

STATE OF WEST VIRGINIA

AUDIT REPORT

OF

WEST VIRGINIA DIVISION OF NATURAL RESOURCES PUBLIC LAND CORPORATION

FOR THE PERIOD

JULY 1, 1999 - JUNE 30, 2002



OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305-0610

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

FOR THE PERIOD

JULY 1, 1999 - JUNE 30, 2002

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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CHARLESTON, WEST VIRGINIA 25305-0610

To the Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we have examined the account of the Public Land Corporation.

Our examination covers the period July 1, 1999 through June 30, 2002. The results of this examination are set forth on the following pages of this report. However, only the financial statements for the years ended June 30, 2002 and June 30, 2001 are included in this report. The financial statements for the year ended June 30, 2000 are included in our work papers.

Respectfully submitted,


Theodore L. Shanklin, CPA, Director
Legislative Post Audit Division

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

TABLE OF CONTENTS

Exit Conference 1

Introduction 2

Board Members and Staff 4

Summary of Findings, Recommendations and Responses 5

General Remarks 11

Independent Auditors' Opinion 37

Statement of Appropriations/Cash Receipts, Expenditures/
Disbursements and Changes in Cash Balance 38

Notes to Financial Statement 39

Supplemental Information 40

Certificate of Director,
Legislative Post Audit Division 44

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

EXIT CONFERENCE

We held an exit conference on April 3, 2003 with the Executive Secretary of the Public Land Corporation and other representatives of the West Virginia Division of Natural Resources. All findings and recommendations were reviewed and discussed. The above officials' responses are included in bold and italics in the Summary of Findings, Recommendations and Responses and after our recommendations in the General Remarks section of this report.

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

INTRODUCTION

The Public Land Corporation was established as a unit of the West Virginia Division of Natural Resources by an Act of Legislature in 1988. The Public Land Corporation was created as a public benefit corporation to hold for the State of West Virginia, the title to the beds of the state rivers, creeks, and streams; and to hold the title to all State lands which are not by law vested in any other state agency, institution, or department.

The Public Land Corporation is governed by a board made up of three Ex Officio members and two members who are appointed by the Governor. The three Ex Officio members are the Director of the Division of Natural Resources who serves as Chairman of the Board, the Commissioner of the Division of Culture and History, and the Commissioner of the Bureau of Commerce. The two appointed members of the board serve terms of four years.

Meetings are held at the discretion of the Chairman, however if three members of the board submit a written request for a meeting it is the duty of the Chairman to schedule a meeting. If for any reason a member of the board cannot attend the meeting, that member may appoint someone else to attend the meeting in his/her place.

The provisions of Chapter 20, Article 1A of the West Virginia Code empower the Public Land Corporation to acquire, by purchase, lease or other agreement, any lands necessary and required for public use; acquire by purchase condemnation, lease or agreement, receive by gifts and devises, or exchange, rights-of-way, easements, waters and minerals suitable for public use; sell or

exchange public lands; sell, purchase or exchange lands or stumpage for the purpose of consolidating lands under State or Federal government administration; negotiate and effect loans or grants from the government of the United States or any agency thereof for acquisition and development of such lands as may be authorized by law to be acquired for public use; and expend the income from the use and development of public lands.

Finally, since the Public Land Corporation holds the title to beds of all navigable rivers, creeks and streams in West Virginia, they also control the dredging of sand, gravel, and coal from these beds. The Public Land Corporation also lease areas of these beds for the exploration of oil, gas, and other minerals; grant rights-of-entry to governmental agencies, companies, and individuals to conduct construction on and around the waterways; grant rights-of-way in order to cross the waterways with such things as pipelines, underground cables, and overhead power and telephone lines; and the Public Land Corporation also enters into large stream structure agreements in order for bridges, dams, docks, culverts, and other structures to be built.

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

BOARD MEMBERS AND STAFF

AS OF JUNE 30, 2002

Ed Hamrick, Director
Division of Natural Resources Chairman

Alisa L. Bailey, Commissioner
Bureau of Commerce. Ex Officio

Nancy P. Herholdt, Commissioner
Division of Culture and History Ex Officio

Dr. James VanGundy Citizen Member

Steve Perdue Citizen Member

James H. Jones, Chief
Office of Real Estate Management
Division of Natural Resources
(Retired 04/01/02) Executive Secretary

Bernard Dowler, Deputy Director
Division of Natural Resources
(04/01/02 - 06/30/02) Acting Executive Secretary

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

SUMMARY OF FINDINGS, RECOMMENDATIONS AND RESPONSES

Lack of Effective System of Internal Controls

1. During the course of our examination, it became apparent to us, based on the observed noncompliance with the West Virginia Code, the Public Land Corporation (PLC) did not have an effective system of internal controls in place to ensure compliance with applicable State laws, rules and regulations. We believe an effective system of internal controls would have alerted management to these violations at an earlier date and allowed more timely corrective action.

Auditors' Recommendation

We recommend the PLC comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended and establish an effective system of internal controls that will serve to alert management to areas of noncompliance as noted in this report.

Agency's Response

The PLC concurs with the recommendation. (See pages 11-13)

Cabwaylingo State Forest - Coal Lease

2. The PLC did not have effective monitoring procedures in place for the Cabwaylingo State Forest Coal Lease and incorrectly deposited \$200,000 of lease royalties into a PLC account which should have been deposited in an appropriate account of the West Virginia Division of Natural Resources (WVDNR).

Auditors' Recommendation

We recommend the PLC establish effective monitoring procedures with respect to the Cabwaylingo Coal Lease as they are authorized under the terms of the Lease Agreement to ensure the State is receiving the proper royalties due under the agreement. Also, we recommend the PLC comply with Chapter 20, Article 1A, Sections 1 and 3 of the West Virginia Code and deposit all royalty payments into an appropriate account of the WVDNR. Lastly, we recommend the PLC refund \$200,000 to the WVDNR with respect to the Minimum Annual Royalties paid under the Cabwaylingo Coal Lease which have been incorrectly deposited into the PLC - Planning and Development Account.

Agency's Response

The PLC believes the Cabwaylingo Coal Lease is being properly accounted for. We also believe passage of H.B. 2512 by the 2003 Legislature will help alleviate the monitoring problems. (See pages 13-18)

Land Sale Transactions

3. The PLC Board did not approve the appraisers used to value land which was being sold.

Auditors' Recommendation

We recommend the PLC comply with the provisions of Chapter 20, Article 1A, Section 4(d) of the West Virginia Code and have the PLC Board approve the appraisers used to value land being offered for sale.

Agency's Response

The PLC believes the Real Estate Management Section staff appraiser meets the criteria of "independence" because he does not work for the agencies for whom the appraisals were performed. (See pages 18-20)

Oil and Gas Lease

4. A PLC lease for oil and gas production at certain points along the Ohio River has 700 additional acres leased beyond the number of acres authorized by the PLC Board; the bonus payment according to the lease differs from the amount set in the Bid Prospectus, the Lessee's actual bid and the information presented to the PLC Board when the lease was approved; a Performance Bond is not in effect with respect to the Lease as required in the Lease Agreement; and, the PLC does not have adequate procedures in place to monitor lease compliance including the factors used to calculate the royalty amounts and their timely submission by the Lessee.

Auditors' Recommendation

We recommend the PLC establish effective monitoring procedures with respect to the Cabwaylingo Coal Lease as they are authorized under the terms of the Lease Agreement to ensure the State is receiving the proper royalties due under the agreement. Also, we recommend the PLC comply with Chapter 20, Article 1A, Sections 1 and 3 of the West Virginia Code and deposit all royalty payments into an appropriate account of the WVDNR. Lastly, we recommend the PLC refund \$200,000 to the WVDNR with respect to the Minimum Annual Royalties paid under the Cabwaylingo Coal Lease which has been incorrectly deposited into the PLC - Planning and Development Account.

Agency's Response

The PLC will ask for a performance bond from the lessee and strengthen internal controls over leases by developing compliance monitoring procedures. We believe passage of H.B. 2512 provides opportunity to improve the monitoring of lease compliance including the calculation of royalty amounts. (See pages 20-26)

Legislative Rules for Land Sales

5. The PLC has not promulgated rules and regulations for conducting land sales, land transfers and land exchanges as required by State law and as was recommended in a September 2001 report by the Performance Evaluation and Research Division (PERD) of the Legislative Auditor's Office.

Auditors' Recommendation

We concur with PERD's finding and we recommend the PLC comply with Chapter 20, Article 1A, Section 4(f) of the West Virginia Code and promulgate rules and regulations for conducting public land sales by competitive bidding, modified competitive bidding and direct sales.

Agency's Response

The PLC concurs and will submit proposed rules to the Legislative Rulemaking and Review Committee prior to the August 2003 deadline. (See pages 27 and 28)

Royalty Collections Not Adequately Monitored

6. The PLC does not have an effective system in place to ensure fair and accurate reporting of royalties due the State under the various leases affecting oil and gas; coal; and, sand and gravel production.

Auditors' Recommendation

We recommend the PLC develop a system of internal controls over royalty collections to ensure accurate reporting by lessees/licensees.

Agency's Response

We concur with the recommendation and we have started taking steps to improve the system over monitoring royalties. (See pages 28-30)

Standards for Land Appraisals

7. The standards used by the PLC to determine the fair market value of land being sold are not the same as the standards prescribed in State law.

Auditors' Recommendation

We recommend the PLC ask the West Virginia Legislature to amend the provisions of Chapter 20, Article 1A of the West Virginia Code to reflect the updated version of (2000) of the "Uniform Appraisal Standards for Federal Land Acquisitions " or, if the preceding standards are not applicable, amend the West Virginia Code to reflect the appropriate standards.

Agency's Response

We concur and we will ask the West Virginia Legislature to amend the provisions of Chapter 20, Article 1A of the West Virginia Code. (See pages 30-32)

No "Specific Written Finding of Fact" for Land Donations

8. We believe the PLC does not provide a "specific written finding of fact" as required by State law when land is donated by State agencies to political subdivisions of the State which sets out why such a transfer is in the best interests of the PLC and the State.

Auditors' Recommendation

We recommend the PLC comply with Chapter 20, Article 1A, Section 4(d) and perform appraisals, as well as, prepare "specific written findings of fact" stating the reasons why land is being transferred at less than fair market value and why such transfer would be in the best interests of the State.

Agency's Response

The PLC believes it is in compliance with the requirements of Chapter 20, Article 1A, Section 4(d) of the West Virginia Code. (See pages 32 and 33)

Hearing Notices

9. The PLC's notice announcing a public hearing for a land sale, exchange or transfer does not include the reason for the sale.

Auditors' Recommendation

We recommend the PLC comply with Chapter 20, Article 1A, Section 5 of the West Virginia Code.

Agency's Response

We concur with the recommendation and will include in public notices the reasons for the sale or transfer as provided in the "specific written finding of fact" (See page 34)

No Written Agreements for Land Sale Transactions

10. The PLC does not maintain written agreements for land sale transactions.

Auditors' Recommendation

We recommend the PLC maintain written agreements for land sale services provided to State agencies.

Agency's Response

We concur with the recommendation that the OREM/PLC maintain written agreements for land sale services provided to state agencies. (See pages 35 and 36)

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

GENERAL REMARKS

INTRODUCTION

We have completed a post audit of the Public Land Corporation. The audit covered the period July 1, 1999 through June 30, 2002.

SPECIAL REVENUE ACCOUNTS

During the audit period, the Public Land Corporation operated from the following appropriated special revenue accounts:

<u>Account Number</u>	<u>Description</u>
Planning and Development Fund:	
3205-001	Personal Services
3205-004	Annual Increment
3205-010	Employee Benefits
3205-099	Unclassified
3205-640	Cash Control

COMPLIANCE MATTERS

Chapter 20, Article 1A of the West Virginia Code generally governs the Public Land Corporation (PLC). We tested applicable sections of the above plus other applicable chapters, articles and sections of the West Virginia Code as they pertain to fiscal matters. Our findings are discussed below.

Lack of Effective System of Internal Controls

During the course of our post audit, it became apparent to us, based on the observed noncompliance with the West Virginia Code, the PLC did not have an effective system of internal

controls in place to ensure compliance with applicable State laws. Chapter 5A, Article 8, Section 9(b) of the West Virginia Code, as amended, states in part,

“The head of each agency shall:

. . . (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities, . . .”

This law requires the agency head to have in place an effective system of internal controls in the form of policies and procedures set up to ensure the agency operates in compliance with the laws, rules and regulations which govern it.

During our audit of the PLC, we found the following noncompliance with State laws or other rules and regulations: (1) The PLC did not have effective monitoring procedures in place for the Cabwaylingo State Forest Coal Lease and incorrectly deposited \$200,000 of lease royalties into a PLC account which should have be deposited in an appropriate account of the West Virginia Division of Natural Resources (WVDNR); (2) The PLC Board did not approve the appraisers used to value land which was being sold; (3) A PLC lease for oil and gas production at certain points along the Ohio River has 700 additional acres leased beyond the number of acres authorized by the PLC Board; the bonus payment according to the lease differs from the amount set in the Bid Prospectus, the Lessee’s actual bid and the information presented to the Board when the lease was approved; a Performance Bond is not in effect with respect to the Lease as required in the Lease Agreement; and, the PLC does not have adequate procedures in place to monitor lease compliance including the factors used to calculate the royalty amounts and their timely submission by the Lessee; (4) The PLC has not promulgated rules and regulations for conducting land sales, land transfers and

land exchanges as required by State law and as was recommended in a September 2001 report by the Performance Evaluation and Research Division (PERD) of the Legislative Auditor's Office; (5) The PLC does not have an effective system in place to ensure fair and accurate reporting of royalties due the State under the various leases affecting oil and gas; coal; sand and gravel production; (6) The standards used by the PLC to determine the fair market value of land being sold are not the same as the standards prescribed in State law; (7) We believe the PLC does not provide a "specific written finding of fact" as required by State law when land is donated by State agencies to political subdivisions of the State which sets out why such a transfer is in the best interests of the PLC and the State; (8) The PLC's notice announcing a public hearing for a land sale, exchange or transfer does not include the reason for the sale; (9) The PLC does not maintain written agreements for land sale transactions.

We recommend the PLC comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code, as amended, and establish an effective system of internal controls that will serve to alert management to areas of noncompliance as noted in this report.

Agency's Response

We concur with the recommendation that the Office of Real Estate Management/Public Land Corporation (OREM/PLC) establish a more effective system of internal controls that will serve to alert management to the areas of noncompliance as noted in this report.

Cabwaylngo State Forest - Coal Lease

The West Virginia Division of Natural Resources (WVDNR) through the Public Land Corporation entered into a Lease Agreement with Vantage Mining Company on August 11, 1999 for the development and mining of certain coal reserves under Cabwaylngo State Forest located in

Wayne County, West Virginia which is referred to hereafter as the Cabwaylingo Coal Lease. During the course of our post audit, we examined the terms of the Cabwaylingo Coal Lease and the royalties paid the State during the period July 1, 2000 - January 17, 2003.

Our testing of revenue transactions and review of events occurring after June 30, 2002 revealed that two deposits totaling \$200,000 were made to the PLC's Planning and Development Account (3205) representing the Minimum Annual Royalty of \$100,000 due under the Cabwaylingo Coal Lease during the period August 11, 2000 - August 10, 2002. Upon inquiry of representatives of the PLC and WVDNR, we determined the royalties due under the Cabwaylingo Coal Lease were not been being effectively monitored to ensure the State was receiving the amount of money due under the terms of the Lease. Specifically, the Cabwaylingo Coal Lease provides in Article Ten :

Lessee covenants and agrees to pay, when due, all tonnage royalty or all minimum annual royalty and all other payments to be made by Lessee to Lessor under the terms of this Lease, without notice or demand, to Lessor at such place and in such proportions as hereinafter provided.

Lessee agrees to keep true and faithful accounts of all coal mined and shipped by it from the "Leased Premises", and to render to Lessor on or before the 25th day of each month a statement showing the tons mined and shipped from the "Leased Premises" during the preceding month.

Lessor shall have the right to inspect the books and records of Lessee, and any other related company thereof, relating to the coal to be accounted for hereunder, including weight reports of the railroad or other carrier by which such coal may be shipped, and also to inspect the "Leased Premises" and Lessee's operations thereon and Lessee's maps thereof and to take measurements of coal mined thereon, and of entries, mining-ways, etc.; provided, however, that in so doing, the work of the Lessee shall not be unnecessarily interfered with. . . ." (Emphasis added)

The Lessee began submitting monthly reports to the PLC as required under the Lease Agreement beginning in February 2002. We were told the only monitoring procedures performed with respect to the Cabwaylingo Coal Lease was to ensure the required monthly reporting was being performed and at least the Minimum Annual Royalty due under the agreement was being paid in a timely fashion. The monthly reports submitted by the Lessee and made available to us indicated the Mining Permit for the Cabwaylingo Coal Lease was not active which would make sense as only the minimum \$100,000 annual royalty was being paid. However, we were told the WVDNR and PLC had not availed themselves of the monitoring provisions as set forth above and visited the "Leased Premises" to confirm that no mining activity was occurring nor had they contacted the West Virginia Division of Environmental Protection (WVDEP) in order to assure themselves that the "Leased Premises" were not being actively mined. We believe either visiting the "Leased Premises" on a periodic basis or confirming the status of the Mining Permit with the WVDEP are prudent monitoring procedures which should have been performed since the Lessee was reporting no production related to the lease. In light of this, we contacted the Logan, WV Office of the WVDEP and confirmed the Mining Permit in question was inactive and no coal production activity was occurring.

In addition, we observed the Minimum Annual Royalty payments made under the Cabwaylingo Coal Lease during the last two fiscal years totaling \$200,000 had been incorrectly deposited into the PLC - Planning and Development Account (3205). We believe any monies derived from the Cabwaylingo Coal Lease should be deposited into an appropriate account of the WVDNR because the WVDNR owns Cabwaylingo State Forest. We reached our determination as to the ownership of Cabwaylingo State Forest based on a review of the various deeds making up Cabwaylingo State Forest. Specifically, we were supplied with a total of 11 different deeds making

up various tracts of Cabwaylingo State Forest and we observed that all of these deeds are between various individuals and the WVDNR or the Conservation Commission of West Virginia which previously performed the functions of the current WVDNR. Accordingly, we believe the PLC should refund the \$200,000 to the WVDNR.

Income earned by the PLC is prescribed in Chapter 20, Article 1A, Section 3 of the West Virginia Code which states in part:

(6) Expend the income from the use and development of public lands . . . (C) Obtain grants or matching moneys available from the government of the United States . . . The corporation shall have authority to enter into leases for the development and extraction of minerals, including sand and gravel, except as otherwise circumscribed herein. The corporation shall reserve title and ownership to the mineral rights in all cases

The definition of public lands, as set out in Chapter 20, Article 1A, Section 1 of the West Virginia Code, states in part,

“. . . (c) The corporation shall be vested with the title of the state of West Virginia in public lands, the title to which now is or may hereafter become vested in the state of West Virginia by reason of any law governing the title of lands of the state: **Provided, That those lands for which title is specifically vested by law in other state agencies, institutions and departments shall continue to be vested in such state agencies, institutions and departments.**” (Emphasis added)

On July 25, 2002 and August 9, 2001, the PLC made separate \$100,000 deposits into the PLC - Planning and Development Account (3205) for the coal royalty related to the Cabwaylingo Coal Lease. We also noted coal royalties from the Cabwaylingo Coal Lease were previously deposited into the Lands, Minerals, and Special Projects Account (3239) of the WVDNR during fiscal years 2001 and 2000.

We recommend the PLC establish effective monitoring procedures with respect to the Cabwaylingo Coal Lease as they are authorized under the terms of the Lease Agreement to ensure the State is receiving the proper royalties due under the agreement. Also, we recommend the PLC comply with Chapter 20, Article 1A, Sections 1 and 3 of the West Virginia Code and deposit all royalty payments into an appropriate account of the WVDNR. Lastly, we recommend the PLC refund \$200,000 to the WVDNR with respect to the Minimum Annual Royalties paid under the Cabwaylingo Coal Lease which have been incorrectly deposited into the PLC - Planning and Development Account.

Agency's Response

We did not concur with your finding that OREM/PLC could have visited the leased premises on a periodic basis and confirmed the status of the mining operations. This is a deep mine operation and the mine opening is located several miles distant from the leased Cabwaylingo State Forest property. People who work or visit this forest facility on a daily basis would not be aware if underground mining operations were being conducted on the leased acreage.

We believe that the passage of H.B. 2512 (2003 Legislature) will help alleviate this problem. H.B. 2512 allows OREM/PLC to employ independent auditors to periodically review the accounts or books of a lessee to determine lease compliance.

In 1989, the Legislature in H.B. 2241 combined the functions of the Public Land Corporation and the Land and Real Estate Office of West Virginia Division of Natural Resources. See Chapter 20-1A and Chapter 20-1A-9.

Prior to 1989, account 3239 was created as a second operating account for Division of Natural Resources Real Estate transactions. Account 3205 was established to handle Public Land Corporation transactions.

It is our believe that in 1989 both accounts were allocated by the legislation to the West Virginia Division of Natural Resources Real estate Management Section/Public Land Corporation. We now operate from appropriated account 3205 and a smaller non-appropriated account 3239.

The Real Estate Management Section/Public Land Corporation staff performs all work of Public Land Corporation. Staff salaries and all operating expenses are paid from the above-mentioned accounts. The Public Land Corporation Board Members who are Ex Officio are entitled to be paid expenses incurred for travel, meals, etc. while attending Public Land Corporation Board meetings. We have functioned using these two accounts since 1989, and all monies have been accounted for.

Land Sale Transactions

We noted during our test of land transactions that the appraisal for certain Mason County, West Virginia property was performed by a certified appraiser employed by the Office of Real Estate Management (OREM) of the WVDNR. Also, we noted the PLC used an outside independent appraiser for the other land sale transaction which we located which involved land in Summers County, West Virginia. The details of the two land sales which we located during our audit were as follows:

<u>Property Description</u>	<u>Seller State Agency</u>	<u>Buyer</u>	<u>Amount Paid to PLC</u>	<u>Amount Paid to Seller</u>	<u>Taxes & Realty Fees</u>	<u>Total Selling Price</u>
145 Acres in Mason County	State Police	Gus Douglas	\$8,830.00	\$167,770.00	\$ 0.00	\$176,600.00
43 Acres in Summers County	Agriculture	John & Marlene Vance	\$7,800.00	\$ 69,746.43	\$453.57	\$ 78,000.00

The PLC uses the OREM staff to carry out its functions and the PLC's Executive Secretary heads this staff. However, the PLC Board was never asked to approve the appraisers used to value land offered for sale. Chapter 20, Article 1A, Section 4(d) of the West Virginia Code which states in part,

". . . Except as provided herein, public lands may not be sold, exchanged or transferred by the corporation for less than fair market value. Fair market value shall be determined by an appraisal made by an independent person or firm chosen by the public land corporation. The appraisal shall be performed using the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisitions" published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972; . . ." (Emphasis added)

We believe the PLC Board should approve the appraisers who are used to value land offered for sale by the PLC. Since the PLC Board did not approve the appraisers, we are unable to determine whether the remaining provisions of Chapter 20, Article 1A, Section 4(d) of the West Virginia Code were complied with.

We recommend the PLC comply with the provisions of Chapter 20, Article 1A, Section 4(d) of the West Virginia Code and have the PLC Board approve the independent appraisers used to value land being offered for sale.

Agency's Response

There appears to be a disagreement concerning the definition of the term "Independent Appraiser".

It appears that the legislative auditor's office definition would preclude a state employee regardless of which agency is employing them.

We maintain that the Real Estate Management Section staff appraiser meets necessary criteria of "Independence" because he does not work for the agencies for whom the appraisals were performed. In the case cited by the audit, our staff appraiser performed an appraisal of property owned by West Virginia State Police. We contend that merely being a state employee does not preclude independence.

Oil and Gas Lease

In 1991, the PLC entered into an oil and gas lease for a initial two-year term and which continues from year-to-year as long as oil or gas is produced and royalties are paid by the Lessee. This lease is the only oil and gas lease in effect during the period July 1, 2000 through June 30, 2002. We noted the following aspects of the lease: (1) The Lessee received approximately 700 more acres (four mile points on the Ohio River) than what was offered in the PLC Bid Prospectus and without Board approval; (2) The bonus payment according to the lease differs from what was stated in the Bid Prospectus, the actual bid, and the information provided to the Board as noted in the April 10, 1991 minutes; (3) A Performance Bond was not provided in noncompliance with Chapter 20, Article 1A, Section 6 of the West Virginia Code; (4) The PLC does not have adequate procedures in place to monitor lease compliance including the factors used to calculate the royalty amounts and their timely submission by the Lessee.

Chapter 20, Article 1A, Section 2 of the West Virginia Code states in part,

" . . . An affirmative vote of a majority of the members of the corporation is required for any action of the corporation with respect to the sale or exchange of public lands or for the issuance of a lease or contract for the development of minerals, oil or gas"

Also, Chapter 20, Article 1A, Section 6 of the West Virginia Code states in part,

"The corporation may enter into a lease or contract for the development of minerals, gas or oil on or under lands in which the

corporation holds any right, title or interest: . . . The corporation may enter into a lease or contract for the development of minerals, oil or gas, where such lease or contract is not prohibited by any other provisions of this code, only after receiving sealed bids therefor, after notice by publication as a Class II legal advertisement . . . The area for such publication shall be each county in which such lands are located. The minerals, oil or gas so advertised may be leased or contracted for development at not less than the fair market value, as determined by an appraisal made by an independent person or firm chosen by the corporation, to the highest responsible bidder, who shall give bond for the proper performance of the contract or lease as the corporation shall designate. . . .”

In the November 7, 1990 Board minutes, a representative of an oil company made a presentation to the PLC Board requesting approval to lease areas under the Ohio River for oil and gas production. The Board approved a motion that the Executive Secretary advertise bids for oil and gas leasing rights underneath the Ohio River at specified locations with the results of the bidding to be presented to the Board for review.

The lease file indicates the legal newspaper advertisements were placed in the Charleston Gazette, the Charleston Daily Mail, the Parkersburg News, and the Wheeling Intelligencer on February 13 and 20, 1991 announcing a bid proposal acceptance for oil and gas resources. Interested parties were to contact the PLC for a Oil and Gas Leasing Prospectus Package. The bid opening, as noted in the Prospectus, was to have been held on March 22, 1991.

The April 10, 1991 PLC Board minutes indicate that only one company proposed to lease the oil and gas resources and the Board authorized the PLC Chairman to sign the lease. This company is the same company which requested approval for leasing at the preceding November 7, 1990 meeting. We reviewed the lease with the terms set out in the Bid Prospectus and the West Virginia Code and the results of our review follow.

The location of the oil and gas resources to be leased were beneath the Ohio River at mile points 133 to 140 and 148 to 161. However, we noted an additional four mile points (approximately 700 acres) were leased but not included in the Bid Prospectus, the bid received, or approved for lease by the PLC Board. As stated in the aforementioned statute, the PLC may enter into a lease for the development of oil or gas only after receiving sealed bids. The PLC Board must also, by majority vote, approve the lease. Not receiving sealed bids and not obtaining the Board's approval for these four miles results in noncompliance with the statute.

We found correspondence in the file from the sole bidder to the PLC's Executive Secretary dated April 22, 1991 which is after the bid opening date and the April 10, 1991 Board meeting which states in part,

"Pursuant to our recent telephone conversation I am writing to indicate to you that four miles of the Ohio River Oil and Gas rights were inadvertently excluded from our original request, and our recent bid. If possible, I would like to discuss with you whether or not it would be appropriate or possible to include the land under the Ohio rivers at mile markers 140 to 144 in either of the leases which have been approved or even perhaps in a separate lease"

No evidence was found in the file to indicate that sealed bids were received for mile points 141 through 144 or that a majority of the PLC Board approved the lease that included these mile points. The lease was signed by the PLC Chairman.

Secondly, we noted the bonus amount provided for in the minimum terms of the lease approved at the Board meeting on April 10, 1991 was not the same as the bonus amount of the executed lease. We found no evidence that the change in minimum terms was brought before the PLC Board for their approval in noncompliance with the preceding statute. The minimum terms set out in Bid Prospectus states in part,

"The minimum terms acceptable to the PLC for the state's oil and gas resources per section of the Ohio River shall be no less than a one-

eight (1/8) royalty fee, based on the fair market price at the time of production, for all oil and gas produced. A bonus will be paid to the PLC on the date of execution of an agreement with the successful bidder of not less than Ten Dollars (\$10.00) per acre. An annual delayed rental of not less than Five Dollars (\$5.00) per acre will be paid the state on the date of execution of an agreement and every year on the anniversary date of the agreement until such time as production commences. . . .”

Based on the Bid Prospectus, the bidder should have paid a bonus of \$15.00 per acre on the date of execution of the agreement and \$5.00 every year on the anniversary date of the agreement until production commences. But, the Lessee submitted a bid which the PLC Board approved which specified: (a) \$10 per acre (2,991 acres @ \$10 equals \$29,910) to be paid at the execution of the lease; (b) if no wells are drilled within the 9-month anniversary date, another payment of \$29,910; (c) if no wells are drilled within the 12-month anniversary date, another payment of \$29,910; and, (d) if no well is drilled with the 18th month anniversary date, the lease was to be relinquished. Ultimately, the actual lease executed by the PLC Chairman and the representative of the Lessee states the bonuses paid under the lease shall be as follows:

“5. BONUS: Lessee shall pay to Lessor a one time bonus of TWENTY-FIVE DOLLARS (\$25.00) maximum per acre as follows:

a) EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$8.25) per acre will be paid to Lessor upon execution of this lease by the Lessee.

b) If no well is drilled by Lessee within nine (9) months after the date of execution of this lease, an additional EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$8.25) per acre will be paid to the Lessor.

c) If no well is drilled by Lessee within twelve (12) months of the date of execution of this lease, the final EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$8.25) per acre will be paid to the Lessor....”

We calculated the amount of the bonus due at the execution of lease using the terms set out in the Bid Prospectus and the executed lease which total \$44,865 (2,991 acres @ \$15 per acre) and \$30,443 (3,690 acres @ \$8.25 per acre), respectively. Also, we located a copy of a check, dated March 18, 1991, made out to the "State of West Virginia Department of Public Lands" for \$29,910 (2,991 acres @ \$10 per acre) which is the bonus amount noted in the Lessee's bid. We are unable to determine what amounts were actually paid to the PLC by the Lessee because no accounting records are currently available for 1991. Again, based on the information available to us in the PLC Board minutes, the modified bonus terms actually contained in the executed lease were never reported to all Board members or approved by a majority vote of the PLC Board in noncompliance with the statute.

Thirdly, no performance bond was submitted by the Lessee or subsequent assignees in noncompliance with the statute. The provisions of Chapter 20, Article 1A, Section 6 quoted above provides that a bond must be submitted; however, PLC staff could not provide evidence of a bond or tell us why no bond was available. In September 1998, the Lessee assigned their interests in a portion of the lease that pertained to 18 of the 24 mile points. The agreement was approved in writing by the PLC Chairman; however, the Assignment Agreement in the lease file was not signed by the Assignee. The lease provides for assignments (including the bond) as follows:

“ASSIGNING AND ENCUMBERING: Lessee shall not use or allow to be used, the demised premises for any other purpose than is authorized by this instrument and shall not farm out, convey, assign, pledge, transfer, encumber or hypothecate the demised premises or any portion thereof at any time without the express prior written approval of Lessor. Lessee shall make application to obtain such consent in writing accompanied by a map to Lessor describing the land to be assigned and the interest therein if less than the whole, together with the interest retained by assignor. **The assignee shall agree in writing**

to be bound by all of the terms and provisions of this lease and shall furnish a surety or performance bond satisfactory to Lessor. . . .” (Emphasis added.)

Lastly, the PLC does not have adequate procedures in place to monitor lease compliance including the factors used to calculate the royalty amounts and their timely submission by the Lessee. The executed lease provides for lease monitoring as stated in part,

“ . . . Lessee further grants to Lessor the right at any time to examine, audit, or inspect books, records, and accounts of Lessee pertinent to the purpose of verifying the accuracy of the reports and statements furnished to the Lessor and for checking the amount of payments lawfully due under the terms of this lease. . . .”

In regard to royalties, the PLC relies on the Assignee to remit the correct amount of royalties without ever verifying current oil and gas rates or the production amounts used to calculate the royalty. This lease resulted in royalties submitted for the years ended June 30, 2002 and 2001 totaling \$17,046.85 and \$18,947.19, respectively. For royalty rates, the executed lease states in part,

“7) ROYALTY: (OIL ROYALTY): Lessee shall pay monthly to Lessor as oil royalty, 1/8 (one-eighth - 12.5% of 8/8) of the field price per barrel . . . (GAS ROYALTY) Lessee shall pay monthly to Lessor, as gas royalty, 1/8 (one-eighth - 12.5% of 8/8) for all natural gas, casing head gas, or other gaseous substance produced from the demised premises, at the prevailing market value for natural gas in the area or posted N.G.P.A. price, whichever is higher at the time of production. . . The unit of volume for the purpose of measurement shall be one (1) cubic foot of gas”

We are unable to determine if the royalties paid are correct because there are no procedures in place to determine the market value of oil and gas rates, as well as, production amounts. Also, our testing revealed the Assignee was habitually late in filing its production and sales activity report and remitting the report with the royalty amount for the preceding month by the 25th of the succeeding month. The executed lease provides for payments as follows:

“PAYMENTS: Lessee shall be held responsible for the payment of all royalties which shall be made payable to and mailed or delivered

to Lessor. Payments of royalties shall be made no later than the twenty-fifth (25th) day of each calendar month; covering production and sales for the preceding calendar month.

“Lessee shall submit statements of the production and sales of oil, gas, other hydrocarbon products, and other products not later than the twenty-fifth (25th) day of each calendar month covering production and sales for the preceding calendar month.”

Our test of royalties submitted by the Assignee consisted of 27 production reports with activity that brought royalties to the PLC in the amount of \$37,967.74 from July 1, 2000 through October 21, 2002. These reports were submitted an average of 89.37 days after the due date (25th day of the succeeding month) with a time lapse between the due date and the receipt of the report and applicable royalties ranging from 52 to 119 days.

We recommend the PLC comply with the provisions of Chapter 20, Article 1A, Sections 2 and 6 of the West Virginia Code. Also, we recommend the PLC strengthen internal controls over leases by developing compliance monitoring procedures.

Agency's Response

We concur with the recommendation that OREM/PLC comply with the provisions of Chapter 20, Article 1A, Sections 2 and 6 of the West Virginia Code.

The OREM/PLC will ask for a performance bond from the lessee.

We concur with the recommendation that the OREM/PLC strengthen internal controls over leases by developing compliance monitoring procedures.

We believe that passage of H.B. 2512 (as previously mentioned) provides opportunity to improve the monitoring of lease compliance including the calculations of royalty amounts.

Legislative Rules for Land Sales

The PLC has not promulgated rules and regulations for conducting land sales, land transfers and land exchanges as recommended in a September 2001 Performance Evaluation performed by the Performance Evaluation and Research Division of the Legislative Auditor's Office (PERD) which stated:

“The PLC should comply with the West Virginia Code §20-1A-4(f) by promulgating rules regarding procedures for conducting public land sales by competitive bidding, modified competitive bidding and direct sales.”

The Chairman of the PLC responded to the PERD report in a letter dated September 13, 2001 as follows, “The DNR agrees that rules and procedures for the sale, transfer and exchange of land should be promulgated. The DNR is in the process of drafting these rules and will have them ready to submit at the next legislative session.” However, as of the date of this post audit report (January 17, 2003), such rules and regulations have not yet been promulgated. Chapter 20, Article 1A, Section 4(f) of the West Virginia Code states,

“(f) The corporation shall promulgate rules, in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code, regarding procedures for conducting public land sales by competitive bidding, modified competitive bidding and direct sales.”

We asked the Chairman of the PLC why rules and regulations have not been promulgated as required by Chapter 20, Article 1A, Section 4(f) of the West Virginia Code. He responded to us by a letter dated October 23, 2002 which stated in part,

“. . . Other than WV Code Chapter 20-1A, no rules or guidelines have been promulgated other than the WV Code. However, in all transactions, general real estate practice and ethics are applied. We believe the lack of mandated rules have not resulted in any monetary loss to any state agency because: a) at the minimum, we get fair market value for properties sold; b) our charges to state agencies only recoup

expenses and are always below what the private sector would charge; c)in this instance, the Code is very specific in laying out the procedures and steps to follow and therefore the promulgation of rules would not change the manner in which transactions are conducted. ...”

We concur with PERD’s finding and we recommend the PLC comply with Chapter 20, Article 1A, Section 4(f) of the West Virginia Code and promulgate rules and regulations for conducting public land sales by competitive bidding, modified competitive bidding and direct sales.

Agency’s Response

We concur. The OREM/PLC will promulgate rules and regulations, in compliance with Chapter Twenty-nine-a of the WV Code, regarding procedures for conducting sales, leases, and exchange of public lands and minerals. The rules will be submitted to the Legislature Rule-making and Review Committee prior to the August 2003 deadline.

The OREM/PLC would note that the “Rule issue” was one of the subjects discussed in a January 2003 meeting. Attending this meeting with the WVDNR Staff were Rule-making & Review Co-Chair Delegate Virginia Mahan and Legislative Staff Attorney Debra Graham Phillips. Many ideas discussed at this meeting were incorporated in H.B. 2512. The WVDNR was fully supportive of the passage of H.B. 2512 as it codifies many policies implemented by the current Director and will significantly enhance our capability to monitor lease compliance..

A decision was made to await the outcome of the proposed legislation prior to promulgating rules.

Royalty Collections Not Adequately Monitored

Chapter 20, Article 1A, Section 3 of the West Virginia Code states in part,

“ . . . The corporation shall have the authority to enter into leases for the development and extraction of minerals, including sand and gravel, except as otherwise circumscribed herein. . . .”

Also, Chapter 20, Article 1A, Section 6 of the West Virginia Code states in part,

“The corporation may enter into a lease or contract for the development of minerals, gas or oil on or under lands in which the corporation holds any right, title or interest”

The PLC receives royalties from companies that dredge sand, coal and gravel from stream beds, as well as, receives royalties from oil and gas leases. However, the PLC does not have in place an adequate system to ensure fair and accurate reporting of materials produced or dredged and the royalties derived from such produced or dredged materials.

During fiscal years 2002 and 2001, the PLC collected approximately \$190,000 and \$96,000, respectively, in royalties for the oil & gas lease, and coal, and sand and gravel dredgers license agreements. Since the PLC does not have a adequate system in place to monitor the production or dredging activity of its lessees/licensees, the PLC cannot determine whether the licensee/lessee is accurately reporting his activity and sale price, and whether the PLC is receiving correct royalty amounts due on such activities.

In his response to our letter of October 9, 2002, wherein we asked what specific procedures the PLC had in place to monitor the royalties being reported to PLC for materials dredged by lessees/licensees – the PLC Chairman stated:

“The PLC receives royalties from coal, sand/gravel that are dredged from the rivers/streams in WV. All of these functions are covered by the license/permission to perform this activity. All licensees are required to submit to the PLC a report of the material dredged on a monthly/quarterly basis. Other than the requirements/reports required in the license, there are no other reports. **This office lacks the staff to initiate other inspections/audits.** Pursuant to the license, we require monthly/quarterly reports.” (Emphasis added.)

We recommend the PLC develop a system of internal controls over royalty collections to ensure accurate reporting by lessees/licensees.

Agency's Response

We concur with the recommendation that the OREM/PLC improve its system of internal controls over royalty collections to ensure accurate reporting by lessees/licensees.

The OREM/PLC monitors the payment of royalties on the timely basis established by the lease/license. We recognize the fact that we have not audited lessees/licensees to verify the accuracy of the reports. We have contacted the State Tax Department seeking interagency cooperation in verifying reports. We believe that the passage of H.B. 2512 provides opportunity to resolve this problem.

Standards for Land Appraisals

The standards for appraisals for land which is to be sold, exchanged or transferred by the PLC are found in Chapter 20, Article 1A, Article 4(d) of the West Virginia Code which states in part,

“ . . .Except as provided herein, public lands may not be sold, exchanged or transferred by the corporation for less than fair market value. Fair market value shall be determined by an appraisal made by an independent person or firm chosen by the public land corporation. The appraisal shall be performed using the principles contained in the “Uniform Appraisal Standards for Federal Land Acquisitions” published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972; . . .”(Emphasis added)

In relation to land sale appraisals, we were told by the OREM appraiser that the principles for appraisals noted in the West Virginia Code are outdated because the publication date noted in the statute is 1972, but revisions have occurred since this date. Also, we were told that land appraisals are actually being performed in accordance with the **“Uniform Standards of Professional Appraisal Practice” (USPAP)** which the OREM appraiser stated should be the governing principles

because principles contained in the **“Uniform Appraisal Standards for Federal Land Acquisition”** are for land acquisitions – the PLC Board does not approve land acquisitions – just land sales, transfers and exchanges. However, the OREM appraiser also told us that the standards and principles are basically the same and the OREM appraiser will review all outside appraisals for compliance with the Federal standards. We noted an appraisal for a land sale in Summers County was performed by an outside appraiser in accordance with USPAP, but the OREM appraiser could not locate a review for this appraisal.

We believe the PLC should ask the West Virginia Legislature to amend the provisions of Chapter 20, Article 1A to reflect the updated version of the Federal standards or, if these standards do not apply, amend the statute to reflect the appropriate standards that should be followed. We believe the definition of “market value” differs between the two standards as described in the **“Uniform Appraisal Standards for Federal Land Acquisitions, 2000”**.

Because there is a question about applicable standards and fair market value, we are unable to determine if the property which was sold in Mason and Summers Counties by the PLC as discussed in another finding in this report entitled “Land Sale Transactions” was valued in accordance with the preceding Code section. We are unable to determine if the “fair market value” of the respective properties were determined by the appropriate standard and that the Minimum Bid Amounts deemed acceptable for the land were reasonable.

We recommend the PLC ask the West Virginia Legislature to amend the provisions of Chapter 20, Article 1A of the West Virginia Code to reflect the updated version (2000) of the **“Uniform Appraisal Standards for Federal Land Acquisitions”** or, if the preceding standards are not applicable, amend the West Virginia Code to reflect the appropriate standards.

Agency's Response

We concur.

The OREM/PLC will ask the West Virginia Legislature to amend the provisions of Chapter 20, Article 1A of the West Virginia Code to reflect the current version of the "Uniform Appraisal Standards for Federal Land Acquisitions".

No "Specific Written Finding of Fact" for Land Donations

We noted the PLC does not provide a "specific written finding of fact" when land is donated by State agencies to political subdivisions of the State of West Virginia. Chapter 20, Article 1A, Section 4(d) of the West Virginia Code states in part,

". . . Except as provided herein, public lands may not be sold, exchanged or transferred by the corporation for less than fair market value. Fair market value shall be determined by an appraisal made by an independent person or firm chosen by the public land corporation. The appraisal shall be performed using the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisitions" published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972; Provided, That public lands may be sold, exchanged or transferred to any federal agency or to the state or any of its political subdivisions for less than fair market value if, upon a specific written finding of fact, the corporation determines that such a transfer would be in the best interests of the corporation and the state. . . ." (Emphasis Added)

We noted during our test of land transactions that the Division of Environmental Protection (WVDEP) donated 10 acres of land to the Berkeley County Solid Waste Authority to be used for a recycling center. The PLC staff supplied us with an internal memorandum from the WVDEP and told us that they consider letters, etc. from the transferring agency requesting assistance to constitute a "specific written finding of fact". However, we believe the "specific writing finding of fact" should provide the reasons why such a transfer would be in the best interests of the

corporation and the State. Further, no appraisal was performed on the land prior to the transfer. The PLC staff told us that they do not obtain appraisals for land transferred to other State, city or county governments. Without the “specific written finding of fact”, we are unable to determine if the PLC Board complied with the statute and the land transfer was in the State’s best interest.

We recommend the PLC comply with Chapter 20, Article 1A, Section 4(d) and perform appraisals, as well as, prepare “specific written findings of fact” stating the reasons why land is being transferred at less than fair market value and why such transfer would be in the best interests of the State.

Agency’s Response

The OREM/PLC believes we are complying with Chapter 20, Article 1A, Section 4(d). In the case of the land transaction from the Division of Environmental Protection (WVDEP) to the Berkeley County Solid Waste Authority no appraisal was performed, nor required. Appraisals are required and obtained if state property is being disposed of to a non-governmental agency or entity.

We concur with the recommendation that the OREM/PLC prepare a “specific written findings of fact” stating the reasons why land is being transferred at less than fair market value and why such transfer is in the best interest of the state.

In the past, the OREM/PLC has used the written request from the agency seeking to dispose of property in lieu of a formal “Findings of Fact” by this office. We will continue to rely on information provided by such agencies as the basis for the preparation of such “Findings of Fact”.

Hearing Notices

Chapter 20, Article 1A, Section 5 of the West Virginia Code states in part,

“(a) Prior to any final decision of any state agency to sell, exchange or transfer land, the public land corporation shall:

(1) Prepare and reduce to writing the reasons and supporting data regarding such sale or exchange. The written reasons required under this section shall be available for public inspection at the office of the county clerk at the county courthouse of each county in which the affected land is located during the two successive weeks before the date of the public hearing required by this section;. . .”

The PLC does not make available, for public inspection at the affected County Courthouse two weeks before a public hearing, the reasons and supporting data regarding land sales and exchanges which is in noncompliance with Chapter 20, Article 1A, Section 5(1) of the West Virginia Code.

The PLC prepares a “Notice of Hearing” which is sent to county clerks for posting at least two weeks before a public hearing. However, the “Notice of Hearing” only advertises the time and date of the public hearing, as well as, identifies the property to be sold/exchanged and the parties involved, but does not meet the requirements provided by State law because no reference is made as to the reasons for the sale or exchange of property. The PLC uses the “Notice of Hearing” for all public hearings.

We recommend the PLC comply with Chapter 20, Article 1A, Section 5 of the West Virginia Code.

Agency’s Response

We concur with the recommendation and will include in public notices the reasons for the sale or transfer as provided in the “specific written finding of fact”.

No Written Agreements for Land Sale Transactions

The PLC provides realtor services to State agencies wanting to sell land. We were told State agencies and the PLC arrive at a verbal agreement on how the land sale transaction is to occur; however, we believe such agreements should be in writing as evidence of the terms.

Chapter 20, Article 1A, Section 3 of the West Virginia Code states in part,

“The corporation is hereby authorized and empowered to: (1) Acquire from any persons or the state auditor or any local, state or federal agency, by purchase, lease or other agreement, any lands necessary and required for public use . . . (3) Sell or exchange public lands”

The ability of the PLC to enter into contracts and the definition of public lands are provided for in Chapter 20, Article 1A, Section 1 of the West Virginia Code as stated in part,

“ . . . b) The corporation shall be a public benefit corporation and an instrumentality of the state and may sue or be sued, contract and be contracted with, plead and be impleaded, have and use a common seal. (c) The corporation shall be vested with the title of the state of West Virginia in public lands, the title to which now is or may hereafter become vested in the state of West Virginia by reason of any law governing the title of lands of the state: Provided, That those lands for which title is specifically vested by law in other state agencies, institutions and departments shall continue to be vested in such agencies, institutions and departments.”

The procedures used by the PLC for land sales are that the State agency owning the land will title the land over to the PLC. The PLC will sell the land, generally through a competitive bid process. The PLC instructs bidders for the property to submit a deposit amount (in PLC’s name) with their bids equal to a percentage of the bid amount, generally five to ten percent. The PLC will keep the deposit amount submitted by the winning bidder as “reimbursement of expenses” and the bidder will pay the residual amount in a check made out to the State agency which owned the land.

We believe the land sale agreements between State agencies and the PLC should be in writing as evidence of the specific terms. In our review of the June 27, 2000 and February 20, 2002 Board minutes, we noted possibly three additional land transactions were to occur; however, PLC staff told us the projects were stopped by the State agency owning the land. Without a written agreement between the PLC and the State agencies on the terms of the agreement, no written evidence exists documenting the events that occurred and the understanding between the two agencies.

We recommend the PLC maintain written agreements for land sale services provided to State agencies.

Agency's Response

We concur with the recommendation that the OREM/PLC maintain written agreements for land sale services provided to state agencies.

INDEPENDENT AUDITORS' OPINION

The Joint Committee on Government and Finance:

We have audited the Statement of Cash Receipts, Disbursements, and Changes in Cash Balance of the Public Land Corporation for the years ended June 30, 2002 and June 30, 2001. The financial statement is the responsibility of the management of the Public Land Corporation. Our responsibility is to express an opinion on the financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note A, the financial statement was prepared on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

In our opinion, the financial statement referred to above presents fairly, in all material respects, the cash receipts collected and disbursements paid by the Public Land Corporation for the years ended June 30, 2002 and June 30, 2001 in conformity with the basis of accounting described in Note A.

Our audit was conducted for the purpose of forming an opinion on the basic financial statement taken as a whole. The supplemental information is presented for the purposes of additional analysis and is not a required part of the basic financial statement. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statement and is fairly stated in all material respects in relation to the basic financial statement taken as a whole.

Respectfully submitted,


Thedford L. Shanklin, CPA, Director
Legislative Post Audit Division

January 17, 2003

Auditors: Michael E. Sizemore, CPA, Supervisor
Jean Ann Krebs, CPA, Auditor-in-Charge
Peter J. Maruish, Jr., CPA
Melanie L. Nuckols, CPA
Lori A. Sutton

**WEST VIRGINIA DIVISION OF NATURAL RESOURCES
PUBLIC LAND CORPORATION
STATEMENT OF CASH RECEIPTS, DISBURSEMENTS AND
CHANGES IN CASH BALANCE**

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Cash Receipts:		
Coal Royalties	\$135,130.53	\$ 23,873.04
Pipeline Permits	65,233.50	63,844.50
Sand & Gravel Royalties	37,718.95	53,059.01
Structures	31,511.00	28,410.00
Fees from Land Purchases	9,500.00	0.00
Gas & Oil Leases	17,046.85	18,947.19
Land Leases	0.00	250.00
Right of Way	224.40	60.00
Sub Cable Renewal	650.00	7,875.00
Water Intake Structure Fees	3,502.00	3,000.00
Easements	0.00	9,200.00
Low Level Water Bridge	43,700.00	52,200.00
Coal Annual Fees	1,600.00	1,200.00
Channel Changes	900.00	1,700.00
Low Water Fords	1,000.00	1,200.00
Docking Facilities	8,800.00	8,401.00
Stream Restoration	3,300.00	1,800.00
Sand & Gravel Annual Fee	11,800.00	12,616.25
Miscellaneous	<u>4,200.00</u>	<u>3,500.00</u>
	375,817.44	291,535.99
Disbursements:		
Personal Services	195,352.12	198,190.00
Employee Benefits	55,818.15	58,871.24
Current Expenses	40,439.86	36,479.02
Repairs & Alterations	205.20	65.00
Equipment	10,225.30	4,388.24
Miscellaneous	989.67	0.00
Transfer to PEIA Premium Stabilization Fund	<u>1,426.92</u>	<u>1,951.20</u>
	<u>304,457.22</u>	<u>299,944.70</u>
Cash Receipts Over/(Under) Disbursements	71,360.22	(8,408.71)
Beginning Balance	<u>90,417.11</u>	<u>98,825.82</u>
Ending Balance	<u>\$161,777.33</u>	<u>\$ 90,417.11</u>

See Notes to Financial Statement

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

NOTES TO FINANCIAL STATEMENT

Note A - Accounting Policies

Accounting Method: The cash basis of accounting is followed, therefore certain revenues and related assets are recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statement is not intended to present financial position and results of operations in conformity with accounting principles generally accepted in the United States of America.

Note B - Pension Plan

All eligible employees are members of the West Virginia Public Land Corporation. Employees contributions are 4.5% of their annual compensation and employees have vested rights under certain circumstances. The Public Land Corporation matches contributions at 9.5% of the compensation on which the employees made contributions. The Public Land Corporation expenditures were as follows:

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Special Revenue	<u>\$17,530.39</u>	<u>\$18,828.29</u>

SUPPLEMENTAL INFORMATION

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
<u>Planning and Development Fund -</u>		
<u>Personal Services (3205- 001)</u>		
Appropriations	\$245,683.00	\$242,281.00
Expenditures:		
Personal Services	190,802.12	193,790.00
Transfer to PEIA Premium Stabilization Fund	<u>0.00</u>	<u>1,951.20</u>
	<u>190,802.12</u>	<u>195,741.20</u>
	54,880.88	46,539.80
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Ending Balance	<u>\$ 54,880.88</u>	<u>\$ 46,539.80</u>
<u>Planning and Development Fund -</u>		
<u>Annual Increment (3205 - 004)</u>		
Appropriations	\$ 5,450.00	\$ 5,450.00
Expenditures	<u>4,550.00</u>	<u>4,400.00</u>
	900.00	1,050.00
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$ 900.00</u>	<u>\$ 1,050.00</u>

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

PUBLIC LAND CORPORATION

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
<u>Planning and Development Fund -</u>		
<u>Employee Benefits (3205 - 010)</u>		
Appropriations	\$ 83,571.00	\$ 91,799.00
Expenditures:		
Employee Benefits	54,270.49	56,929.56
Transfer to PEIA Premium Stabilization Fund	<u>1,426.92</u>	<u>0.00</u>
	<u>55,697.41</u>	<u>56,929.56</u>
	27,873.59	34,869.44
Transmittals Paid After June 30	<u>1,005.40</u>	<u>1,547.66</u>
Balance	<u>\$ 26,868.19</u>	<u>\$ 33,321.78</u>
 <u>Planning and Development Fund -</u>		
<u>Unclassified (3205 - 099)</u>		
Appropriations	\$139,443.00	\$130,631.00
Expenditures:		
Current Expenses	37,035.06	32,475.28
Repairs and Alterations	205.20	65.00
Equipment	6,150.28	1,981.38
Other Disbursements	<u>9.67</u>	<u>0.00</u>
	<u>44,380.21</u>	<u>34,521.66</u>
	95,062.79	96,109.34
Transmittals Paid After June 30	<u>3,454.33</u>	<u>7,479.82</u>
Balance	<u>\$ 91,608.46</u>	<u>\$ 88,629.52</u>

**WEST VIRGINIA DIVISION OF NATURAL RESOURCES
PUBLIC LAND CORPORATION
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
SPECIAL REVENUE**

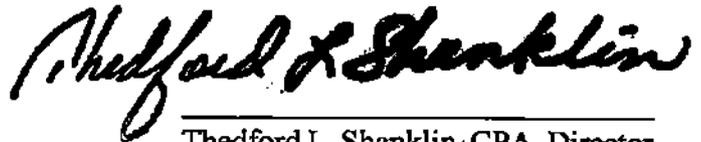
	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
<u>Cash Control Planning and Development Fund - Fund 3205</u>		
Beginning Balance:		
Cash Balance	\$ 90,417.11	\$ 98,825.82
Cash Receipts:		
Other Collections, Fees, Licenses and Income	<u>375,817.44</u>	<u>291,535.99</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$466,234.55</u>	<u>\$390,361.81</u>
Ending Balance:		
Cash Balance	\$161,777.33	\$ 90,417.11
Disbursements:		
Personal Services	195,352.12	198,190.00
Employee Benefits	55,275.89	58,477.22
Current Expenses	38,961.39	35,880.08
Repairs and Alterations	205.20	65.00
Equipment	6,150.28	6,056.40
Miscellaneous	2,517.67	0.00
Transfer to PEIA Premium Stabilization Fund	<u>1,426.92</u>	<u>1,951.20</u>
	<u>299,889.47</u>	<u>300,619.90</u>
Add Transactions Paid After June 30 Beginning and (Less Transactions Paid After June 30 Ending):		
Employee Benefits	1,547.66	1,941.68
(Employee Benefits)	(1,005.40)	(1,547.66)
Current Expenses	3,404.80	4,003.74
(Current Expenses)	(1,926.33)	(3,404.80)
Equipment	4,075.02	2,406.86
(Equipment)	0.00	(4,075.02)
(Miscellaneous)	<u>(1,528.00)</u>	<u>0.00</u>
	<u>4,567.75</u>	<u>(675.20)</u>
TOTAL CASH ACCOUNTED FOR	<u>\$466,234.55</u>	<u>\$390,361.81</u>

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the report of audit appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 16th day of April, 2003.



Thedford L. Shanklin, CPA, Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Public Land Corporation, Director of the West Virginia Division of Natural Resources; Governor; Attorney General; State Auditor; and, Director of Finance Division, Department of Administration.