

MANAGEMENT OF STATE LEASES & RIGHTS OF WAY

OFFICE OF STATE LANDS
DIVISION OF ADMINISTRATION



PERFORMANCE AUDIT SERVICES
ISSUED OCTOBER 25, 2018

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

October 25, 2018

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Taylor F. Barras
Speaker of the House of Representatives

Dear Senator Alario and Representative Barras:

This report provides the results of our evaluation of the Office of State Lands within the Division of Administration. The purpose of this audit was to evaluate the processes the Office of State Lands uses to manage leases and rights of way on state lands and water bottoms.

The report contains our findings, conclusions, and recommendations. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of the Office of State Lands and other stakeholders interviewed for their assistance during this audit.

Sincerely,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

OSL LEASE MANAGEMENT

Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



Management of State Leases & Rights of Way Office of State Lands – Division of Administration

October 2018

Audit Control # 40170013

Introduction

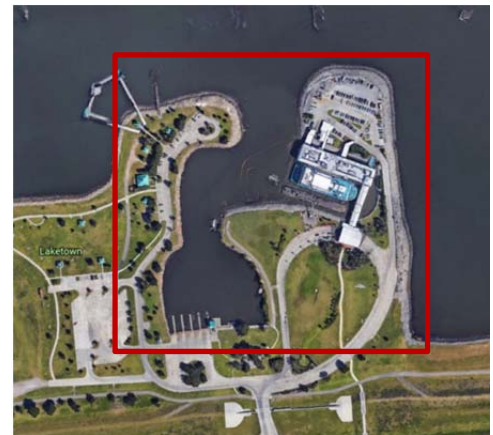
We evaluated whether the Office of State Lands (OSL) effectively manages leases and rights of way on state lands and water bottoms. Louisiana Revised Statute (R.S.) 39:11 directs the Commissioner of Administration to administer and supervise lands and water bottoms owned by the state of Louisiana. OSL, within the Division of Administration (DOA), is responsible for the identification, administration, management, and inventorying of public lands and water bottoms. Its mission is to maximize revenues while ensuring continued public utilization of state public lands and water bottoms, and to protect the state's proprietary interests in its lands and water bottoms through the permitting process. This report is the second in a series on OSL. The first report, issued in August, evaluated whether the inventory of state lands maintained by OSL was current and comprehensive.¹

Lease – A contract by which one party conveys land, property, etc. to another for a specified time in return for a periodic payment.

Right of Way – The legal right, established by usage or grant, to pass along a specific route through grounds or property belonging to another.

OSL generates revenues for the state by issuing and managing leases and rights of way on state lands and water bottoms. OSL issues leases to individuals and businesses who want to build and maintain docks, campsites, and other structures on state lands. OSL issues rights of way to companies for installing pipelines, cables, and utilities. OSL's responsibilities for managing a lease or right of way include:

- Receiving and processing the application for a lease or right of way;
- Issuing the lease or right of way for the correct timeframe and fee;
- Monitoring the lease to collect annual rental payments from the lessee and to send out renewal notices at the end of the lease or right of way term;



Example of a water bottom lease issued by OSL.

¹ Our performance audit on OSL-Inventory of State Lands can be found on our website at [https://www.la.gov/PublicReports.nsf/2A4CDBD9DFB0BE58862582F000625135/\\$FILE/0001A476.pdf](https://www.la.gov/PublicReports.nsf/2A4CDBD9DFB0BE58862582F000625135/$FILE/0001A476.pdf)

- Canceling the lease or right of way agreement at the end of its term or renewing the agreement for an additional term at the correct amount; and
- Ensuring state land is not illegally occupied after the lease or right of way is expired, and taking appropriate enforcement actions when noncompliance is identified.

According to OSL, leases and rights of way on state lands generated an average of \$3.85 million per year in revenue for fiscal years 2013 through 2017. The types of leases and rights of way issued by OSL, their legal requirements, and estimated revenues are outlined in Exhibit 1.

Exhibit 1 Leases & Rights of Way Managed by OSL Fiscal Years 2013 - 2017			
Type	Examples	Legal and Other Requirements	Average Yearly Revenue
Surface Lease (1,331 Leases*)	Campsites, houseboat sites, and grazing lands	Term: 10 years Annual Rental: Price determined through public bid and varies according to location Renewal: Additional 10 years; Rental price increased according to Consumer Price Index upon renewal	\$1,405,658
Water Bottom Lease (181 Leases*)	Wharves, piers, docks, mooring facilities, and shipyard facilities	Permits required for all water bottom encroachments ² ; Lease required for Class C, D, & E permits ³ Term: 5 years Annual Rental: Minimum of \$0.02/ft ² for Class C and D commercial leases, no less than \$100 per year. Class E commercial lease fees based on appraised value of the property ranging from 5% to 7.5%, no less than \$100 per year. Renewal: Additional 5 years; Rental price may be increased	\$692,541
Right of Way (5,055 Rights of Way*)	Pipelines, utilities, telephone, and cable lines	Term: 20 years One-time Fee: Price varies based on length and width of area Renewal: Additional 20 years; Fee price increased according to Consumer Price Index upon renewal	\$1,748,604
*These figures represent the number of active leases and rights of way as of September 7, 2017, and are based on OSL's database of leases and rights of ways, SLIMS, which we determined did not contain accurate information. Therefore, we cannot ensure the accuracy of these numbers. According to OSL, there are additional rights of way that are older and are not recorded in SLIMS; therefore, we were not able to determine the total amount of active rights of way. Source: Prepared by legislative auditor's staff using information from OSL and Louisiana Revised Statutes and Administrative Code.			

The objective of our evaluation was:

To evaluate the processes the Office of State Lands uses to manage leases and rights of way on state lands and water bottoms.

The issues we identified are summarized on the next page and discussed in further detail throughout the remainder of the report. Appendix A contains OSL/DOA's response to this report, and Appendix B details our scope and methodology.

² R.S. 41:1704 defines an encroachment as any construction, improvement, obstacle, fill, or material which is placed upon or maintained upon state lands.

³ The classes of water bottom permits as defined in R.S. 41:1706 are defined in Appendix C.

Objective: To evaluate the processes the Office of State Lands uses to manage leases and rights of way on state lands and water bottoms.

We found that OSL needs to strengthen its processes to ensure it effectively manages leases and rights of way on state lands and water bottoms. Specifically, we identified the following issues:

- **OSL has not established formal rules and regulations on how to issue and manage certain types of leases and rights of way.** Without established criteria, such as rental price and timeframe limits, OSL cannot ensure that it is issuing and managing these types of leases and rights of way consistently and fairly.
- **OSL does not maintain sufficient and reliable data on properties in its database. As a result, it cannot use data to effectively monitor the state's leases and rights of way.** We found that OSL's database contained incorrect information on 59 (32.2%) of the 183 leases and rights of way we reviewed.
- **OSL has not established sufficient inspection and enforcement processes to identify and address illegally-occupied state properties, which can result in lost revenue and increased liabilities to the state.** OSL does not conduct inspections to determine if a lessee is still using the property when lease payments are not made or when lessees are not responsive to OSL regarding renewals. In addition, OSL does not conduct inspections on expired leases and rights of way to identify if there is remaining infrastructure on the property, which may pose a risk to the state, and to identify unauthorized encroachments on state lands.

These issues and recommendations on how OSL could strengthen its management of leases and rights of way are summarized in more detail in the sections below.

OSL has not established formal rules and regulations on how to issue and manage certain types of leases and rights of way.

OSL has not promulgated rules and regulations governing how certain types of leases and rights of way should be managed. Without established criteria, such as rental price and timeframe limits, OSL cannot ensure that it is issuing these types of leases and rights of way consistently and fairly. These leases and rights of way include the following types:

- **Subsurface Agreements:** OSL issues subsurface agreements for directional drilling for oil on state properties for horizontal wells. According to OSL, there are five types of these agreements, and they are neither a lease nor a right of way. Since state law does not provide OSL with guidance on how these agreements

should be issued, OSL issues these agreements with differing terms and prices depending on the type of subsurface agreement. However, OSL has not promulgated rules for the requirements of these types of agreements in the Louisiana Administrative Code (LAC).

- **Rights of Way Other than for Pipelines:** While LAC tit. 43, pt. 27, §2701 establishes the prices that should be charged for rights of way issued for pipelines, it does not establish the prices that OSL should charge for rights of way issued for other purposes, such as fiber optic cables, weirs, roads, and alligator egg collection grounds. In total, OSL issued 961 rights of way for purposes other than pipelines,⁴ or 33.6% of the 2,856 total rights of way issued during our scope. We reviewed 20 of these rights of way⁵ and found that OSL charged fees similar to what they would charge for a pipeline on seven of them. These rights of way were issued for purposes of electrical and fiber optic lines. However, for four⁶ of the rights of way that were issued for purposes such as weirs and rock jetties, OSL files did not include any documentation of how staff calculated the fees.

Furthermore, LAC tit. 43, pt. 27, §2701 does not establish timeframes for rights of way that are issued for purposes other than pipelines. We identified nine (16.4%) of 55 rights of way that were issued without any timeframes defined in their contract. These nine rights of way were issued for purposes of electrical powerlines in the 1980s, and because OSL did not establish any expiration dates, they are still active today. According to OSL, it began issuing these types of rights of way with expiration dates beginning in 1990; however, this practice has not been promulgated in the Administrative Code.

- **Residential Water Bottom Leases:** LAC tit. 43, pt. 27, §2301 provides guidance on the amounts OSL should charge for Class C and D commercial water bottom leases; however, it does not specify the prices that should be charged on residential leases. While OSL has established some informal guidance on the prices that it should charge on these residential leases, it has not promulgated regulations or formalized these requirements in law. Currently, as established in law, OSL issues commercial water bottom leases at a rate of at least \$0.02 per square foot (with an average of \$0.20 per square foot), while residential water bottom leases are issued at an average rate of \$0.10 per square foot, which is not specified in laws or regulations.
- **Leases and Rights of Way for Public Benefit Purposes:** Article VII, §14(C) of the Louisiana Constitution gives OSL broad discretion when issuing leases and rights of way with a public purpose, such as a right of way issued to a city for a water line. However, we found that OSL charged fees for some of these leases and rights of way, but did not charge fees for others. It also did not document in

⁴ These are active rights of way as of September 2017 that were issued between July 1, 1980, and June 30, 2017.

⁵ We were not able to review all 961 rights of way issued for purposes other than pipelines due to data reliability issues with the OSL database (SLIMS). Therefore, we only were able to review 20 of these rights of way due to the limited resources and time constraints involved in reviewing OSL's paper file.

⁶ The remaining nine rights of way were issued for public benefit purposes or subsurface agreements.

its files the reasons why it waived the fee for certain projects but not for others. For example, OSL did not charge a fee when it issued a right of way for a road expansion, but it did charge a fee when it issued a right of way for a gas line. OSL needs to establish criteria in rules and regulations for issuing leases and rights of way with a public benefit purpose so it can ensure that it issues them consistently.

Recommendation 1: OSL should promulgate rules and regulations in the Administrative Code that establishes the criteria for the management of leases and rights of way, including subsurface agreements, rights of way other than for pipelines, and residential water bottom leases.

Summary of Management's Response: OSL does not agree with this recommendation and stated that the provisions of LRS, Title 41 and the LAC provide sufficient guidance for OSL to properly, fairly, equitably, and consistently administer leases on state property. OSL further states that in regards to rights of way issued for purposes other than pipelines, that it should be noted that none of the reported rights-of-way resulted in monetary deficiencies or improper or unlawful administration of state property. See Appendix A for OSL's full response.

Additional LLA Comments: On pages 3 and 4 of the report, we point out several examples in which OSL issued leases and rights of way inconsistently, specifically with differing terms and prices. The inconsistencies identified occurred because OSL does not have requirements (state law, administrative code, or internal agency procedures) to guide the issuance of all types of leases and rights of way.

In addition, since OSL lacks established criteria over these types of rights of way, we were not able to determine if OSL issued these rights of way in accordance with law. Therefore, we were not able to determine if these resulted in any monetary deficiencies.

Recommendation 2: OSL should develop criteria in rules and regulations for when fees can be waived for leases and rights of way with a public benefit purpose. In addition, OSL should ensure that lease or right of way agreements specify the public benefit, and ensure there is adequate documentation in its files to support why it issued a lease or right of way without cash compensation.

Summary of Management's Response: OSL partially agrees with this recommendation and referred to its response for Recommendation No.1 regarding rules and regulations in the LAC. OSL does agree that additional documentation in their filing system would help third parties understand the methods used to properly manage state property. See Appendix A for OSL's full response.

Additional LLA Comments: On page 4 of the report, we point out several examples in which OSL inconsistently issued leases and rights of way for public benefit purposes, specifically OSL's waiving of fees for some agreements. These inconsistencies occurred because OSL does not have requirements (state law, administrative code, or internal

agency procedures) to guide the issuance of these types of leases and rights of way. OSL's files did not contain documentation on why staff waived the fees on some of these leases. The inclusion of additional information in the established agreements is not just for the benefit of third parties, it is also to show that OSL staff does not waive fees arbitrarily.

OSL does not maintain sufficient and reliable data on properties in its database. As a result, it cannot use data to effectively monitor the state's leases and rights of way.

The State Land Information Management System (SLIMS) database contains unreliable data, which affects OSL's ability to monitor the number of active leases and rights of way and collect payments in a timely manner. OSL maintains information on its leases and rights of way, such as lessee information, start/end date of the lease, location, and price in SLIMS. OSL relies on the information that staff enters into SLIMS for such things as when to send out rental payment notifications and when leases and rights of way are up for renewal. We analyzed SLIMS data against paper files for 183 leases and rights of way and found that information in SLIMS was incorrect for 59 (32.2%) records. These errors affect OSL's ability to use this data to effectively manage leases and rights of way. For example, not having a correct date entered on the due date of a lease payment may prevent OSL from collecting future payments of the lease timely. While some errors in SLIMS appear to be caused by data entry errors by OSL staff, other errors were due to a lack of policies and procedures guiding OSL staff on how to use the database. For example, OSL does not have policies that guide staff on when to indicate that a lease or right of way is cancelled. As a result, OSL cannot rely on SLIMS to determine the number of active leases and rights of way there are on state lands.

SLIMS does not contain fields to record information such as expiration dates, renewal dates, cancelation dates, reasons for cancelation, or enforcement actions taken,⁷ which are all critical pieces of information that OSL needs to effectively perform its responsibilities. As a result, staff have created their own spreadsheets to compensate for these deficiencies. In addition, SLIMS currently lacks certain functionalities that would allow OSL to better manage leases and rights of way. For example, it does not link the table containing permit information to the table containing lease information. As a result, OSL staff cannot use SLIMS to ensure that all water bottom permits resulted in a lease as required by state law.⁸ According to Office of Technology Services (OTS), it may be able to link these tables if OSL requests that they do so.

⁷ While some modules in SLIMS may have an expiration or renewal field, not all do.

⁸ R.S. 41:1709, LAC 43:2301, and LAC 43:2101 require owners/occupiers of Class C, D, and E encroachments to apply for a water bottom lease after the permit is issued and construction is complete.

Recommendation 3: OSL should develop policies and procedures that guide staff on how information should be recorded in SLIMS.

Summary of Management’s Response: OSL agrees with this recommendation; however, it does not agree that the SLIMS database is completely unreliable, as implied in the report. Additionally, on page 3 of its response, OSL states that the SLIMS database may lack functionality and is not an up-to-date land management software system, but that does not make the data completely unreliable. On pages 1 and 4 of OSL’s response, OSL management made additional statements that only five (0.36%) of the total 1,392 files dated between 1980 and 2018 that OSL provided to LLA for review were found to have lost revenue.

Additional LLA Comments: The report does not state that OSL’s SLIMS database is “completely unreliable” and does not indicate an error rate of only 0.36%. Instead, the report specifies errors in 59 of the 183 files we reviewed, for a 32.2% error rate. Due to this high error rate, we were not able to rely on the information recorded in the database to determine if OSL properly managed leases and rights of way. Instead, we conducted a file review on various populations of OSL’s leases and rights of way, as outlined in our scope and methodology (Appendix B). The leases and rights of way we reviewed, and the instances in which we found OSL had not properly managed these leases and rights of way, are outlined in the next section of this report.

Recommendation 4: OSL should work with OTS to address the current limitations of the SLIMS database, including linking necessary tables and adding all necessary fields.

Summary of Management’s Response: OSL does not agree with this recommendation and stated that linking tables is not necessary due to current procedures in place within OSL. See Appendix A for OSL’s full response.

Additional LLA Comments: This report highlights several of the limitations we noted in the review of the SLIMS database, including a lack of necessary fields and a lack of connection between certain tables. Having key information recorded in SLIMS would allow staff to better and more easily manage the state’s approximately 6,500 leases and rights of way without having to rely on paper files.

OSL has not established sufficient inspection and enforcement processes to identify and address illegally-occupied state properties, which can result in lost revenue and increased liabilities to the state.

OSL does not conduct inspections to determine if a lessee is still using the property when they do not make rental payments or do not respond to OSL regarding renewals.

Lessees are in violation of their rental agreements when they no longer make rental payments or if they do not renew their lease but still occupy it. We reviewed a targeted selection of OSL's paper files that included active leases and rights of way issued between July 1, 1980, and June 30, 2017, and found the following:

- OSL did not always collect annual rental payments.*** State law requires annual rental payments during the term of surface and water bottom leases. We found four (21.1%) out of the 19 active surface leases and one (2.9%) of the 34 active water bottom leases we reviewed had annual payments that were not paid, as of the date of our analysis.⁹ This water bottom lease had not been paid since 1995, and OSL is waiting to determine if the lessee is still occupying the property. Of the four surface leases, OSL collected the late payment for two, totaling \$643, and cancelled the remaining two leases after we conducted our analysis.
- OSL did not always renew expired leases and rights of way that were still in use by the lessee.*** State law allows for lessees to renew their leases or rights of way at the end of their terms. Once a lease or right of way is nearing the end of its term, OSL sends a letter asking if the lessee wishes to renew the lease. However, according to OSL, lessees are not always responsive to OSL's inquiries regarding the renewal. Because OSL does not inspect these leases and rights of way to determine if they are still being used, they may go for extended periods of time before they are renewed. We found that three (5.0%) out of 60 rights of way, three (6.8%) out of 44 surface leases, and one (2.8%) out of 36 water bottom leases we reviewed had expired but were still being used by the lessee and had not been renewed by OSL as of the date of our analysis.¹⁰



Campsite locations available for surface lease near Mud Lake, Louisiana.

⁹ The dates of these analyses were December 11, 2017, for surface leases and March 14, 2018, for water bottom leases.

¹⁰ The dates of these analyses were February 9, 2018, for rights of way; December 11, 2017, for surface leases; and March 14, 2018, for water bottom leases.

If inspections find that properties are still occupied, OSL can then determine whether to proceed with further actions, such as canceling the lease or seeking further enforcement actions. By not inspecting to determine whether these properties are still being used, a lease or right of way may continue to be used for long periods of time before they are paid or renewed, resulting in potential lost revenue for the state. For example, we identified a surface lease that was listed as active in SLIMS but had not been paid since September of 2016. After the lessee was unresponsive to OSL's letters seeking payment, OSL took no further actions. After presenting these results to OSL, it investigated and found that the lessee was still using the property and should have been making payments. OSL subsequently collected the rental amount of \$316, 1.8 years after it was due.

Conducting inspections would also allow OSL to determine if expired leases contain any remaining infrastructure, such as abandoned pipelines, which may pose a risk management issue for the state.

For example, rights of way are often issued for the purposes of installing pipelines to transport potentially hazardous products such as oil, gas, or chemicals. If OSL does not conduct an inspection of the area after a lessee decides not to renew, OSL cannot tell if the lessee has removed the structure. As the pipeline ages, there is a risk it could start to deteriorate and become an environmental hazard and a future liability to the state. Identifying these instances are important so that OSL can take proper actions to address them, such as working with the Department of Natural Resources (DNR) to determine if they can be abandoned in place, or referring the case to the Attorney General (AG) for the removal of the structure.

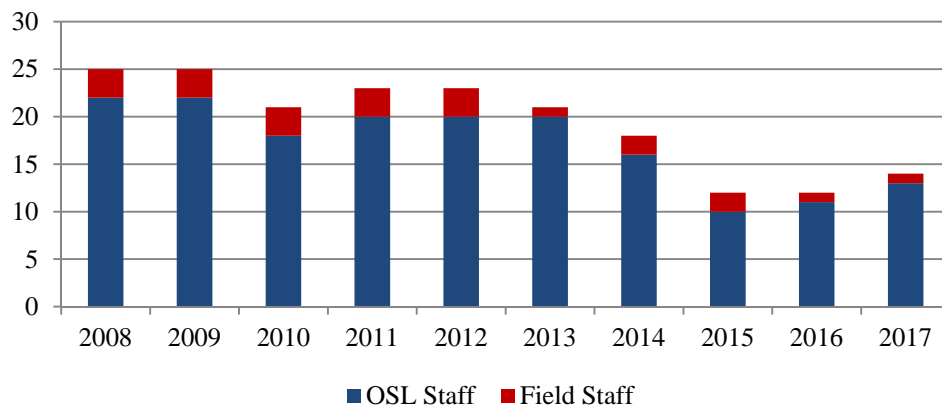


Example of infrastructure that can remain on a lease or right of way and potentially be a future liability for the State.

Inspections would also help identify unlawful encroachments on state lands by individuals who did not obtain required leases. These illegal structures pose liability issues and lost revenue to the state. OSL field staff identified several unlawful encroachments during inspections that had not been permitted or leased by OSL; however, these inspections were all conducted in the 1990s when OSL had the staffing levels needed to conduct these inspections. One of the unlawful encroachments identified was a shipyard that was in operation on state water bottoms but had not been put under a water bottom lease as required, resulting in lost revenue of \$9,000 for the state. Conducting inspections would better allow OSL to fulfill its legal responsibilities of permitting and leasing authorized encroachments on state lands, and may potentially result in increased revenue for the state.

According to OSL, it is not currently able to conduct inspections of leases and rights of way because of a lack of staff, particularly field staff. Over the last 10 years, OSL's staff has decreased from 25, including three field staff, in 2008 to 14 staff, including one field staff, in 2017. This is an overall reduction in staffing of 44%. However, the agency cannot meet its statutory responsibilities of protecting and managing state-owned properties if it cannot determine what is occurring on these properties. Exhibit 2 shows OSL staffing levels from 2008 through 2017.

Exhibit 2
OSL Staffing levels by Fiscal Year
(2008-2017)



Source: Prepared by legislative auditor's staff using information from the Division of Administration's Business Objects tool.

OSL has not established an effective enforcement process that sufficiently and consistently addresses illegally-occupied state properties. OSL does not have the authority to issue certain enforcement actions, such as evicting someone from a lease. However, state law (R.S. 41:1217) allows the AG to evict a tenant for failure to comply with the terms of the lease. When OSL identifies instances of noncompliance, such as a lessee who is still using a lease or right of way but has not paid or renewed, it can refer the case to the AG to seek compliance or eviction. However, of the five instances of unpaid rental payments and seven cases of leases and rights of way not renewed that we identified and discussed earlier in this report, OSL did not refer any of them to the AG. As a result, these leases and rights of way remained unpaid or expired as of the date of our analysis and ranged from 1.5 to 23.3 years past-due.¹¹ After our analysis, OSL was able to cancel three of these leases and rights of way, renew two, and collect the payments on two others. However, as of August 15, 2018, five leases and rights of way remained unpaid or expired, resulting in \$3,823 revenues not being collected.

According to OSL, it does not always refer cases of unpaid or expired leases and rights of way to the AG because it would rather work with the lessee to gain compliance. This is especially true in the case of surface leases, in which the rental payments are often for small amounts. In these cases, OSL will fine the lessee an amount equal to the rental payment on top of collecting the delinquent rental payment if the lessee wishes to continue the lease. However, OSL does not penalize lessees of water bottom leases or rights of way for late payments or renewals due to a lack of authority established in law. To ensure that noncompliance is addressed consistently, OSL should establish enforcement procedures, including timeframes of when leases and rights of way should be cancelled, when fines should be assessed, and when to refer cases to the AG for further enforcement actions, such as eviction.

¹¹ As of August 15, 2018

Recommendation 5: OSL should determine the cost-effectiveness of hiring more field staff in order to increase inspections of state leases and rights of way that are not renewed or paid on time and to assist in identifying unlawful encroachments on state lands.

Summary of Management's Response: OSL agrees with this recommendation and stated that it has written an internal comprehensive management plan that outlines activities and priorities of each section of OSL. The plan includes observations and recommendations for each section, a detailed inspection and enforcement plan, an official request for additional staff and resources, and a detailed cost-benefit analysis. See Appendix A for OSL's full response.

Recommendation 6: OSL should establish a consistent enforcement process to address issues of noncompliance, including non-payment and continued use of a lease or right of way after it has expired. This process should include establishing timelines on when to cancel a lease, when fines should be implemented, and when cases should be sent to the AG to begin the eviction process.

Summary of Management's Response: OSL agrees with this recommendation and referred to the information included in Recommendation No.5. See Appendix A for OSL's full response.

APPENDIX A: MANAGEMENT'S RESPONSE

State Land Office
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

October 8, 2018

Daryl G. Purpera, Louisiana Legislative Auditor
1600 North Third Street,
Baton Rouge, LA 70802

RE: OSL Performance Audit

Dear Mr. Purpera:

Please accept this letter as the Office of State Land's (OSL's) official response to the referenced findings and recommendations presented as a result of a recent performance audit of leases and rights-of-way administered by OSL. We appreciate the time that LLA spent with OSL staff attempting to learn the very detailed and complex issues faced by the office; however, it is evident that much of the information presented in the report results from a misunderstanding of OSL processes and laws that regulate our industry.

First, we would like to note that only five (0.36%) of the total 1,392 files dated between 1980 and 2018 that OSL provided to LLA for review were found to have "lost revenue." We appreciate the efforts of the LLA staff and will work diligently to rectify and collect the \$12,823 that was purportedly lost over this 38 year period. Information pertaining to these files can be provided upon request.

In an effort to add clarity, the following paragraphs summarize OSL's response to the findings and recommendations outlined in the report.

Bullet point 1 on page 3 of the report:

In addition to laws included in Louisiana Revised Statutes (LRS), OSL is subject to formal rules and regulations promulgated in the Louisiana Administrative Code (LAC) directing the issuance of rights-of-way for pipelines, class A through E permits, and both recreational and commercial water bottom leases. LRS and LAC guidelines establish rental prices and timeframe limits for nearly all types of agreements issued by OSL. Although LAC does not specifically address rights-of-way for electric, fiber optic, and other unusual servitudes or easements, it should be noted that OSL consistently administers all ROWs for commercial purposes by issuing them for specific prices based on the width of the servitude needed. This price and width criteria, as established in LAC for pipelines, is applied to electrical transmission, fiber optic, gas, and other commercial enterprises.

Bullet point 2 on page 3 of the report:

It should be noted that none of the reported 59 leases and rights of way resulted in monetary deficiencies nor improper or unlawful administration of state property.

Bullet point 3 on page 3 of the report:

OSL has an enforcement process and routinely conducts field and internal investigations on many properties. The office, however, lacks sufficient staff necessary to inspect and enforce all water bottom leases. For instance, OSL conducts inspections on every campsite lease either upon its expiration or prior to nomination of the land for public bid. Physical inspection of pipeline rights-of-way is nonsensical. The Department of Natural Resources (DNR) is the regulatory agency for enforcement of these project types, and OSL relies upon DNR inspection reports and expert recommendations when addressing expired pipeline rights-of-way. The Coastal Use Permitting (CUP) process allows multiple state agencies such as OSL, Louisiana Department of Wildlife and Fisheries (LDWF), Coastal Protection and Restoration Authority (CPRA), and DNR to review and comment on proposals to construct or abandon facilities in the coastal zone. Further, expiration of a state lease or right-of-way agreement does not relieve nor diminish the lessee's liability under the agreement.

Bullet point 4 on page 3 of the report:

In an effort to clarify, OSL administers five types of agreements related to oil and gas exploration. For all types, the associated prices are listed on OSL's website in the document titled "2018 rates" and updated annually using the consumer price index (CPI). Additionally, all types of lease agreements administered by OSL are located on the website; by viewing these instruments, it is easily determined what terms, provisions, and authorities are included in each.

Bullet point 1 on page 4 of the report:

As authorized by LRS 41:1173, rights-of-way for the purposes of electric transmission, fiber optic cable, or other commercial endeavors by private corporations are issued by OSL for terms and prices considered to be "adequate compensation." In an effort to be fair and consistent, OSL issues all commercial right-of-way agreements in accordance with LAC guidelines, which establish price and width criteria for pipelines. It should be noted that none of the reported rights-of-way resulted in monetary deficiencies nor improper or unlawful administration of state property.

Bullet point 2 on page 4 of the report:

LAC Title 43, pt. 27, Section 2301 provides regulations for the issuance of leases related to both residential and commercial encroachments. "Such structures shall include, but not be limited to wharves, piers, storage docks, camps, warehouses, residences, bulkheads, restaurants, dams, bridges, etc." The regulation provides that "Exempted from permit and lease requirements are commercial and noncommercial wharves and piers less than 50 linear feet whose surface area does not exceed 150 square feet" which implies that noncommercial structures over 150 square feet are subject to lease. The regulations also state that "In no instance shall the consideration be less than \$100 per annum" which sets the minimum price OSL can charge. It would be unwise to assume the legislature did not consider noncommercial structures in its drafting of the statutes. In addition, it is evident due to the varying nature and complexity of each individual project, the legislature's intention was to allow flexibility for OSL to determine the values of leases pursuant to the nature, size, and use of the encroachment.

Bullet point 3 on page 4 of the report:

OSL waives fees when dealing with a public entity or projects for a public purpose. For instance, recreational leases to localities are typically issued free of charge or below market rates. In addition, rights-of-way across state property benefitting only state buildings are free of charge. Regarding the examples given by LLA in the report, a road expansion is for the benefit of the public; however, a gas line is issued to a private for-profit corporation and, therefore, necessitates "adequate compensation" to the state.

Recommendation 1:

OSL does not agree with this recommendation. The provisions of LRS. Title 41 and the LAC provide sufficient guidance for OSL to properly, fairly, equitably, and consistently administer leases on state property.

Recommendation 2:

OSL partially agrees with this recommendation. Please refer to our response to recommendation #1 regarding rules and regulations in the LAC. OSL agrees, however, that additional documentation in our filing system would help third parties understand the methods used to properly manage state property.

Page 5 of the report:

The SLIMS database may lack functionality and is not an up-to-date land management software system, but that does not make the data completely unreliable. This is evidenced by the fact that none of the issues presented in the report resulted in monetary deficiencies nor improper or unlawful administration of state property. The SLIMS database does record various lease dates. It is not necessary to duplicate information, such as enforcement actions, in the database when this information is recorded in the paper files. In addition, it is not necessary to link the permit table to the lease table because OSL currently requires completion of the lease prior to issuing a completed permit. This practice was put in place approximately five years ago to avoid the circumstances presented in the report; however, permits issued prior to this newer practice are a major reason why increased water bottom inspections are necessary.

Recommendation 3:

While OSL does not agree that the SLIMS database is completely unreliable as implied in the report, OSL does agree with the recommendation in that internal policies guiding the contracts, grants reviewer, and land manager positions would improve and enhance the extensive on-the-job training which is necessary to fully understand the vast myriad of occurrences that flow through OSL.

Recommendation 4:

OSL does not agree with this recommendation. As stated previously linking tables is not necessary due to current procedures in place within OSL.

Bullet point 1 on page 6 of the report:

Because late payments are a commonality in land management, leases managed by OSL provide for the acceptance of late payments at the discretion of the lessor. As previously stated, OSL does not have sufficient staff to inspect all water bottom leases due to the remote locations across the state. The cancellation and/or renewal of the two surface leases mentioned in the report was not prompted by the LLA audit. For example, the late payment was received for SL #2220 on 7/16/2018 and for SL #2938 on 5/4/2018. The spreadsheet, which specifically identified leases that purportedly resulted in monetary deficiencies, was emailed to OSL on 7/31/2018.

Bullet point 2 on page 6 of the report:

While it may be reasonable to assume that a lessee may be unlawfully using state property subsequent to the expiration of a lease, this cannot be determined without physical inspection of the property. All agreements issued by OSL are bi-lateral in nature, meaning OSL cannot force renewal. If a lessee elects not to renew an agreement, it expires. If a lessee continues to occupy the premise, it becomes a legal matter that must be handled by the AG and the courts.

Paragraph 1 on page 7 of the report:

For the specific surface lease mentioned in the report, multiple attempts to collect payment were made prior to the issue being presented to OSL. Payment was received from the lessee on 7/16/2018 while the spreadsheet that specifically identified leases which purportedly resulted in monetary deficiencies was emailed to OSL on 7/31/2018.

Paragraph 2 on page 7 of the report:

The installation, operation, maintenance, removal, and abandonment of pipelines are regulated by DNR. Review of DNR files and CUP files will determine if a pipeline is active or abandoned; physical inspection by OSL is not necessary. State law and DNR regulations will not allow abandonment without prior agency approval, regardless of whether or not the right-of-way agreement is valid. Again, expiration of an agreement does not relieve nor diminish the liability of the lessee. The picture on page 7 of the report is of a salt-water disposal well that is plugged & abandoned (P&A) but has potential future utility. The P&A of this well was approved and inspected by DNR and structures remain due to the potential of the wellbore.

Paragraph 3 on page 7 of the report:

OSL has changed its procedure regarding the issuance of Class C and D permits and the associated leases. Class C and D permits are not executed and issued without the accompanying lease, which reduces but does not eliminate the necessity of field investigation. Previously, OSL would issue the permits and once the encroachment was actually built, the lease would be issued. OSL does need increased staffing levels to address potential unlawful encroachments that were issued prior to management and administration changes as well as encroachments constructed without prior approval by OSL via permit application.

Paragraph 2 on page 8 of the report:

Collection, cancellation, and renewal of these agreements are ongoing issues that OSL deals with on a regular basis. For example, surface lease #3139 was formally cancelled on 2/9/2018 after months of attempts at collection. This was prior to receipt of the audit results.

Paragraph 3 on page 8 of the report:

This assertion is incorrect. OSL works with water bottom lessees to remedy the un-permitted encroachment through the issuance of settlement agreements which are additionally reviewed and approved by the Office of General Counsel (OGC) and the Commissioner of Administration.

Recommendation 5:

OSL agrees with this recommendation. OSL management and administration have written an internal comprehensive management plan that outlines activities and priorities of each section of OSL. The plan includes observations and recommendations for each section, a detailed inspection and enforcement plan, an official request for additional staff and resources, and a detailed cost-benefit analysis. The draft management plan was submitted to upper level management months prior to being presented with the results of this audit.

Recommendation 6:

OSL agrees with this recommendation. Please refer to the information included with Recommendation #5.

As previously stated in the second paragraph on the first page of this official response, OSL notes that only five (0.36%) of the total 1,392 files dated between 1980 and 2018 that OSL provided for review by the LLA auditors were found to have "lost revenue."

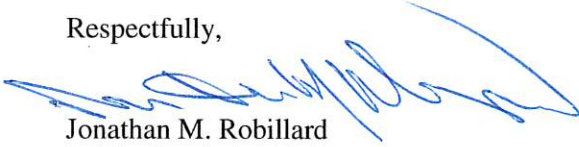
Daryl Purpera, Legislative Auditor

October 2, 2018

Page 5

In conclusion, we appreciate the efforts made by LLA and our staff remains available to discuss these matters with any reader of the report to attempt to clarify any of the issues presented.

Respectfully,



Jonathan M. Robillard
Public Lands Administrator

Cc: Mark Moses, Mark Gates, Marsha Guedry

APPENDIX B: SCOPE AND METHODOLOGY

This report provides the results of our evaluation of the Office of State Lands (OSL). We conducted this evaluation under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. We conducted this evaluation in compliance with R.S. 24:522, which directs the legislative auditor to complete and publish at least one evaluation for each executive department agency within a seven-year period. The purpose of this evaluation was to evaluate OSL's management of state leases and rights of way. This evaluation was conducted in conjunction with a previous one on OSL's inventory of state lands, which was published in a separate report. This evaluation primarily covered OSL's management of leases and rights of way issued between July 1, 1980, and June 30, 2017. Our objective was:

To evaluate the processes the Office of State Lands uses to manage leases and rights of way on state lands and water bottoms.

We conducted this evaluation in accordance with generally-accepted *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our objective. To answer our objective, we reviewed relevant internal controls and performed the following steps:

- Researched Louisiana Revised Statutes, Administrative Code, Executive Budget documents, OSL's website, and conducted interviews with OSL staff to understand the Commissioner of Administration and OSL's legal authority and requirements for managing leases and rights of way.
- Researched state land audits and practices in other states and studies conducted by local and national organizations in addition to a 2004 performance audit and a 2014 financial audit on the Office of State Lands conducted by our office.
- Interviewed OSL staff and state land stakeholders, such as Louisiana fishermen, state legislators, the Louisiana Landowners Association, Department of Wildlife and Fisheries, Louisiana Sea Grant, Governor's Executive Counsel, and Assistant Attorney General over Land and Natural Resources.
- Obtained and analyzed the State Land Information Management System (SLIMS) database for water bottom leases and permits, surface leases, and rights of way from the Office of Technology Services in order to evaluate OSL's management of leases and rights of way issued between July 1, 1980, and June 30, 2017, according to state law, agency rules, and internal policies. As of September 7,

2017, there were a total of 4,335 active leases and rights of way issued between July 1, 1980, and June 30, 2017.

Total Population of Leases & Rights of Way* Issued July 1, 1980 - June 30, 2017 As of September 7, 2017			
Water Bottom Leases	Surface Leases	Rights of Way	Total
179	1,300	2,856	4,335
*These figures are based on OSL's database of leases and rights of ways, SLIMS, which we determined did not contain accurate information. Therefore, we cannot ensure the accuracy of these numbers. Source: Prepared by legislative auditor's staff using information from SLIMS.			

- To assess the accuracy of the SLIMS database, we reviewed the leases and rights of way data and identified issues with the database. We identified various limitations of the SLIMS database, including no connectivity between certain related tables, no fields in which to record key information such as expiration and renewal dates for surface leases, and a lack of historical payment information and enforcement actions taken. As a result of these limitations, we were unable to use SLIMS to evaluate OSL's management of the entire population of leases and rights of way.
- Since we were unable to rely on the entire population of leases and rights of way in SLIMS for our analysis, we narrowed our review to six sub-populations of leases and rights of way that the data indicated were not correctly managed by OSL, such as those issued with incorrect timeframes or were unpaid. See (A) in the following exhibit for the sub-populations we reviewed. Of the 4,335 leases and rights of way that were active as of September 7, 2017, we identified 1,159 (26.7%) that appeared to have been incorrectly managed (B). We were able to test all 21 water bottom leases but did not have the audit resources to test all 580 surface leases and 558 rights of way. Therefore, we chose targeted selections from each of these six sub-populations to compare the information in SLIMS to source documents (paper files) to evaluate OSL's management of these leases and rights of way (C). We chose these targeted selections randomly using Excel's RAND function on 10-20% of each of these six sub-populations depending on the estimated amount of time needed to review the files. We evaluated a total of 183 leases and rights of way that appeared to have been incorrectly managed; however, for each lease or right of way, we only tested the one aspect of OSL's administration that appeared to be incorrectly managed in the data. For example, for the 52 leases and rights of way in our targeted selection issued for incorrect timeframes, we only tested to determine if OSL issued them for correct timeframes but did not test these files for other aspects of OSL's management, such as if they were issued for the correct rent amount or were properly renewed.

Leases and Rights of Way Evaluated in Audit Issued July 1, 1980 – June 30, 2017 As of September 9, 2017								
(A) Sub-Populations Data Indicated Was Incorrect	Water Bottom Leases		Surface Leases		Rights of Way		Total	
	(B) Total Sub- Population	(C) Selection Reviewed	(B) Total Sub- Population	(C) Selection Reviewed	(B) Total Sub- Population	(C) Selection Reviewed	(B) Total Sub- Population	(C) Selection Reviewed
Issued for Incorrect Timeframes	0	0	145	22	187	30	332	52
Issued with No Timeframes	1	1	0	0	107	15	108	16
Issued with No Rent Amount	0	0	65	11	46	5	111	16
Rent Not Collected	9	9	74	12	0	0	83	21
Expired but Still Active	11	11	296	37	208	20	515	68
Renewed for Rental Amount of Zero	0	0	0	0	10	10	10	10
Totals	21	21	580	82	558	80	1,159	183
Source: Prepared by legislative auditor's staff using information from SLIMS.								

- Based on our review of 183 leases and rights of way, we identified several errors in the data recorded in SLIMS. In total, SLIMS contained incorrect data on 59 (32.2%) of the 183 leases and rights of way we reviewed. In these instances, the lease or right of way was properly managed by OSL based on the source documents reviewed; however, the information was incorrectly recorded in SLIMS. As a result, we concluded that the data in SLIMS was unreliable.
- To further evaluate OSL's management of leases and rights of way, we chose targeted selections of randomly-selected leases and rights of way using Excel's RAND function from the entire population of leases and rights of way to compare against OSL's source documents. We chose these based on the estimated amount of time it would take to review the file and on certain characteristics of the lease or right of way, such as the reason it was issued. Specifically, we choose 25 randomly-selected water bottom leases, 7 surface leases with rental amounts greater than \$10,000, 20 rights of way issued for pipelines, and 20 rights of way issued for purposes other than pipelines. For these 72 leases and rights of way, we tested all aspects of OSL's administration, including whether they were issued for the correct timeframe, whether the rental fee was calculated correctly and was collected, and whether it was renewed correctly.

- In total, we reviewed 255 leases and rights of way. Based on this review, we identified instances where OSL had not properly managed leases and rights of way. However, OSL has not established criteria for all types of leases and rights of way agreements. As a result, we could not draw conclusions on OSL's administration of 122 out of the 255 leases and rights of way that we reviewed.
- Discussed the results of our analyses with OSL management and provided OSL with the results of our data analyses to identify potential causes of leases and rights of way that were incorrectly managed.
- Using those leases and rights of way that were determined to be incorrectly managed by OSL, we estimated the potential lost revenues that may have been incurred. For the leases in which OSL did not collect the annual rental payment, we added the amount of rent that was not collected by OSL each year until the end of the current term of the lease. For the leases and rights of way that were not properly renewed, we calculated the amount of rent that would have been collected had OSL properly renewed the lease upon its expiration, including the increased rental amount upon its renewal.
- Obtained and analyzed OSL's revenues and staffing levels for fiscal years 2008 through 2017.

APPENDIX C: CLASSES OF WATER BOTTOM PERMITS

R.S. 41:1706 - Classes of Permits

Any person desiring to construct, create, alter, improve, extend, or maintain any wharf, pier, dock, bulkhead, landfill, structure, or other encroachment shall obtain a permit from the office, prior to commencing any work, under the procedures established herein. Permits shall be classified as follows:

- Class A Permits: Permits for reclamation of lands lost through erosion under R.S. 41:1702(D)(1).
- Class B Permits: Permits to construct bulkheads or flood protection structures in proximity to the bank or shore, excluding bank stabilization works and projects to facilitate the development, design engineering, implementation, operation, maintenance, or repair of coastal or barrier island restoration projects by the Department of Natural Resources under R.S. 49:214.1 et seq. or other applicable law or projects for the Atchafalaya Basin Program.
- Class C Permits: Permits to construct commercial wharves and piers.
- Class D Permits: Permits to construct structures other than wharves or piers, excluding projects to facilitate the development, design engineering, implementation, operation, maintenance or repair of coastal or barrier island restoration projects by the Department of Natural Resources under R.S. 49:214.1 et seq. or other applicable law or projects for the Atchafalaya Basin Program.
- Class E Permits: Permits to construct landfills upon non-eroded state lands.