

**REGULAR MEETING
STATE BOARD OF LAND COMMISSIONERS
August 13, 1991**

The regular meeting of the State Board of Land Commissioners was held Tuesday, August 13, 1991, at 9:00 a.m. in the conference room of the Joe R. Williams office building. Governor Cecil D. Andrus presided. Those members present were:

Honorable Cecil D. Andrus, President, and Governor of the State of Idaho
Honorable Pete T. Cenarrusa, Secretary of State
Honorable Larry EchoHawk, Attorney General
Honorable J. D. Williams, State Auditor
Honorable Jerry Evans, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

Consent Agenda

- A. Official Transactions -- June 1991
- B. Proposed Timber Sales:
 - 1. Benton Ridge
 - 2. Goat Creek
 - 3. Oviatt Meadow
 - 4. Stanton Pole
 - 5. West Feary
 - 6. West Fork Bear Creek OSR
- C. Easement Requests:
 - 1. Idaho Department of Transportation -- Water Outfall Structure on Payette Lake
 - 2. Cogeneration, Inc. -- Hydroelectric Project on Snake River
- D. Requests to Dispose of Property Declared Surplus:
 - 1. Idaho Department of Transportation -- 5.36 acres near Malta, Cassia County
 - 2. Idaho Department of Education -- 1009 Wyoming St., Gooding
- E. Disclaimer Requests:
 - 1. Steven E. Shelton -- 4.0 acres Former Riverbed Land North of Idaho Falls
 - 2. Jack D. Maulin -- 7.83 acres Former Riverbed Land, Boise River
- F. Qualified Bidders List Addition -- Larson Logging

J. D. Williams moved to adopt the consent agenda. Jerry Evans seconded. The motion passed unanimously.

Regular Agenda

Audience -- Proposed Baldwin Exchange -- Jeff Huber, et al; Tom Blanchard

Governor Andrus reviewed for the audience that at the last meeting, the Land Board decision was that they would look at all proposals -- not just a single proposal, and the department was directed to investigate that and bring it back to the board.

Mr. Hamilton stated that the staff is looking into the proposals, however, Mr. Jeff Huber on behalf of several people who live in the area, asked for audience with the board today to discuss the Baldwin proposal. Also, Mr. Tom Blanchard, Blaine County Commissioner, had asked to speak, but instead has sent a letter which has been provided to the board members.

Jeff Huber, 1109 Leadville, Boise, introduced himself and said that he also has a second home in Blaine County. He is not a legal counsel but he does represent his family who own two parcels encompassing 52 acres adjacent to the east of this property. He stated that they wanted to be on record today that they are in support of Mr. Blanchard's proposal as the most appropriate use of that property. He understands that Mr. Blanchard's proposal was to exchange some BLM land in the area for the bombing range. That would keep the land in use as grazing range.

Mr. Hamilton said that the department has discussed with BLM over the years the possibility of exchanging the 40 and the 640 acre parcels, but the BLM never expressed a lot of interest in that. However, it will be considered during the review of the Baldwin proposal. Mr. Hamilton stated that the department will be looking at all the alternatives before this is brought back to the board later this fall.

Jerry Evans commented that one of the options was the potential for sale as well. Mr. Hamilton affirmed that it still is.

Morningside Heights

Mr. Hamilton commented that two letters have been delivered for the record -- one from the East End Neighborhood Association dated August 7, and one from Phil Barber, the attorney for Hawley Troxell dated August 9.

Attorney General EchoHawk reported that Deputy Attorney General David Barber had been assigned to take a look at this issue and he wrote a review and gave back a memo that outlines his conclusions and recommendations, and he has concluded that there are a number of factual and legal issues that need to be resolved. Additional information is needed, and the recommendation for the Land Board is to appoint a hearing officer to hold a hearing and develop a record on this.

Phil Barber, legal counsel for Morningside Heights Partnership (MHP), urged that the board grant the original request made by Mr. Snyder. Mr. Snyder's record is very complete. If it is determined necessary to have a hearing officer, he believes the record will mirror Mr. Snyder's record. He reiterated that this is an area embedded in an urban area governed by a variety of very strict local land use ordinances and regulations. He urges that the board allow the land use planning mechanisms set up by the city of Boise to be responsible in the first instance for those land use planning questions.

Betty Foster, 700 Hillview Drive, Boise, stated that she is unofficially representing the East End Association. Ms. Foster said their request would be that the hearing be held.

J. D. Williams moved to adopt the recommendation of the Attorney General and appoint a hearing officer to make a factual determination in this matter to be submitted to this board upon completion. Jerry Evans seconded the motion. The motion passed unanimously.

Timber Sale Assignments and Extensions

Mr. Hamilton said that earlier this year there was a proposal being circulated which offered several state timber sales owned by Kooskia, Inc. for resale to the highest bidder. That proposal has raised a number of questions in the industry and has prompted the department to bring a couple of extensions that are currently being requested on these sales to the board for consideration.

Winston Wiggins briefed the board on the background. Mr. Wiggins said that one of the items highlighted in the request for bids was the fact that these state sales had been sold before the timber supply stabilization act had been implemented and therefore were available for export. Even though it turned out there were no bidders on that sale, it has raised several questions that have been referred to legal counsel in regard to the extension assignment process on state timber sales as they relate to the timber supply stabilization act and to the federal export law that was passed last fall. Those include whether extensions should have provisions that prohibit export from Idaho or the United States, whether assignment of sales sold prior to the timber supply stabilization act should be allowed only to qualified bidders, and whether the federal export law applies to contracts dated prior to the implementation of that law.

The department recommendation is that the board authorize the department to proceed with the extension of these contracts and with other similar sales in the future on the following terms -- first, that the interest on stumpage shall be at the department interest rate in force at the time of the extension or the rates in place during the prior extension, whichever is higher. Second, that any extension or assignment of state timber sale contracts include a provision requiring full compliance with the timber supply stabilization act and the forest resources conservation and shortage relief act.

Governor Andrus explained for the benefit of the public present that Kooskia, Inc. had beat out their competitors on four state timber sales, combined the 29 million board feet of sawlogs into one sale, that they then reoffered for a minimum bid of \$2-1/2 million to those same people. Somehow or other, there were no bids. Governor Andrus commented that he thinks the point is if the timber is worth that much, whether the board wants to let somebody else reap the profit of what should go to the school endowment fund.

Jerry Evans stated his concerns as well with someone else benefitting from that increase in value, and he asked what would happen if the department failed to extend the contract and whether the current successful bidders will go ahead and log it.

Mr. Wiggins explained that if the contract were not extended, it would become null and void. He was not certain if that would fall in the same category as under the turn-back policy involving some kind of an adjustment for the purchaser.

Jerry Evans said he thinks the board ought to continue the policy of allowing extensions, but also thinks they ought to be controlled so that those extensions will allow the purchaser to go ahead and harvest that timber, but anything beyond that, he thinks the benefit should accrue to the state of Idaho and not to the purchaser. Mr. Evans said he thinks the industry should be protected from this constant speculation. They should not be buying up sales and logging a portion or none of it during the prescribed time in the hopes of assigning it to someone else to make a profit.

J. D. Williams moved to approve the department's recommendation with an additional condition -- that as additional consideration for the granting of the extensions requested, that the purchaser has to agree that if in fact, any of these sales are

assigned to third parties, that any profit above and beyond the purchase and their sale price to the third party, would revert to the state of Idaho endowment funds. Jerry Evans seconded.

Mr. Cenarrusa stated that he sees nothing wrong with the profit motive as long as the state loses nothing from the sale.

Mr. Echohawk commented that he is in support of the department recommendation the way it stands. He thinks the issue about assignments and speculation needs to be addressed, but would want to give more careful thought to the language.

Mr. Williams said he thinks this is a very unusual circumstance because this company successfully bid to the exclusion of a lot of other companies at very high prices for four contracts and then tried to market the four contracts as a package at apparently a substantial profit. He said this really bothers him particularly because some of it was purchased before the restrictions on export were in place.

Mr. Hamilton brought up one more point of information. The one sale has already been extended at about a 10% interest rate. The interest rate on these goes from the date the stumpage is removed back to the original date of sale. The longer they let this run, the more it's going to cost them.

There being no further discussion on the motion, the motion passed on a 3-2 vote; Mr. Cenarrusa and Mr. EchoHawk opposed.

Bear Lake -- Resolution to Close Lakebed to Motorized Vehicles

Mr. Hamilton explained that the department has been approached by the Bear Lake County Commissioners about their concerns now that the waters of Bear Lake have receded to the point that there is approximately a quarter mile of sand exposed in many areas around the lake. Recreational users of the lake have taken that area over and local enforcement officials are having difficulty in maintaining the area in a sanitary manner and have asked for assistance in gaining control over what occurs on those exposed sands. Department staff has visited with the county commissioners and the recommendation is to take an action that would allow the local county authorities the ability to exercise enforcement control over it. The recommendation is for an order in which the State Board of Land Commissioners as trustees for the Public Trust, the owners of the bed of the lake, would close that except for specific purposes. They would close it for driving or parking of motorized vehicles except for the use of a vehicle for launching boats at authorized boat launches, for emergency law enforcement and government administrative vehicles, and other vehicles authorized by appropriate authority for specific purposes. Also, the county commissioners have requested the department to fund enforcement activities.

Bear Lake County Commissioner Ron Law, Montpelier, spoke to the board. He said that Rich County in Utah in which half the lake lies, has passed a fairly restrictive ordinance that bans most all vehicular use of the lakebed, etc. Bear Lake County is very concerned about the lake and wants to protect that resource, but they also want people to be able to utilize it. They think they can bring about protection and maintenance and still allow a certain amount of use. They do not want to prohibit any motorized vehicles from using the lake, but they are asking for some restrictions, and they are asking to ban overnight camping and parking of vehicles. They are not asking the state to fund the total enforcement, but they do feel the state has some responsibility as a partner.

Mr. Williams said that he has visited the area, visited with the county commissioners and with Lou Benedick, the department area supervisor; also, the legislative conference was held down there and it was discussed in great detail. Mr. Williams asked Mr. Law to review the document that is before the Land Board today.

Mr. Law said what they are asking for is some flexibility in drafting an ordinance because they don't feel there is that big a problem with the vehicles as long as they can put some restrictions on it.

Mr. Williams suggested making some changes in Paragraph A of the proposed resolution and asked if he could spend a couple of minutes with the commissioner to work out some language agreeable to both. Jerry Evans asked that someone from the department staff (Fred Kisabeth) participate. With no objections, Governor Andrus so ordered.

Mr. Williams upon return explained that the three of them had changed some of the language, particularly to the first line where it says, "The following activities are expressly prohibited," adding the phrase "unless otherwise modified by the Board of County Commissioners of Bear Lake County, Idaho." That way the county can adapt it to their local needs. Mr. Williams then moved the adoption of the proposed Order with that modification. Jerry Evans seconded. The motion passed unanimously.

Governor Andrus noted also that the board has agreed via a gentlemen's agreement to assist Bear Lake County with the printing of a brochure for the users of that lake.

Rules and Regulations Governing Issuance of Geothermal Resource Leases (IDAPA 20.06) -- Final Adoption

Mr. Hamilton said that on May 14 the board authorized the department to take proposed amendments to the Rules and Regulations Governing Issuance of Geothermal Resource Leases through the APA process. That was done, they were advertised for three weeks in various papers in the state, and no written comments have been received nor any request for a hearing. They are now back before the board for final adoption.

Pete Cenarrusa moved to adopt these rules and regulations for geothermal leasing. Larry EchoHawk seconded. The motion passed unanimously 4-0. (Mr. Williams was out of the room at the time working on the Bear Lake Resolution (preceding agenda item).

Proposed Air Force Training Range

Governor Andrus reported that the briefing provided at the last meeting is still very current. Since then, the Mountain Home AFB is no longer on the base closure list; the Air Force has concurred with the creation of a training range to expand that facility. The deputy secretary of the Air Force is dealing with the Air Force and the landowners to come up with a lease/purchase agreement for the deeded ground in the area. At the same time, there was a suggestion by Jerry Evans that the Land Board look at all alternatives to the state's involvement such as leasing its grounds to the Air Force, trading out the BLM ground with state ground in other areas such as the Baldwin properties, a trade of land property by Mr. Naha of his ranch to the state for the properties at McCall, or an outright sale of our property. The only action the board needs to take now is to tell the department to prepare those proposals to place before them so the board can then make a decision as to which way to go. At the same time, hopefully, the Air Force will have completed their description and perhaps some kind of a lease/purchase agreement.

J. D. Williams moved that the department be directed to proceed to look at all alternatives and prepare those proposals for the board to assist them in making the proper determination. Pete Cenarrusa seconded. The motion passed unanimously.

Governor Andrus clarified for Mr. Evans that this motion was not an approval of the department recommendation.

Land Sale Contracts -- Reinstatement Request -- Martin Leest

Mr. Leest introduced himself and said he lives at 1170 Pleasant View Drive, Weiser. Mr. Leest appealed to the Board to reinstate his lapsed land sale contracts. He explained that he has been at that address for some time, and does not understand why his mail was going to California. Governor Andrus pointed out that there was a divorce and the agreement stated that all indebtedness would be paid including this, and then the default notice was sent to California, and Mr. Leest is saying he was not notified. He later moved to the property where he made improvements and now has found out he is being held in trespass.

Mr. Biladeau pointed out that the California address was the last address of record in the department. The notice for the 1988 payment was mailed there and when not received, a final notice letter was received which gave the contract holder 60 days to make payment. That was a certified letter which was signed for by Mr. Leest. The cancellation notice was also sent to that address and that was signed for by Mrs. Kathy Leest. Mr. Biladeau said the department feels that the notification process was properly carried out; that was the address on record; when cancelled, the Idaho Code is specific that there is a two-year reinstatement period from cancellation. The department does not believe it cannot vary from the two-year reinstatement period. Mr. Leest has made no inquiry about nor made a payment on the contract for a period of three years. The department sees no way to recommend reinstatement of the contract.

Governor Andrus asked Mr. Leest if he has been paying the property taxes of Washington County. Mr. Leest said he inquired at the county and was told that since the state had taken the land back, no notices were sent out. He did pay the tax in 1988.

Governor Andrus asked Mr. Leest at what date did he take residence on that property and what has been done to it. Mr. Leest said he started living on that property in April 1988. He put in power and a well and a mobile home. He lives there with his family, and they have no place else to go.

Governor Andrus asked if he is prepared to pay if the state accepts his request to reinstate. Mr. Leest said he does have the resources to have it brought up to date within thirty days.

Mr. Williams said he thinks there are extenuating circumstances here and if Mr. Leest can bring the contract and taxes current, he thinks the Board should reinstate.

Pete Cenarrusa so moved. J. D. Williams seconded. Mr. Biladeau in answer to a question from Larry EchoHawk said that to bring the current contracts current, the amount is \$3,391.84. Mr. Hamilton also pointed out the back taxes would also have to be brought current. Mr. Leest assured the Board he could bring his contract current and pay the taxes, but he is not prepared to pay the contracts off at this time.

The motion passed unanimously.

Department Budget

Mr. Hamilton said that the state agencies received two sets of budgeting instructions this year and the department has three. The department has prepared the base budget along the guidelines received from the Division of Financial Management which was to remove all one-time replacement capital outlay, then reduce the operating expenses by 3% of base and add back up to 5% of their base budget including all the capital outlay or any decision units left over.

Mr. Hamilton pointed out that the General Fund, 1101, is at 4.1% over base and the total is 3.9% of base. Forest Resources is at 5.2% of base and total overall in that program, 3.7% including the dedicated funds. Lands, Range, and Mineral Resources is at 8.2% and the total in that program at 11%. Forest and Range Fire Protection, up in general fund 2.8% for a total overall and including the dedicated funds of 4.8%. For the Soil and Water Conservation Commission, the general fund is up 5.0% and the total for the program is up 3.5%. The Board of Scaling Practices, a dedicated fund agency, is up 6% overall but that includes just dedicated moneys and is a maintenance of current operation budget. The department total of all programs in general fund is up 5.0% in general fund and a total overall of 4.9% including all programs.

Mr. Hamilton then explained the add-backs, primarily replacement of capital outlay, for a total of general fund in all programs of \$169,200. Added to that, within the DFM guidelines, a navigable water specialist was added back into the general fund in the amount of \$38,600. There are two dedicated fund decision units that were included -- some equipment in the Forest Improvement Program of \$6,300, and some computer equipment for the Scaling program of \$19,800.

Outside the budget guidelines are some supplemental requests of approximately \$70,000 for gypsy moth control, and the lawsuit involving the State Treasurer reimbursement is now at \$5.2 million for the forest improvement account and \$754,000 for the range and recreational improvement account. This was prepared assuming the Board would want to continue to pursue that.

There is a forest and range fire supplemental request. This is under deficiency warrants and will be submitted as soon as the numbers are available.

JFAC staff and co-chairmen have instructed the agencies to prepare whatever budget they felt appropriate. Traditionally, this Board has reviewed that and given the department direction on what to take to JFAC. Mr. Hamilton pointed out the decision units that would be over and above the DFM budget that Lands would submit to the Governor's office. The first item is for staffing of the geographic information system. The second is the timber management program, and Mr. Hamilton said this request is for additional help because the department is about 87 million board feet behind on the 1991 timber sale plan.

Jerry Evans said he was surprised that the 200 million board feet goal has not been given a higher priority. Mr. Hamilton said that within the DFM guidelines, the department felt it had to deal with replacement capital outlay first to maintain the existing program. Beyond that, the dollars available fit the Lake Protection Act Specialist which had been one-time funded with instructions to bring it back this year. GIS capability is also of high priority. Mr. Hamilton said these are all important, but he would have no problem making that the number one priority in the Governor's budget, and that would mean the replacement capital outlay would have to be eliminated.

Governor Andrus emphasized that the budget he will submit to the legislature will adhere to the guidelines. Jerry Evans said he would not want to cut into the activities that contribute to the revenues. Mr. Hamilton said if he had more time, he could explore some options; the department has not had an opportunity to spend much time on the problem of the shortfall.

Governor Andrus said he would extend the budget due date to the day after the next Board meeting (September 18) to give the department some more time to re-establish its priorities.

Mr. Cenarrusa spoke about the importance of a noxious weed control program.

Information

Information items included in the agenda were:

Timber Sale Report
Gypsy Moth Update
1992 Cottage Site Lease Rental Notices
Endowment Report
Interest Rate Report
Newspaper Article -- Desert Land Entry

There being no further business brought before the Board, the meeting was adjourned.

STATE BOARD OF LAND COMMISSIONERS

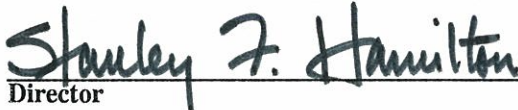


President, and Governor of the State of Idaho

COUNTERSIGNED:



Secretary of State



Director

