

**REGULAR MEETING  
STATE BOARD OF LAND COMMISSIONERS  
June 8, 1993**

The regular meeting of the State Board of Land Commissioners was held at 9:00 a.m., Tuesday, June 8, 1993, in the east 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 L. Evans, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

**Consent Agenda**

- A. Official Transactions -- April 1993
- B. Proposed Timber Sales:
  - 1. CR-1-0248, Flat Water -- Priest Lake Area
  - 2. CR-2-0142, Cone Creek -- Pend Oreille Area
  - 3. CR-4-0535, Cedar Canyon -- Clearwater Area
  - 4. CR-4-0544, Asbestos Mine -- Clearwater Area
  - 5. CR-4-0558, Brush Creek -- Clearwater Area
- C. Disclaimer of Interest Request -- Melvin A. and Helena Zehr -- 3.56 acres, Canyon County
- D. Disposal of Surplus Property -- Idaho Department of Fish and Game -- Property at 106 W. 44th St., Garden City. Recommended for sale at public auction.

Jerry Evans moved to approve consent agenda items A through D. J. D. Williams seconded. The motion passed unanimously.

## Supplemental Agenda

### Peggy Clemmer -- Audience with the Board

Mrs. Clemmer requested that the board to speed up the road building and clean-up operation at their cabin site in McCall. Bill Petzak, area supervisor, Payette Lake area, explained that the reason this project has taken so long is that the federal agency changed its requirements in mid-project. He said that the problem will now be taken care of.

### City of Gooding -- Request for 12-Month Lease with Option to Purchase Gooding T.B. Hospital

Perry Whittaker said that the city of Gooding has requested a 12-month lease with option to purchase the former Gooding T.B. hospital. The city's last lease option expired May 10. The city was approached by representatives of a California company called Bos Audio Corporation who has expressed interest in using the hospital facility. The department recommendation is to grant a 12-month lease with option to purchase to the city of Gooding for a \$10 fee.

J. D. Williams commented that there is a good description of this firm and their proposal in the board packet and therefore would move to approve the option. Jerry Evans seconded. The motion passed unanimously.

Governor Andrus noted that the property will have to brought up to certain standards that could be quite expensive and he would advise the city leaders to not sign anything until they are sure the asbestos abatement program and everything has been computed since the proposal implies that the city will be responsible for bringing up the doors, windows, glass, etc., to code.

## Regular Agenda

### Administrative Rules -- Final Adoption -- Rules of Practice and Procedures--IDAPA 20.01

These rules have gone through the process and Steve Schuster said that the department now recommends adoption of the final rules as modified with a couple of grammatical corrections. The department has received no comments on these rules.

Larry EchoHawk moved to adopt the rules as recommended. Pete Cenarrusa seconded. The motion passed unanimously.

**Disposal of Surplus Property -- Idaho Department of Transportation -- 19.46 acre parcel, Ada County -- Recommended for sale to Meridian School District:**

Don McNarie provided background information to the board. Mr. McNarie said that this item was before the board last April. The department had gone through the normal procedures to have the property offered at public auction, then the Meridian School District said they were interested in the property. The department came to the board with the recommendation to sell the property directly to the school district after holding a public hearing as required by law. The hearing was held on May 25, 1993. At that hearing, Mr. Mike Tanner, representative of the Bright Corporation who was developing the property to the west of this parcel, appeared and made a statement that he was not objecting to the sale of the property to the school district, but did have concerns about the possibility of the site being used as a school bus depot with the added traffic that would be generated through the subdivision. Mr. Mabes, representing the school district, said that their plans were not solidified as to the possible use of the property but they would have to go through the normal procedures of planning and zoning to develop the property. The department is now again recommending that the property be sold directly to the school district.

Jerry Evans moved to approve the department recommendation. Pete Cenarrusa seconded. The motion passed unanimously.

**Land Exchange Proposal -- Everett and Edith Chapman/State**

Alvin Carr provided a brief background on this exchange proposal. Mr. Carr said that this package involves forty acres of private land for forty acres of state land in the Clearwater area. Both parcels are within one-quarter mile of one another and the highest and best use of each is timber production. The state would be gaining about ten more acres of timber producing land with an estimated 1800 board feet per year. The Chapmans would be acquiring access to their ownership.

J. D. Williams moved to approve. Larry EchoHawk seconded. The motion was approved unanimously.

**FY-94 Land Sale Plan**

Stan Hamilton said that over the years the department has accumulated a number of parcels on the land sale plan, many of which never sold or had any interest expressed in them. This year the department went through that plan, took a good look at what was on it, and is now recommending some parcels for sale and that some of these parcels be withdrawn from the sale plan until more interest has been expressed.

Perry Whittaker said that of the twelve parcels being removed from the sales plan this year, nine are in the eastern Idaho area, two in the Payette Lake area and one is in the St. Joe area. Two 320-acre parcels are being added to the plan. These are located in Butte County in the eastern Idaho area. The department has received requests to offer each of these tracts for sale. The department recommends approval of the proposed FY-94 Land Sale Plan with the understanding that each proposed sale unit will be submitted individually for approval as they are appraised and processed.

Mr. Cenarrusa said there is a parcel in the Antelope Valley with a landing strip and asked if that is being considered for sale. Mr. Whittaker said only the land to the south. Mr. Hamilton said he believes the landing strip is on private ground, but he will check on that for Mr. Cenarrusa.

Jerry Evans moved to approve the department recommendation. Pete Cenarrusa seconded. The motion passed unanimously.

### **Dupont Dock Case -- Final Decision**

Stephanie Balzarini reviewed that last month the board ordered a period in which written exceptions to the hearing officer's findings of fact, conclusions of law and recommendation could be submitted. That process has come to a close. All of the documentation received by the department during that period is included in the board memo. Because of the board's familiarity with the background on this case, Ms. Balzarini discussed only the hearing results and the department's recommendation. She said that the department's role in the administrative proceeding that the board ordered last July was that of an objective participant. The department aided the hearing officer in developing a record for the board to make a final decision, but did not advocate either the affirming or the revoking of the permit in the contested case hearing or in the public hearing, but merely provided guidance and clarification for the record.

Ms. Balzarini said the public hearing was held August 19, 1992, and the great majority of the people attending that hearing spoke in opposition of the dock due primarily to safety of swimmers and continued public recreation in the area. Some were in support and they were concerned with the private property rights of the Duponts. The contested case hearing was held in December, and the hearing officer's findings and conclusions were issued in April of this year. The hearing officer determined that on balance, the permit would violate the Lake Protection Act and the Public Trust Doctrine and determined that it should be denied.

The department has recommended that the substance of the hearing officer's recommendation be adopted by the board. Two of the conclusions that deal with procedural matters the department has recommended that the board not adopt. One deals with the nature of the proceeding. The department has maintained that the board ordered a revocation hearing in compliance with the rules governing the Lake Protection Act. The hearing officer determined it was a rehearing and not a revocational proceeding reading in some procedural authorities fairly broadly resulting in a twenty-day period after a permit is granted for any person to have the right to a rehearing.

Ms. Balzarini said that is not the way the department interprets those rules and it is not what the legislature intended as the legislature intended these types of docks be handled with a minimum of procedural requirements. The other item the department suggests the board not adopt is a procedural matter in which the hearing officer determined that the notice provided the city of Coeur d'Alene at the time the permit was issued was inadequate. The relevant section of the LPA provides that statutory notice, personal service, or certified mail be provided to riparian owners adjacent to the proposed docks whose riparian rights might be infringed upon.

The hearing officer found that based upon the existence of another permit for buoys in the vicinity and based on the broad public trust doctrine notice that the city would be entitled to the statutory notice. This is contrary to the clear language of the provision and if this conclusion were adopted, the department would be in the position of not being able to manage the notice provision. There would be no way to determine who had an interest, and the department would always be subject to procedural challenges.

Senator Denny Davis, Coeur d'Alene, spoke to the board. He thanked the board for the opportunity to have this record developed, and also complimented the agency on facilitating in developing this record. In regard to the notice question, he thinks the board could as a matter of policy generally adopt a policy that would allow for some public notice. He also thinks there is some question about a regulatory taking, but he does not think this is the forum in which that issue ought to be resolved.

John Magnuson, legal counsel, and his client, Mr. Donald Dupont, spoke to the board. Mr. Magnuson stated that Mr. Dupont's permit was issued on May 4, 1992, which subsequently began a 13-month odyssey which has culminated in the hearing officer's recommendations. Mr. Dupont's property is a 158' of frontage located approximately 300' west of the city beach. The property was assessed at \$1550 for each one of those feet and last year Mr. Dupont paid \$10,000 in taxes because he owns riparian land. \$3,000 of that went to the city. Now the city says Mr. Dupont does not own riparian land. The city had no problem with Mr. Hagadone applying for a dock. Mr. Dupont now finds himself the only private property owner on Lake Coeur d'Alene who basically has had his property cordoned off for public use. He maintains this is not fair and requests that the department affirm the permit that the department originally issued.

Donald Dupont, Coeur d'Alene, stated that he lives across the street from Denny Davis and they are part owners in a common parcel between their properties. Mr. Dupont said his contention is that all of this is a precedent setting situation. Prior to the city of Coeur d'Alene ever making this a public swimming area, there was a dock on his property. He pointed out that there has never been any mention of his restricting public access to his beach. The public could still access his beach. He said there have been safety comments about swimmers in the area and yet not one piece of information has ever been documented of an injury to a swimmer related to a boat or a dock.

Wendy Haig, Assistant City Attorney, addressed the board. Ms. Haig said this is about a 686 square foot dock in the middle of a public swimming area which has been a public swimming area since the turn of the century. Before 1956, there was a public log boom there which prevented boats from coming in. In 1956 the city created the ordinance creating that as a public swimming area. In 1982 they asked for a permit from the Department of Lands for buoys to buoy off that swimming area which it granted. Last year, the permit was extended. That area encompasses the dock that the applicant wants to put in. Ms. Haig cited many reasons why safety to swimmers is a big concern of the city. She also mentioned that the city was entitled to be given notice as the fee simple owner of West Lakeshore Drive.

Larry EchoHawk commented that the public interest here is very strong and the board needs to take that into account under the Public Trust Doctrine, and there are significant safety issues. He moved to adopt the department recommendation to adopt the hearing officer's finding of fact, conclusions of law, and recommendations, in part, and

order the Dupont permit revoked, including in his motion the two exceptions to the hearing officer's conclusions concerning the nature of the proceedings and the adequacy of notices as set forth in the recommendation. J. D. Williams seconded.

Pete Cenarrusa said he would like more time for study on this and made a motion to table this issue for one month (to the July Land Board regular meeting). Jerry Evans seconded.

Mr. Cenarrusa's motion passed 3-2; J.D. Williams, Pete Cenarrusa, and Jerry Evans voting in favor.

### Triumph Mine Superfund Site

Mr. Hamilton explained that the board was scheduled to go into an executive session in order to discuss some aspects of the listing of the Triumph Mine site as a superfund site, however, prior to that, Donna Rose has requested audience with the board. Mr. Cenarrusa added that the county commissioners have stated a wish that this issue be considered by the board and that the state take over the supervision of the proposed Triumph NPL site.

Donna Rose said that Wendy Collins would be the first presenter today. Ms. Collins, Hailey, said she is appearing before the board on behalf of the group called the Concerned Citizens of Triumph. She said that Triumph received an astronomical score of 90.33 as the national priorities list superfund candidate. No other site in the history of superfund has ever received a score so high. Studies done in their area last week showed no heavy metal contamination in their wetlands or groundwater. The only problem appears to be state-owned tailings and fugitive dust blowing. This high test score jeopardizes the credibility of an already questionable superfund program. To date, there has been no conclusive evidence that there has been a health risk in the community of Triumph. They are here asking the state to intervene in the superfund process and also to cover the tailings with a vegetative covering. Ms. Collins said that she and her husband are also prepared to participate in any act of civil disobedience that is necessary to protect their land, their home, and their way of life.

Donna Rose, P.O. Box 3730, Ketchum, also representing the Concerned Citizens of Triumph, thanked the governor for her nomination to the Western State Governors Abandoned Mine Waste Committee known as DOIT which stands for "developing on-site innovative technology." This is in conjunction with the EPA, Department of Defense, Department of Energy, Department of Interior and private industry, and composes a mining think-tank which is now choosing pilot testing sites in order to compete commercially in international world trade. There are only 28 days left in the EPA process public comment period before Triumph gets a life sentence to the national priority list. Ms. Rose stated that except for Mr. Cenarrusa, they have received no help from the State Land Board. They appeared before the board two months ago and nothing has been done except that the state has looked at the legal ramifications of becoming a PRP behind closed doors. They are asking the state to help them try to solve this problem together. Ms. Rose added that they feel that capping the tailings is the only economic, viable option and that re-mining in Triumph is not in the best interests of the residents as it would damage the river and create a hazard and health risk.

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Pat Murphy, Hailey, said that after 1,750 pages of tests and reports, no health risks have been substantiated at Triumph, but it has still been nominated for NPL with the highest score in superfund history. He said the EPA is noncooperative and the state appears to be involved but is not acting in their best interest. Triumph people are kept out of the information loop. At their last presentation to the Land Board, they asked that no re-mining project be held in a residential neighborhood, and yet at last week's DOIT conference, Rob Hanson of the state presented a re-mining proposal. They received a letter from the university president and the university sponsor, Dr. Mink, that they were withdrawing the proposal (to re-mine the tailings) and it now reappears as sponsored by the state. The DOIT committee said such projects were unrealistic and should be dropped. The state needs to take the lead on providing solutions.

### Executive Session

Jerry Evans made a motion that the board go into executive session under the provisions of Idaho Code 67-2345(f) to consider matters in or possibly for litigation. Pete Cenarrusa seconded. The motion passed unanimously.

While in executive session, the board heard from State of Idaho Division of Environmental Quality representatives, Joe Nagel and Clyde Cody; also from Steve Schuster, counsel for the Idaho Department of Lands.

During executive session, Governor Andrus had to leave for another appointment and turned the chair over to Mr. Cenarrusa.

### Regular Meeting

Back in regular session, Mr. Cenarrusa explained there were three items for the board to take up in open meeting:

1) Comment period. J.D. Williams said additional information was needed in order for the board to be in a position to adequately comment and moved that the board request an extension of that 28-day comment period in order to give an informed response. Jerry Evans seconded. (Legal counsel to determine how long an extension period to ask for.) The motion passed unanimously. Governor Andrus absent.

2) Special meeting. Larry EchoHawk moved to request the director to determine a date as soon as possible for a special meeting and asks that staff prepare briefing materials for the board and propose some strategy. Some part of the meeting may be closed, but some of the meeting should remain open because this is an issue the public is very much concerned about. Jerry Evans seconded. The motion passed unanimously. Governor Andrus absent.

3) Re-mining question. Jerry Evans said the Land Board should not allow this to happen, but does not know correct procedure since no application has been received. The director will contact University of Idaho staff and look at the existing easement to see if it does require board action. Director Hamilton will also contact DEQ and will follow-up to see if they are sponsoring or not. He will report back to the board at the special meeting.


J.D. Williams also suggested that in response to the PRP letters, a need to know why there is a disparity between EPA's findings and the actual health of the individuals involved there, and what the "potential" designation means.

**Information**

The following informational items were provided to the board: Timber Sale Report; Interest Rate Report; Gypsy Moth Update; Guidelines -- Land Board Meetings; Priest Lake Land Appraisals; Cottage Site Rentals for 1994; Summary of Projected 1994 Cottage Site Rentals -- Payette Lake; Keep Idaho Green Poster Contest Information.

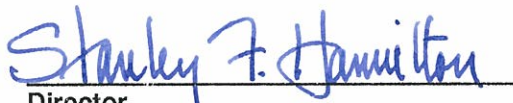
There being no further business brought before the board, the meeting was adjourned.

**STATE BOARD OF LAND COMMISSIONERS**

  
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President, and Governor of the State of Idaho

Countersigned:

  
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Secretary of State

  
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Director

