

**REGULAR MEETING
STATE BOARD OF LAND COMMISSIONERS
September 7, 1993**

The regular meeting of the State Board of Land Commissioners was held at 1:30 p.m., Tuesday, September 7, 1993, at the Edgewater Inn, Sandpoint, Idaho. 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 -- July 1993
- B. Proposed Timber Sales:
 - 1. CR-2-0157, Hoodoo 4 -- Pend Oreille Lake Area
 - 2. CR-3-0369, Canary Pine -- St. Joe Area
 - 3. CR-4-0554, Riverview Road -- Clearwater Area
- C. Requests for Disclaimer of Interest:
 - 1. Richard and Fonda Frasier -- Payette River/Gem County -- 21.36 acres
 - 2. Eagle River Sewer District -- Boise River/Ada County -- 7.48 acres
- D. Potluck Mining -- Dredge/Placer Permit 294

Larry EchoHawk moved to approve the consent agenda. Jerry Evans seconded. The motion passed unanimously.

Regular Agenda

Audience with the Board -- Andy Jolliff -- Small Logging Sales

Winston Wiggins provided background information on this topic. Mr. Wiggins said there are two types of small sales authorized by Idaho Code -- there is the salvage sale which is less than a million board feet and \$75,000 value which has to be sold at public auction; the other is a direct sale which has a limit of a hundred thousand board feet and \$10,000 and can be sold without advertisement. Small sales are typically used to harvest isolated or bypassed parcels of timber, and the number of sales offered each year fluctuates depending on the availability of salvage material and time available. An average of 28 salvage and 100 direct sales have been sold each year for the past ten years. The St. Joe Area is unique in that there is a small sales forester position there.

Andy Jolliff and Stan Smith of the Small Loggers Council were invited forward to address the board.

Mr. Jolliff described how they salvage dead and down timber and how although the legislators voted to fund the program, but all of their proposals for how to deal with this material have been ignored. He said they cannot take any materials that has paint on it, and he maintains that some very good marked material is left to rot or to be burned when the small loggers could make good use of it. They believe that someone in the Department of Lands is intentionally trying to prevent their program from working. Mr. Jolliff said that millions of dollars worth of cabin logs, firewood, float logs, and cedar shake logs have been methodically, intentionally, and illegally burned. He said that the Small Loggers Council is asking the board to look into this situation and try to find a solution.

Stan Smith stated that he is on the board of directors of the Small Loggers Council headquartered in St. Maries. Mr. Smith said that he visited with Steve Trombley, C-PTPA's man in charge of burning slash at New Boehls Camp who said slash piles would be burned as soon as it rained, and that they burned everything piled. Mr. Smith said that most of those piles had merchantable material in them. The small loggers are not allowed to purchase the merchantable material until the pole or timber sales are canceled and yet the C-PTPA policy is to burn the slash piles whether they have material resources in them or not at the soonest possible date. Mr. Smith handed out photographs to the board showing merchantable timber slated for burning. Mr. Smith made two requests of the board: 1) Place a one-year moratorium on the burning of slash piles that contain merchantable timber; 2) Order the department to develop a successful direct sales program for said salvage.

Winston Wiggins and Sam Charles, Forest Area Manager, St. Joe Supervisory Area, were invited forward.

Mr. Charles explained that the pictures were taken from a sale still on active contract, and the purchaser has the option to take the material. It is not customary to allow burning of the piles before the sale cancels although there are situations where the department will try to work with the association when there is a fire hazard. There would be little or no opportunity for destroying merchantable material.

Winston Wiggins commented that the burning of slash or the disposal of slash in some manner is required by law, but the department's intent is to insure that when that disposal takes place that merchantable material is not a part of what is burned. He feels the department is well on the way to a balanced and successful program there that will be more successful in the coming years than it was this first year. The department is willing to look at any area that the Small Loggers Association may have in mind for sales and work with them on it.

In answer to a board question, Mr. Wiggins explained that department staff has the responsibility in the field to insure that merchantable material is moved to the landing and secondly that it is properly manufactured. Then if burning is required, that is again a coordinated thing, and department people have to clear the area for burning, and notify the association that the piles can be burned. When the burning takes place is more of an association responsibility.

Mr. EchoHawk asked, short of acting on the request for a moratorium, what assurance can the Department of Lands give the board that these concerns are going to be addressed. Mr. Wiggins assured the board that the department will look at the situations the Small Loggers pointed out today.

Governor Andrus suggested that Mr. Wiggins and Mr. Charles go with Mr. Jolliff and Mr. Smith to take a look and see whether the material is in fact merchantable, and whether it has been cleared. He also suggested that they talk with the C-PTPA and make sure they understand that they are not to burn until the department says to burn. He asked them to report back at the next meeting.

Centennial Trail -- Memorandum of Agreement between Department of Lands and Department of Parks and Recreation

Bryce Taylor provided some background on the proposed memorandum of understanding between the Department of Lands and the Department of Parks dealing with the proposed Centennial Trail. Mr. Taylor said that in November 1989, Yvonne Ferrell, Director of Parks and Recreation, briefed the Land Board about the Centennial Trail. The Centennial Trail was developed after significant work by several Idaho citizens groups, the Idaho Lasting Legacy Committee, and the Department of Parks and Recreation. The trail traverses the entire length of the state of Idaho from the Canadian border on to the south border of Idaho. The Department of Parks and Recreation has been, where possible, developing portions of the trail with user groups from meager funds that have been collected. At this time they feel they need to do some work on some portions of the trail that cross the Priest Lake State Forest in the Panhandle. This memorandum of agreement between the two agencies has a basic agreement to hold an annual meeting to talk about the needs on the trails and about who is going to do the work without having to issue individual permits each and every time they put out a work project. The current memorandum of agreement does not include a clause that would allow the Department of Lands to close or ask for a relocation of the trail for management needs such as timber management, and the department would like to include that.

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The memorandum of agreement allows for cancellation if problems arise. Either agency could cancel with a required thirty days' notice. The department recommendation is to approve the memorandum of agreement contingent on adding a clause which would allow the trail to be relocated or temporarily closed for endowment land management needs.

Jerry Evans moved the approval of the recommendation including the additional clause dealing with closure and temporary location contingent upon the acceptance by the director of Parks and Recreation. Larry EchoHawk seconded the motion. The motion passed unanimously.

Land Exchange -- Hoodoo No. 2 (Forest Service/State of Idaho) -- Final Approval

Perry Whittaker provided background information. He said that this is Phase 2 of a land exchange plan with the Panhandle National Forest whereby the State of Idaho is consolidating some ownership in the Hoodoo Mountain area north of Spirit Lake. The first phase was completed in 1986. In Phase 2, the state will be acquiring four different tracts of federal land consisting of 2,653 acres with about 22,215 MBF of timber. In exchange, the state lands consist of four tracts comprising 2,881.82 acres with 21,957 MBF of merchantable timber. The exchange will reduce the state property boundary by seven miles which will reduce survey costs. Members of the Senate Resources and Environment committee and the House of Representatives Resources and Conservation committees have been notified and no comments have been received. The package was jointly appraised by the U.S. Forest Service and the Department of Lands. The department recommends this exchange package be approved as per the appraised values of \$3,300,000 on each side.

Pete Cenarrusa moved to approve the recommendation. J. D. Williams seconded. The motion passed unanimously.

Navigability Determination -- S.F. Salmon River and Other Major Salmon River Tributaries -- Approval to Proceed

Clive Strong, Division Chief, Natural Resources, Office of the Attorney General, reported that this issue was referred to their office from the Department of Lands for consideration of litigation regarding the state's ownership of the South Fork of the Salmon River's submerged lands. Under the Equal Footing Doctrine, the state has title to all submerged lands that are within a navigable stream. The issue is whether the federal government has the authority to issue patents to mining claims along the South Fork of the Salmon River. The initial request was to determine the state's titles to the beds and banks of the South Fork of the Salmon River, yet over the last several months, there have been several situations that suggest a lawsuit should be broader. Specifically, there have been some conflicts with Native Americans and local residents on the East Fork of the Salmon River in regard to the tribe's right to access over the beds and banks of those rivers. Resolution of that issue will help resolve the tribe's right to ingress and egress on those lands. In addition, a counter-claim was filed against the State of Idaho in the Blackbird Mine case asserting the state was a potentially responsible party (PRP) and claiming the state owned the beds and banks of those rivers and streams within the boundaries of the Blackbird Mine site, and therefore since materials were deposited on the beds and banks of

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those streams that the state was a potentially responsible party. That issue needs to be resolved and presently in the litigation, the state has indicated that issue is unresolved but would be seeking appropriate resolution to determine whether the state is indeed the owner of the beds and banks of those streams.

What is being proposed is that the state simply go forward under the federal Quiet Title Act which requires 180 days notice to the federal government that the state intends to quiet title to the beds and banks of all navigable bodies of water within the Salmon River drainage basin. That lawsuit would go and make determinations under the federal test of navigability based upon the ability to use those waters in the course of navigation or the course of commerce at the date of statehood in 1890. What would be required in making those determinations is simply to show that those waters are subject to the use of commerce and that will require the retention of some experts for some areas to determine how it was used in commerce in the past. A major part of the Salmon River should be simple to resolve in that it is already used in commerce in terms of rafting, etc., but there will be some need, particularly for tributaries, to obtain some expert assistance. At this time, he would not expect the cost to exceed \$40,000.

J. D. Williams made a motion to accept the recommendation to proceed. Jerry Evans seconded. The motion passed unanimously.

Triumph Mine Update -- Draft Request for Proposals

Mr. Hamilton provided the monthly update on the Triumph Mine Superfund listing issue. He said that in 1922, the Federal Mining and Smelter Co., Triumph, asked the Land Board for an easement on state-owned endowment lands on which to place mine tailings. The board granted that easement for a fee of about \$640. Subsequently, the area was mined in the mid-50's and tailings were placed on the 20-acre site and on another 40 acres up the road from it. About two years ago, the EPA decided that the site was qualified for listing under the Superfund national priority list and advised the state it was a potentially responsible party because the mine tailings had been placed on state-owned lands.

Last month he, Clive Strong, and J.D. Williams appeared before the Legislative Council Committee to brief them on the situation and to determine whether they were satisfied with the general course of action, and secondly, to seek their support and approval of the expenditure of monies to retain consulting services beginning as soon as possible and extending up to the time that the legislature can be asked for a supplemental for payment. There was a motion on the table approved unanimously by the members there that the board and the department were generally headed in the proper direction by trying to take aggressive control of the site and to take control over the remediation processes. They declined, however, to give committee approval to the funding saying that they could not speak for JFAC or for the entire legislature.

Mr. Hamilton referred to a request for proposals for consultant services which is patterned in part after the Bunker Hill case proposals. The department believes the board should approve the adoption of this request for proposals and direct the department to put it out for consideration by the various firms that deal with this in order to obtain consulting services as soon as possible.

Mr. Hamilton listed four specific actions that he hopes the board will approve:

1. Expend general fund monies on the Triumph Mine project even though such monies were appropriated for other purposes.
2. Seek a supplemental for reimbursement from the 1994 Legislature.
3. Seek emergency fund monies as need to carry out project activities.
4. Proceed with the RFP for consulting services immediately.

Clive Strong advised that two items brought up at the Legislative Council meeting that they wanted addressed was whether the state could be held responsible for the full amount of the clean-up and if the state was making an aggressive effort to identify other potentially responsible parties. Mr. Strong has talked with Asarco's counsel and has been advised that they are willing to participate with the state in developing a proposal, but are not committed on a dollar amount. He has been in conversations with EPA in which they've indicated they will provide all the research they have done on potentially responsible parties. Secondly, the legislature was concerned with the listing process and whether the site would be included on the NPL. There was clear direction given to try to work with the EPA to see if there is a way of avoiding that activity. Mr. Strong is trying to set up a meeting to discuss that matter with them.

The board members each expressed agreement that the state is on the right track, however, Jerry Evans expressed some concern about what would happen if the legislature did not approve the supplemental request. Mr. Hamilton said that in that case, part of the department would simply have to be shut down. Clive Strong said that his sense from the meeting was that they were generally supportive of the requests that will come forward.

After further discussion, Larry EchoHawk made a motion to approve the department recommendation. J. D. Williams seconded. The motion passed unanimously.

Threatened and Endangered Species Briefing

Mr. Hamilton reported that there are two or three major endangered or threatened species on state endowment lands or within endowment land recovery areas with perhaps the bull trout being added sometime later this year. For that reason, he has asked the following people to make some presentations on some of the management activities and administrative details necessary to deal with threatened and endangered species:

1. Clive Strong, Office of the Attorney General: Mr. Strong first briefed the board on the provisions of the Endangered Species Act (ESA). He said that the ESA has some far-reaching implications due to a statement of policy as a nation to preserve and protect those populations or species. That policy is elevated above economic considerations and is based solely on biology.

The key definitions associated with the ESA are: a) Conservation which is defined as all methods of procedures necessary to bring any endangered or threatened species to

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the point that the measures are no longer necessary; b) Endangered species is when a species is in danger of extinction throughout all or a significant part of its range; c) Threatened species is any species that is likely to become endangered; d) Take means harassing, harming, pursuing, hunting or shooting or any method by which a species is affected by an activity of man; e) The consultation process that follows listing a species.

If it is found that an activity is causing jeopardy to the chances of survival of the species, then the only way the action can continue is if the agency issues a biological opinion evaluating the impact and identifying reasonable and prudent alternatives. If an incidental take permit is granted, then the agency can proceed under strict guidelines. Without an incidental take, the activity then cannot go forward. That is the most critical aspect of the Act and where most of the difficulties come with respect to federal and state agencies. Mr. Strong described the impact on Idaho's salmon runs where there was time to prepare all the analyses required. Mr. Strong stressed that under Section 9, a takings provision, anyone, including the state, who takes a species without authorization under the Act, is subject to substantial penalty and fines as well as judicial suit.

Another definition is for critical habitat which upon the listing of a species defines the parameters of which type of activities will be subject to the consultation process. Mr. Strong explained that the ESA can overlay the board's constitutional charge to maximize returns from the endowment lands for educational programs. It can also affect management of other state resources such as water. The state needs to make sure it is in compliance and meets both state objectives and avoids potential liability with the federal government.

2. Bob Hallock, U. S. Fish & Wildlife Service, and Wayne Wakkinen, Fish & Game :

Mr. Hallock said he is supervisor of the Coeur d'Alene field station, Division of Ecological Services. He discussed the status of listing and recovery activities of a few high profile species in the area such as the bull trout, the woodland caribou, and the grizzly bear and how management activities of state endowment lands may hasten recovery of listed species. He explained that extinction of species is a natural process, however, the consequences of unhampered economic growth and development have increased the rate at which species are reaching the brink of extinction. Recovery means achieving a level of sound stewardship, for example, possible recovery of salmon to the point where it can be harvested.

Mr. Hallock talked about the bull trout and the threats of mining, logging, road building, grazing, etc. No decision has been made whether to list them or not. The decision will be based solely on the best scientific information. If not listed now, there will probably be a need to re-evaluate in the near future. He said a revised recovery plan for woodland caribou may be released soon. They are also reviewing a petition to designate critical habitat within the range of the woodland caribou which may affect the harvest of some old-growth timber. The decision may be made on whether proposed action degrades habitat or not rather than applying the more stringent jeopardy standard. He brought out maps to show where some recovery zones are for both caribou and bears. Their management units tend to stop at state lands. For grizzly bears, the recovery goals for the Selkirks now are five sows with cubs for a six-year running average. The count may include areas within ten miles of recovery zone boundaries, and there are some state lands within

the ten-mile area. He asks that the state to do whatever it can to provide bear security and bear habitat on state lands.

Mr. Wayne Wakkinen, Idaho Fish and Game, handed out some information covering the Selkirk grizzly bear project and the woodland caribou project in the Selkirks. He used a map to show former and current grizzly bear range. It is estimated about 1% to 2% of the former range is now occupied by grizzly bears. There were about 50,000 total grizzly bears in the 48 states in the 1800s. Today there are about 1,000. The reason for the reduction is because of displacement by human population centers and by man's killing of bears. The grizzly bear habitat is still there. They have radio collared 28 grizzly bears in Washington, Idaho, and British Columbia. As a result, they have found that they are reproducing okay. About three-quarters of the mortalities documented have been due to poaching. They now have one full-time employee whose job is information, education, and enforcement regarding the grizzly bear population up there. Mr. Wakkinen also mentioned that the grizzly bear is listed as a threatened species and the woodland caribou is listed as endangered. The Selkirk mountain range is the only place in the lower 48 states where caribou is found. Caribou mortality is high, and they think that mountain lions are a major factor in that. They are still researching that. They do have two herds established there now, and they are going to try to get a third herd established by augmentation.

3. Ned Horner -- Idaho Fish and Game : Mr. Horner talked about the cutthroat trout. He said that, historically, there have been great fisheries in north Idaho but as drainages were accessed, populations soon declined and signs of overharvest and severely depressed populations were seen as early as the 1950s. The Department of Fish and Game has been using restrictive regulations for over two decades now, and they have been used very effectively. The catch and release program is now getting popular. At this time, the entire Spokane River drainage is under restrictive regulations. Those efforts are restricted by the impacts of habitat degradation. He used slides to illustrate research results and habitat problems due to logging, mining, etc. Mr. Horner said that if they are forced to close the fisheries, it will be due to lack of good habitat.

Supplemental Agenda

Jean Martin for Wayne Snyder -- Unauthorized Encroachment

Jean Martin, Coeur d'Alene, said that she has a cabin near Mr. Snyder's on North Sherwood Beach at Priest Lake. They have had a terrible erosion problem on their sand beaches and have been trying to do something to stop the erosion. Everyone wants to stop it but no one is sure how to do it. Mr. Snyder placed some logs perpendicular to the beach as did his neighbors, Mr. and Mrs. Robinson. These logs have improved the beaches a great deal in the last two years. The wave action had been eating the beaches away. No one wants the logs there, but that is what is working.

Mr. Hamilton said the problem with wave action there is very real, but one of the problems with using logs in that manner is that it stops the movement of the sand along the shore but the next one down has the problem, etc. The department told Mr. Snyder he has to get a permit for that particular use, but so far, he has not done so. Revetment is more

costly, but is a method the department feels would be more effective. Mr. Cenarrusa said Mr. Snyder had told him that even if he did so, the department would not grant a permit. Mr. Hamilton explained that the department does not feel that is the best way to deal with it, although they are willing to work with Mr. Snyder.

Mr. Cenarrusa asked that the department follow up on this and try to resolve it. Mr. Hamilton said they would.

Rangeland Reform:

Mr. Cenarrusa reported that the Secretary of the Interior and the Secretary of Agriculture have proposed advance rules, ANPR, allowing for a 30-day comment period which ends on the 13th of September. There are just a few days left to comment on the extreme recommended changes -- not only the grazing fee -- but the other rules and regulations being proposed. Mr. Cenarrusa said many people want to respond with comments, but he feels there isn't enough time. He would like the board to go on record and recommend to the Secretary of the Interior and to the Secretary of Agriculture an extension of the allowed comment time of an additional thirty days. Governor Andrus said he would not object to asking for an extension of time period to October 1, however, he doesn't think the changes are that devastating.

J. D. Williams made a motion that the board go on record of having the department send a letter to the Secretary of the Interior asking for an extension until October 1 for additional comment. Pete Cenarrusa seconded. Governor Andrus said he thinks also that the weekly newspapers should be notified that the reports are there, to tell the people that they're there, so that they can get their comments in. The motion passed unanimously.

Nathaniel T. Pace - Sand Removal Permits:

Mr. Pace addressed the board saying that he has a situation just opposite from Mr. Snyder's. They have a problem with too much sand that keeps building around the end of their dock. He is referring to Encroachment Permit #ERL 97-369. He then referred to a map of the area to illustrate the shoreline, etc., and explained that they are on what is called the "point" of the property. He described various problems with neighbors who have contributed to the problems by the addition and placements of docks, etc. Mr. Pace would like to keep the sand dredged out without having to apply for a permit every year. The problem is that it takes six weeks to process a permit and it costs \$50 each time.

Governor Andrus asked the department its position. Ray Greene and Will Pitman were invited forward to discuss this issue. Mr. Greene said that whole area is very shallow and sandy. There is a lot of erosion there now, partly due to the additional docks, retaining walls, and other encroachments. It is an accretion area and this is an ongoing problem. He does not know what the solution would be.

J. D. Williams asked if the state could give Mr. Pace an annual permit. Mr. Pitman said that the department has had meetings with Mr. Pace's neighbors and they are the ones objecting to Mr. Pace's dredging. Mr. Pitman said that the dredging is causing changes elsewhere along the shoreline. Mr. Pitman thinks Mr. Pace should go through a public process on this because there are more than two people in a dispute.

Mr. Hamilton said he thinks the best way to handle this is for the department to do an indepth study of what is going on along that whole section of shoreline and contact the neighbors and find out what their objections are and try to come up with a solution. The board members agreed with Mr. Hamilton's suggestion and advised Mr. and Mrs. Pace that the department would work with them.

Loel Fenwick, Land Exchange Proposal at Rocky Point:

J. D. Williams introduced Dr. Fenwick and said that Dr. Fenwick has discussed with him a possible exchange with the state for a portion of Rocky Point where the state owns about 300-400 acres of timberland. Dr. Fenwick owns a great deal of that point and has asked to briefly review his proposal with the board.

Dr. Fenwick said his purpose here is to gather a sense of the board as to whether there would be any interest in a potential land swap. The area in question is on the Rocky Point peninsula on the southeast side of Priest Lake. The Rocky Point peninsula is a very prominent landmark on the lake. It is managed as part of the endowment timber base. He owns the area at the bottom part of the peninsula which he purchased five years ago from Diamond International. It had been a log loading area. It is currently being managed as part of the Idaho Stewardship Incentive Program for long-term timber yield. It is also open to the public as a wildlife refuge. It is a sensitive area. Immediately to the north of the wildlife refuge is an area of approximately 250 acres comprising the undeveloped portion of the tip of the Rocky Point peninsula. The periphery of the peninsula along the north and the west sides have long been developed as cabin sites and the east shore has not been developed primarily because it is a steep, rocky slope unsuitable for building or road development. During the time of the last logging of the point, a road was put in to potentially serve a new row of cabin sites and the area was identified in the comprehensive plan as a potential site for cabin sites. He is asking for a proposal that would take away some of the pressure on that piece of opened land from having to provide a return to the school endowment. He suggests identifying a piece of land that the Land Board could exchange for this, or perhaps he could purchase the land outright and add it to the wildlife refuge.

Governor Andrus advised Dr. Fenwick that the state cannot sell the land to him. If sold, it would have to be sold at public auction, however, at times the board does make land trades for like value. He said the board could direct the department to look at it and give him an answer of yes or no.

Jerry Evans said he would not make any commitment without further information. A good deal of study and thought ought to go into that process. He would like a very complete analysis.

Larry EchoHawk made a unanimous consent request to direct the department to look at this in concept and bring it back to a subsequent board meeting. Governor Andrus suggested the February meeting.

Information

Information reports provided to the board members were: Fire Activity Report; Gypsy Moth Activity Report; Timber Sale Activity Report; Interest Rate Report; Fish & Game Concerns, Eastern Idaho; Newspaper Article of Interest.

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

STATE BOARD OF LAND COMMISSIONERS



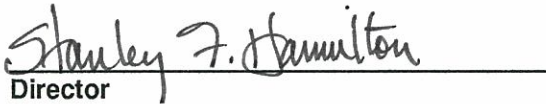
President, and Governor of the State of Idaho

Countersigned:



Secretary of State




Director