

**REGULAR MEETING  
STATE BOARD OF LAND COMMISSIONERS  
September 13, 1994**

The regular meeting of the State Board of Land Commissioners was held at 9:00 a.m., Tuesday, September 13, 1994, in the east conference room of the Joe R. Williams office building. Governor Cecil D. Andrus presided.

The 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 1994
- B. Request for Disclaimer -- City of Nyssa -- 1.51 ac., Snake River
- C. Proposed Land Sales:
  - 1. 8.125 acres, Cassia County
  - 2. 20 acres, Fremont County

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

**Regular Agenda**

**Idaho State Historical Society (ISHS)/Idaho Botanical Gardens (IBG)**

Mr. Hamilton said that this item is on the agenda at the request of Mr. Wayne Meuleman. The department has been working with the Idaho Botanical Garden (IBG) and with the Idaho Historical Society (ISHS) in an effort to try to resolve some of the differences that have developed at the old penitentiary and botanical garden sites. Several years ago the board delegated the management of the old penitentiary reserve site to the ISHS who stands in for the Department of Lands in the management of that parcel. Any long-term uses of the property are reviewed by the ISHS and brought to the Land Board for approval. Several years ago, the IBG was granted a 50-year lease. Some of the terms of the lease have come into dispute and there have been concerns and differences over the development that has occurred on the site. The department feels that more work is needed to reach a resolution and is not asking for a final decision from the board today.

Dale Higer, representing the Idaho Botanical Garden, addressed the board. He introduced others with him, Wayne Meuleman, the president; Sally Jo Peters, the director; Chris Davidson, former executive director of the garden; Arthur Hart, the ISHS director at the time the lease was entered into; and others. Mr. Higer said his understanding is that originally

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the buildings that did not have historical significance on the site could be removed if necessary. ISHS had requested at that time that they did not want any plantings in the garden that would destroy the view from Old Pen Drive, and that there would be no development or plantings in the "dead zone" -- a 25-foot strip of land outside the walls of the old penitentiary. IBG currently pays \$5,000 a year for the lease when other non-profit organizations such as the art museum and the discovery center pay nothing. In 1991 the State Land Board granted them some additional acres for development of the centennial gardens. At that time both the ISHS and the Land Board agreed they could remove all buildings on the site except the 1907 building and the two guard towers.

Mr. Higer said that beginning in March 1993, their relationship with the ISHS has deteriorated to one of almost ongoing war with its present director. As a result of their education program, the IBG proposed renovating the 1907 building in 1990. The building is falling down and if nothing is done, it will be a pile of rubble. They would leave the exterior of the building identical to the day it was built. The ISHS imposed certain design conditions and those conditions were met. IBG expended \$12,000 to complete a design to fulfill those conditions. They were on the verge of obtaining a building permit in the spring of 1993 when the current director stopped progress unless the plans were changed to meet his criteria even though different than those approved by his board a year earlier. In 1988, Water Resources imposed a moratorium on further development of geothermal water which they had been using to irrigate the gardens. They worked with Water Resources and the city of Boise and worked out a program to utilize an old state well near the Warm Springs golf course and arrange financing for the Garden, the Historical Society and Boise City at no cost to the Historical Society. It only needed the approval and signature of the director, and they have refused. In 1990 the 1950 administration building on the site became available and IBG wanted to use it for a library, gift shop, and educational activities. That was refused -- instead ISHS leased the building to another state agency for \$12,000 a year. They also have threatened IBG with a lawsuit for no valid reason they can see. IBG instead sought mediation through Jim Hansen. No progress was made through the mediation process. IBG then talked to the director to try to settle, but every concession the IBG makes, ISHS draws the line a little further. It turns out they want to micromanage everything IBG is doing. They feel ISHS is not following the mandates of the State Land Board.

Mr. Higer briefly outlined their latest proposal. One of the things is that ISHS would be allowed to continue to review the proposed uses, but IBG would have immediate right to appeal to the Land Board. They need the Land Board's help. They are having problems raising further money for the Garden not knowing where they are going to be, and some donors have requested their money be returned because they have not been making any progress. If this proposal is not acceptable to the ISHS, then they will be willing to live with the existing lease, but if so, then the Land Board must direct the ISHS to discharge obligations of this board in good faith.

Dr. John Hill, Director, Idaho State Historical Society (ISHS), addressed the board. Dr. Hill pointed out that the State Historical Society is charged by statute as the leading preservation organization for historical properties within the state of Idaho. In regard to the old penitentiary site, they are further charged under the agreement and legislative assignment to preserve the old state penitentiary historic site in order to provide for its educational use and preservation for the future. One of the first instructions he received after coming on board in January 1993 from the board of trustees was to provide for them a report on the interaction of the IBG and the ISHS under the 1984 lease. He provided that report. It was determined that the lease in force was flawed and had not been adhered to by IBG and they were

substantially in breach of that lease. His board of trustees gave him directions to send the IBG board a statement that they were in breach of the lease. The removal or construction of any buildings on the leasehold as indicated in the original lease must be done only with the written permission of the board of trustees. Despite this, a structure was moved onto the grounds. A very important historical structure built for the education and rehabilitation of inmates was destroyed without permission in 1986. The hold-back strip has not been regarded. This is a unique site, one of only four penitentiary sites open to the public in the United States. The characterization of warfare between ISHS and IBG is unfair. The ISHS board of trustees and staff have been extremely accommodating and flexible. It was the IBG who discontinued the mediation discussions. The use of the heating plant building was not denied to IBG; those requirements were from the Division of Public Works, not ISHS. Regarding Water Resources, this would be a matter that would need to be settled as a part of the renegotiations, and he recognizes the need to work through the last few details involving the use of buildings. He feels they have come very far in trying to resolve these issues.

Betty Derring, Weiser, a member of the Board of Trustees for the ISHS spoke to the board stating their full support of Mr. Hill and added that she feels they they have been cooperative.

J. D. Williams observed that it seemed in the past that everyone was getting along just great and that the prison has become a real showplace and the children have been able to see the plantings there. He expressed his surprise at this turn of events. In looking at the proposals, he thinks they are close on what they are going to exchange. The issue is how are the lease rents going to be adjusted. He feels the Land Board has a lot of discretion on this because those are not endowment lands. Mr. Williams emphasized that there is a lease; there is a valuable public resource on both sides; and the fighting has to stop.

Mr. Hamilton said the department recommendation is that the parties continue to work on negotiations and suggested they may need some outside assistance.

Larry EchoHawk said he does not think the board is in a position to make a decision today. He moved to direct the department to continue to encourage both parties to come to some mutual agreement but in the event that does not occur, the department come back with a firm recommendation to the board on how to proceed by the next meeting of the board. J. D. Williams seconded. The motion passed unanimously.

#### **Collins/IDPR/IDL Land Exchange -- Final Approval**

Mr. Hamilton stated that this item was on the agenda last month. The only comments the department will make this month will be to update the board on things that have changed since the last meeting.

Bryce Taylor reported that the only change in the proposal is that the Simplot Corporation has bought the Owen Family Trust properties, but their attorney has assured the department they would carry out that part of the agreement.

J. D. Williams moved to approve the proposal; Pete Cenarrusa seconded.

Jerry Evans spoke out in opposition to the motion. He commented that this is only a partial solution to the problem of Ponderosa Park. It makes the remaining portion of that

problem even more difficult to solve. He thinks there are some serious legal and constitutional questions regarding the 320-acre limitation on acquisitions of property by an individual or corporation during a lifetime. This action very carefully avoids any public auction. He thinks in the attempt to justify this, the state has looked at the income or revenue in a way that is not realistic. No effort has been made to provide any revenue or income from the land that is being given up, and he thinks the income projected in the papers provided to the board is overstated. He does not believe the State of Idaho belongs in the landlord business and he thinks the state could do better.

The motion passed 4-1; Jerry Evans opposed.

### **Status Report -- Land Exchange -- State/Heidi Baldwin**

Visitors present included Heidi Baldwin and family members; Jeff Huber and other members of the Beidebach family; Dick Fosberry representing Galena Engineering; and David Lincoln, filling in for Carl Burke, Ms. Baldwin's legal counsel.

Mr. Hamilton reported that the department has worked with the proponent of the land exchange in an effort to obtain road access into the parcel.

Perry Whittaker updated the board. In review, he said the exchange proposal would allow the state to acquire two patented mining claims in the SNRA along with a developed, assignable legal access to 683 acres the state holds in the Clear Creek drainage three miles south of Ketchum. In exchange the state would propose to exchange approximately 21 acres to Ms. Baldwin. This 683 acres would be restricted to four homesites. Two homesites on the 21 acres would be transferred to Ms. Baldwin with the state retaining the other two homesites. The exchange was last before the board December 8, 1992. At that time, the board approved the exchange with the understanding that it was going to be contingent upon access being provided within a reasonable timeframe. Consummation of this exchange is contingent upon Ms. Baldwin being able to obtain Blaine County approval for that proposed Owl Creek Road.

In September 1993, Blaine County passed a moratorium on the hillside development and that continued to May 10, 1994. During that period, Ms. Baldwin through her engineering firm was working on the engineering aspects of the potential development. When the moratorium was lifted, Ms. Baldwin and the State of Idaho submitted a joint application for a hillside site alteration permit under the old ordinance in effect at that point.

A P&Z meeting was held on August 11, 1994, with no approval for the road under that old ordinance. Ms. Baldwin will go back and resubmit a new application jointly with the state under the new ordinance now in effect on October 27, 1994. The exchange will probably be brought back to the board towards the end of the year. Jerry Evans suggested that if it does not appear the state is going to acquire access to this valuable piece of property, that they begin condemnation proceedings of an access route.

Pete Cenarrusa commented that this year the land earned very little on a grazing lease. Without access, it is not worth anything. With access, it is worth millions to both the endowment fund and the county tax rolls. He and Mr. Evans appeared at the hearing and told the P&Z that they cannot supercede the authority of the State Land Board. That was ignored. He believes the state needs to put some pressure behind this.

Jerry Evans said the people at that August 11 meeting were not happy having anyone from the state expressing any interest in this matter that they consider a local matter. It seems that the Land Board needs to agree again to make a joint application under the new provisions that are in effect in Blaine County, participate in that application process, and go through that procedure again. They do not want to do anything to assist the state in acquiring access to that property unless it voluntarily agrees to come under their jurisdiction with regard to planning and zoning. He does not believe the state should do that. He thinks the Land Board should authorize the joint application again under the new law and to instruct the staff to begin immediately. If it does not appear that this is going to acquire state access to this valuable piece of property, then begin condemnation proceedings in the most appropriate fashion.

Dick Fosberry, Galena Engineering, explained the approach they are planning to try to gain approval from the county planning and zoning. The reason this is so controversial in Blaine County is that it is within the city corridor. P&Z was concerned about where the building sites might be. It is inevitable that the existing road that has been stopped will eventually gain approval. Timing is everything. This got caught in an old ordinance which is deficient. He has been told that if they come in under the new ordinance they should not have any problems with the staff and should gain approval. They want the board's permission to show the potential building sites. They think they can gain approval with that new information.

Governor Andrus commented that there is a new ingredient in this which is for the board to consider condemnation of right-of-way and that the more direct access would be directly west from the main highway.

Mr. Hamilton said the department is prepared to proceed. The department can also examine the condemnation question at this point. There are other places as well that need access to state land. He said this issue does not require any action today.

#### **Triumph Mine Update**

Mr. Hamilton updated the board. He reported that IDL and ASARCO are meeting with DEQ on the consent order for the remedial investigation feasibility study and the statement of work. The final draft should come to the October meeting for board consent. The Department of H&W is looking at early action proposals such as warning signs, fencing, etc. concerning public health. There is little support on this by the Citizens of Triumph. This issue may come back to the board.

#### **Training Range Hearing Notices**

Governor Andrus stated that the board members have received letters with reference to additional hearings on the land exchange proposal tied with the training range proposal in Owyhee County. He had thought one centrally located hearing would be sufficient.

After discussion, J.D. Williams made a motion that an additional hearing regarding the land exchange be held in Boise on October 4, 1994. Pete Cenarrusa seconded. The motion passed unanimously.

**Information**

Informational reports were provided as follows: Timber Sale Report; Gypsy Moth Report; Interest Rate Report; Fire Report; Rangeland Drought Policy Statement; Ron Lawrence Grazing Lease Update; and Litigation Update.

**Other**

The board conveyed their thanks for the good fire fighting efforts to the fire fighters and asked Mr. Hamilton to draft a formal statement for their signatures.

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

**STATE BOARD OF LAND COMMISSIONERS**



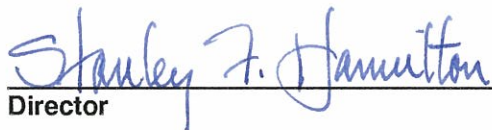
**President, and Governor of the State of Idaho**

**Countersigned:**



**Secretary of State**





**Director**