

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

The regular meeting of the State Board of Land Commissioners was held at 9:00 a.m., Tuesday, December 13, 1994, 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 -- October 1994
- B. Proposed Timber Sales:
  - 1) CR-4-0590, Fall Creek -- Clearwater Area
  - 2) CR-4-0601, Biddle Ridge -- Clearwater Area
  - 3) CR-5-0076, Blackwell Fire -- Payette Lake Area
  - 4) CR-5-0077, More Blackwell Fire -- Payette Lake Area
  - 5) CR-6-0145, Easter Bunny -- Southwest Area
  - 6) CR-6-0146, Minneha Star -- Southwest Area
- C. Requests for Addition to Qualified Bidder List:
  - 1) Springdale Lumber Co., Springdale, WA
  - 2) Ralph Bodek, Miami, FL
  - 3) Crown Pacific Ltd Partnership, Portland, OR

By unanimous consent, Items B-3 and B-4 were deferred to the regular agenda. Jerry Evans moved to approve the other consent agenda items. J. D. Williams seconded. The motion passed unanimously.

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## Regular Agenda

### B.3. CR-5-0076, Blackwell Fire and B.4. CR-5-0077, More Blackwell Fire

Mr. Hamilton reported there was a letter from Peter T. Johnson, Chairman of the Big Payette Lake Water Quality Council, asking that these proposed sales be deferred until the January meeting. Mr. Hamilton said that the department intends to construct approximately one-tenth of a mile of new road on the sale and that about 85% of the sale has been logged before. The purpose of these sales is to pick up the residual of the burned timber, and if the sale is sold in a timely manner, a lot of the work could be done on snow. The department recommendation is to proceed. Mr. Hamilton said the department recognizes this is a sensitive area and is very supportive of maintaining the water quality. Both of these sales have been prepared in light of the special best management practices that were put together by the North Fork Local Working Committee.

Mr. Cenarrusa said that Mr. Johnson visited with him yesterday about this and he sees no reason why a one-month postponement would hurt anything.

Jerry Evans commented that his question is what is gained by waiting one month in that the standards for this sale will not have changed. These are drawn with the idea of protecting the water quality in the lake. He has concluded there would be nothing gained and there is the possibility of losing the opportunity to log part of this on the snow.

Jerry Evans moved for the approval of both sales. Larry EchoHawk seconded. The motion passed 4-1; Pete Cenarrusa opposed.

### Idaho State Historical Society/Idaho Botanical Garden Lease

J. D. Williams reported that he has been working with Stan Hamilton and the parties to try to come up with as much agreement as possible. He said that the report in the board memorandum book is a second draft and distributed a third draft to the board members.

Mr. Williams said this was an interesting process. Both parties have a substantial interest involved and both are well meaning, but it was necessary to have a better mode of operation between the two. Mr. Williams said they went through the twenty issues identified as issues that needed to be resolved and have made recommendations on each issue. Mr. Williams touched briefly on the recommendations:

1) The lease terms. There are still differing opinions on the interpretation and performance of the terms of the lease. The Garden accepted the buildings and the premises in the condition they were in when they started. The Society may use any of those facilities until they are needed by the Garden.

2) The 1950 Administration Building. The recommendation is that the Garden be given rent credit from December 20, the date they could have had possession until March 1 when the Department of Agriculture will vacate, and that the lease continue to be administered by the Society until then.

3) Regarding the two warehouse buildings, the recommendation is that Building No. 1 be given to the Garden as soon as they need it. The real issue with the buildings is that the roofs are in an extreme state of disrepair. The Society has a budget request in for the repairs. The recommendation is that the board recommend to the next governor and to the legislature that these roofs be repaired. It will take about \$250,000 to do both roofs. As to Building No. 2, the Garden give an indication to the Society how long it is going to be before they want possession of that building and that they try to work together on that. Possibly the Society may have a portion of one of those buildings for interpretive purposes because of the prison industry history of the buildings.

4) The recommendation regarding Outlaw Field is that the Garden level it, plant it to grass, have an open grass field, and that they maintain it. The Society has about three years to add the backstop and dugouts. Both parties are to work together on the reconstruction of those facilities, and they will have joint use of the facilities for various activities.

5) The lease says that the 1907 building and the root cellar are the responsibility of the Garden. The Garden ought to see that the building can be stabilized -- it's on the historical register -- if so, it can become part of one of their gardens. If not, they should go to the lease administrator to try to negotiate an amendment to the lease to have someone taking care of that building.

6) As to the root cellar, it is in an extreme state of disrepair. It has no value to the Garden. The Society objects to it being torn down. It is recommended that it be returned for the exclusive control and responsibility of the Society.

7) The endowment land portion is not an issue of dispute. The endowment land portion on the easterly edge of the lease will be removed from the lease and the Garden will receive an annual permit for \$250 a year and will also have a recordable document that will run with the land that will protect the reservoir they constructed on this land in case the land is ever sold.

8) The irrigation water issue has been resolved. All the documents have been submitted to the Department of Water Resources. There needs to be an operating agreement executed following approval by the department.

9) Regarding removal of the small buildings near the Old Penitentiary road going into the site, the Society wants those buildings to remain as part of the interpretive nature of the Old Pen site. The Garden feels like they should be removed. The recommendation is that the Society renovate the buildings to their satisfaction and the IBG landscape around them.

10) Regarding the 1951 heating plant, there are asbestos problems there, and it is of no value to either side. The recommendation is that the Society fence the site, they maintain it in minimally acceptable condition and that they seek funds to remove the asbestos. If that is ever done, then the lease administrator look at the equities involved and decide who should have possession of the building.

11) The recommendation for the guard towers and the cemetery is that they remain under the control of the Society and, if appropriate, some lease changes be made if the administrator feels it necessary.

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12) Revisions of the master plan are detailed in the report including rules for construction of improvements, fund raising, joint events, and other major events at the Old Pen. These are not in dispute.

13-20) Other recommendations include archeological investigations; communications between the parties; and using a CPI consumer price index adjustment formula for the annual rent. A major recommendation is that the Department of Lands be the lease administrator to be the arbiter between the parties. There is a new memorandum of understanding recommended to be executed to place the department as the board representative in administering these properties. A very important part of this is that with respect to the IBG lease is that the ISHS will act in an advisory role to the Department of Lands providing consultation and advice to the department regarding cultural, educational, recreation, and scenic values of the leased premises.

Jerry Evans commented that regarding the public school endowment land, instead of the \$250 renewable permit annually, there should be included some way to allow some growth or review of that number over time. He suggested that if this is the minimum allowed, there should be language to reflect that the minimum could change over time. He suggested language to the effect of "at the annual minimum permit renewal basis." With no objections, Governor Andrus so ordered.

Governor Andrus recognized Ron Bush and Wayne Meuleman, spokesmen for the ISHS and IBG respectively.

Ron Bush, 4801 Kim Drive, Pocatello, representing ISHS, addressed the board. He said this document is a starting point for the Garden and the Society. If this is the course the board chooses for them to go, they will try to live by it in good faith. He said they have been trying to eliminate some of the problems and one of the major problems is the historical two-yard to the penitentiary which sits to the east of the sandstone walls and includes most of the prison industry and recreational areas. At one time there was a proposal from the Garden that that part of the leasehold be returned to the Society in return for additional acreage outside of the leasehold area and they still think that would eliminate much of the problem. The Garden later changed their minds, and that area continues to be a problem. They think it will be difficult to persuade legislators that the state taxpayers should spend \$250,000 for new roofs on buildings. In regard to the Garden's request that the 1907 building and the root cellar be returned to the Society, that currently is a responsibility of the Garden under their interpretation of the lease. If they are going to be relieved of that responsibility there should be some quid pro quo for the Society. That is why they proposed that one of those warehouses be returned to the Society. The suggestion regarding the 1951 building makes sense -- that whichever entity undertake the funding to do the asbestos removal should weigh heavily in the equities in terms of who should possess and use that building. Mr. Bush commented that although they are not entirely happy with the proposed solution, but will try to live with it.

Mr. Wayne Meuleman, Idaho Botanical Garden, addressed the board and said they think Mr. Williams has achieved what every good negotiator achieves -- he sprinkled dissatisfaction evenly amongst the crowd and has reached a fair and acceptable recommendation. They think the one achievement that can bring a permanent solution is the recommendation for a change of the lease administrator so there is some impartiality between these two parties.

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Governor Andrus stated that this has not been an easy task for the board to resolve. It is important to take action today so that the Botanical Garden can solicit funding.

Pete Cenarrusa asked about Outlaw Field. The Botanical Garden had demolished the facilities, and now this agreement has the Society restoring that. Mr. Williams explained that during the last ten years so many events have occurred there that it was decided to not consider that. They decided it would be better to take it from where they are at today. Also, he said the Botanical Garden will have the expense of leveling the field, planting it to grass, and maintaining it.

Larry EchoHawk moved that the board adopt the recommendations set forth by Mr. Williams. Jerry Evans seconded. Governor Andrus clarified that this would include the one change in language regarding the lease fee for the use of the endowment lands. Mr. Williams further clarified that this would also include the MOU regarding IDL becoming the lease administrator and a letter from the Board to the budget people in the Governor's office and to the Legislature regarding the roofs. The motion passed unanimously.

#### **Idaho Historical Society -- Building Site Approval**

Larry EchoHawk moved to approve the recommendation for the administrative building site for the Idaho Historical Society which was held over from the last meeting. J. D. Williams seconded. The motion passed unanimously.

#### **Audience with the Board -- Michael J. Norkevich--Lava Hot Springs Low Head Hydropower Project--Reclamation**

Mr. Hamilton explained that this issue has been before the board before. Some time ago the board approved the issuance of an easement for a low head hydro at the Lava Hot Springs site. Mr. Michael Norkevich who runs the campground there has concerns regarding that hydro site. Mr. Hamilton said he would ask Mr. Perry Whittaker to provide some background information before Mr. Norkevich speaks. Also present are David Crea from CEM, representing the hydroplant operator; and Mr. Bob Meline of the Lava Hot Springs Foundation.

Perry Whittaker stated that Easement #5402 was granted by the board January 9, 1989 to Commercial Energy Management (CEM) for the Portneuf River hydroelectric project. Construction was completed in March of 1993. CEM completed the hydroseeding on April 22, 1993. IDL received a letter from the Lava Hot Springs Foundation in May 1993 indicating the campground area had been restored to a satisfactory condition. Mr. Norkevich, lessee of the foundation's Cottonwood Family Campground in a letter dated March 1, 1994, brought to the Land Department's attention that the landscape restoration may not be in compliance with the terms of the easement and that a portion of the Portneuf riverbank had sloughed into the river due to heavy rain and early snow melt. Mr. Whittaker scheduled a site inspection on May 12, 1994, and discussions were held with the parties involved. Mr. Whittaker outlined the areas where CEM was found to be in noncompliance with landscaping requirements of the easement. Those areas require additional topsoil, regrading and revegetation. A landscape agreement has been developed that CEM, the foundation, and the department have all signed. Once CEM has restored those areas within the campground to IDL's satisfaction as indicated in the easement, it then becomes Mr. Norkevich's responsibility to maintain these restored areas. A

critical component is the provision of adequate irrigation water to CEM by both the foundation and the foundation lessee. This has been a problem in the past. There is still more work for CEM to accomplish before the May 31, 1995 target. The department will do what it can to enforce completion of the landscaping restoration and will monitor CEM's progress. A status report will be provided to the June 1994<sup>5</sup> Land Board meeting with recommendations at that time.

Michael Norkevich, P.O. Box 307, Lava Hot Springs, lessee and operator of the campground, spoke to the board. First, he presented a hand-out to each of the members, to help describe his situation. He is seeking a resolution to this situation which has had a profound effect on his family and his business. In July 1987 he assumed the lease with 34 years remaining. CEM was issued a permit to build the hydroelectric generator on the Portneuf River and through the campground property. They learned this only after signing the lease agreement. He has come here today to ask the board to enforce the terms of the easement and to explain that the continual delays regarding restoration threaten him with bankruptcy. He compiled an income comparison (the hand-out) covering the last four seasons for the January 1 through May 31 period with emphasis on the Memorial Day holiday to convince the board of the importance of this area of the campground. That area generally becomes available long before other areas of the park which has historically produced a significant part of the revenue needed for summertime start-up, taxes, and moneys to keep his mortgage current. The restoration of the land has gone on for twenty months and is still far from complete. He asks the Land Board to act immediately so as not to compromise his right to operate his business on state land any further. If possible, he would like the board to look into the possibility of using the \$35,000 bond with West One Bank which was a condition necessary for the issuance of the easement. He does not have the funds to carry him past March 15, 1995.

David Crea, Pocatello, Idaho, representing Commercial Energy Management (CEM), next addressed the board. Mr. Crea handed out an update of where they are at today. During 1993, very little growth was accomplished. The reasons related to him regarding that are that this hydroseeding was done and then CEM was denied use of the water contrary to the wishes of the foundation. The situation of Mr. Norkevich denying use of the water has existed since May of 1993. When he came into it this year, things looked bad in the sense that things were not flourishing. He could see water was needed and he rigged up a supply of dirty river water. He then promoted vegetation growth and the clover thrived. Mr. Crea went on to explain other steps they have been taking with things now going very well. Winter set in when they were trying to get the last of the dirt in there. Therefore, the target date of May 31, 1995, was put into the agreement.

Governor Andrus asked Mr. Crea if in his opinion Mr. Norkevich will be able to use all of those sites by Memorial Day weekend. Mr. Crea said that essentially, all of them. He said that Mr. Norkevich wants people to think he has been interfered with in his use of that to date. Photos from this year's Memorial Day weekend show the campground was in use and there was no interference and was about one-third full.

Mr. Norkevich said he needs to open in the spring as early as possible and tries to open in March. He would like to have sod and topsoil in place rather than them trying to seed everything. He also cited a letter renewing his offer to allow them to use his water at his expense if they will formally agree to place topsoil, level and regrade the campsites as necessary and place sod on them by a landscaping professional.

Governor Andrus asked Mr. Meline his opinion as to whether Mr. Norkevich will be able to open up this year Memorial Day weekend and not have access impeded because of poor landscaping. Bob Meline, from the audience, said in his opinion, weather pending, he should be able to open up with no problems. He thinks the refurbishing is coming along well and a lot of the area looks better than it did before the hydroelectric project went in. The key is the water.

Mr. Norkevich, said that his request before the board today is that the developer, CEM, adhere to the terms of the easement and hire a professional landscape consultant/contractor to have this restored as soon as possible.

J. D. Williams commented that he thinks Mr. Norkevich has made his point and this should have been taken care of before now. The people involved know that if this isn't done by the dates specified, the board will go after either the mortgage company or the bond for it.

Governor Andrus advised Mr. Norkevich and Mr. Crea that the board will go after West One this spring if this is not done. He advised them both to bury the hatchet and do what is needed to resolve this.

#### **State/Thayne Gneiting Land Exchange -- Final Approval**

Mr. Hamilton said this is for final approval for a small land exchange between the state and Thayne Gneiting, a rancher in the Idaho Falls area.

Perry Whittaker used the map to illustrate that this exchange involves the proposed acquisition by the state of 480 acres of some private inholdings and in exchange the state would trade to Mr. Gneiting approximately 360 acres. The exchange will allow the state to consolidate its land ownership; two of the private parcels lie in grazing allotments of which Mr. Gneiting is not the current lessee. They are not fenced and there is a potential for serious administrative problems. Acquisition of these parcels will reduce the potential for trespass as well. The estimated carrying capacity of both state and federal lands are basically about the same. The sale will result in the state property boundary being reduced 7-3/4 miles. A public hearing was held on June 30; no adverse comments were received. The property has been appraised by a state certified fee appraiser approved by the department and paid for by the land exchange proponent. Members of the Senate Resources & Environment and House of Representatives Resources & Conservation committees were notified. No comments have been received. Mr. Gneiting will issue a check in the amount of \$1500 to balance the exchange package.

Larry EchoHawk moved to give final approval. Pete Cenarrusa seconded. The motion passed unanimously.

#### **Clear Creek Land Exchange -- Heidi Baldwin**

Mr. Hamilton explained that this would be an update on the situation. Mr. Jeff Huber, representing the Biedeback family, was present as well as Heidi Baldwin and her legal counsel, Carl Burke.

Perry Whittaker provided some background information. The access the state would propose to acquire with this exchange is a major part of the exchange package. It would allow the state endowment land to be used to its full potential. The exchange offers the most economical way for the state to obtain developed, legal, assignable access to the state of Idaho. The land exchange proponent would be responsible for the associated costs of building the road including the engineering, seeking county approval, and road development costs. On December 1, Blaine County Planning and Zoning Commission considered the proposed Owl Rock Road mountain overlay site alteration permit application in the name of the State of Idaho and Heidi Baldwin. The P&Z Commission tabled the decision until the February 9, 1995 meeting of the commission. The department will continue working with Ms. Heidi Baldwin, the land exchange proponent, to get the road approved. If approval for the Owl Rock Road is achieved, the department will then bring the proposed land exchange back to the Land Board for their consideration.

Carl Burke said that this has been a long battle and they are here because it is on the agenda and are asking for the board's solid support for the road. He reported some of the things that have occurred. In view of the board's action in December 1992, Ms. Baldwin so far has spent \$509,000 on the road. Another \$400,000 will be spent on the road to bring it 500 feet to the state boundary. In addition, all of the easements granting the state the right to go through the land in question have been signed and they've all been recorded and the state presently has an easement for four units (houses) in that 683-acre development. He provided copies of those. The state now has access which was given prior to closing. They think that will be approved by the county. They believe it meets all county road standards. Mr. Burke said the great battle has been the result of the people who naturally have an interest in keeping this as a private compound for their use. Blaine County wants assurance there will be no more than four units and that is required in the deeds. A letter from the board assuaging the county of those concerns would be helpful. He also commented that the conditions of the contract entered into with the state really protects wildlife.

Heidi Baldwin addressed the board and said they are doing the best they can and she has been trying to give the state as much as she can and take as little. She said it is an equitable trade. It is a very expensive project. It is a good road. It has been signed off by the fire chief, the county engineer, and the health department. They think it will be approved and Ms. Baldwin said she appreciates the board support.

Pete Cenarrusa commented that the whole problem is that there are two parties out there that have "no trespassing" signs blocking access to the state to enter that property because they want to be subsidized by the state at the cost of millions of dollars. They want all that wilderness behind them for their own use. The state is taking the loss on this to the tune of millions of dollars. The road is already there, and the P&Z doesn't seem to see that. It will be approved and everyone will enjoy it after it is approved.

#### **Public Access to State Lands -- At the Request of Jerry Evans**

Governor Andrus commented on the letter received from Roger Seiber regarding public access to state leased lands which he said was a good letter and bears investigation by Department of Lands staff. For the benefit of the audience, Governor Andrus explained that a private citizen wanted to go hunting on state land and the lessee was restricting access. That is against the law on public lands.

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Mr. Hamilton said this was brought before the board at the request of Superintendent Evans. Before that, the department had followed up on this matter, and Bill Petzak from the Payette Lake Area Office, did some additional follow-up work. Mr. Hamilton explained that the department takes this very seriously. Any reports of "no trespassing" signs on state lands are pursued and the lessee is visited with or whoever put the signs up and it is required that they be taken down.

Jerry Evans stated that he had asked this issue to be placed on the agenda because over the last several years, several of these have come to his attention and in each case, the Land Department responded as they did here. The real problem is that the requirement is in the lease and it seldom gets reviewed except upon the time for renewal. He personally has come upon two such cases in the last two years, and the state needs to make sure that these lands are open and the lessees are reminded periodically of the conditions in that lease.

Governor Andrus suggested that the Idaho Cattle Association put something in their newsletter about this. Mr. Hamilton said he would pursue that, but as well, the department will insert reminders with the billings that are due to go out to the lessees.

#### **Acquired Easement #339 -- Request to Amend Terms of Existing Easement**

Jay Biladeau provided the background on this request to modify an existing access easement along the river. Mr. Biladeau said that last year the board disclaimed 1.3 acres adjacent to the Boise River just upstream from the Warm Springs Golf Course. That disclaimer was issued contingent upon the applicant granting to the state a 25-foot wide, permanent unimproved public easement in two sections. One section adjoining the river was excluded because of the close proximity of a homesite to the shore line. Since then, the area has been developed into four building lots. The potential purchaser for Lot 3 is requesting the modification of the easement and is asking for an extension of the excluded portion. The extension would run about 350 feet to the west of the current excluded area. The request for the additional area to be exempt from the public use easement is based on a concern that public use along this section of riverfront would have a negative impact on the homesite on Lot 3. The department has inspected the site and believes the current exempted area already addresses Lot 3 with the exception of maybe a small stretch. The area currently exempted includes the landscaped and lawn area of Lot 3 that borders the river. The remaining river frontage within Lot 3 is within the conservation easement. The residential area is actually separated from the river by a flood channel. Mr. Biladeau explained that the department would recommend that no more than an additional 50 feet be added to the west end. The department is not in agreement with the request to modify the language of the acquired easement. They are separate documents granted for different purposes.

Ms. Joanne Butler, 303 W. Bannock, Boise, introduced herself and said she is representing Tom and Sandy Meuler who are looking at purchasing a portion of the property. With her was Brian Ballard, an attorney with Holley Troxell, Boise, representing the owner of the property, Warm Springs Partners.

Ms. Butler said the first thing her clients looked at was what encumbered the property. It is encumbered by two easements granted to the state. The conservation easement containing both a restricted zone and a human habitat zone. The two easements were issued prior to the subdivision of this property being completed. The disclaimer was granted to a former owner

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of the property. Boise city then changed the plat and required the lot lines to be adjusted and the building envelopes to be adjusted so that the building envelope on Lot 3 was pushed down towards the river. They are asking that because of these unique circumstances to move the access easement and to amend the document language which they think is too broad.

Mr. Ballard commented that the owner of the property fully supports the position by Ms. Butler. This is a very difficult piece of property requiring a long negotiated process with the city and they came up with a conservation easement whereby the majority of the property is protected. One of things was that there be a compromise with the state with respect to land that they arguably already own. They came to the solution that this triangle of land would be traded for an easement that would be limited. The property owners do not agree that this is a standard easement. They are concerned that the 25-foot wide easement will be expanded into something it is not now that the conservation easement is not going to be binding upon the state.

Larry EchoHawk made a motion to approve the department recommendation which is that no more than an additional 50 feet be exempted from the state's acquired easement and that the language not be modified. J. D. Williams seconded the motion. The motion passed unanimously.

#### **Governor's Residence Property**

Governor Andrus said that as Governor of the State of Idaho, he was never in favor of a governor's residence being constructed there and the governor-elect has taken the public position that he did not favor the building of a governor's residence in that location. The economics of the situation clearly dictate to his mind that the public would not be well served to spend the necessary amount of capital outlay that it would take. The question now is what to do with the property. He thinks it could be a part of the open-space park land with foot traffic access. The department memorandum points out that there is an easement for pedestrian access into the north end of the military reserve. The recommendation is that department staff work with the city and the BLM to transfer the 15-acre parcel if the board decides to convey title to the city.

Mr. Hamilton pointed out the two maps included in the memorandum. They show the location of the parcel with respect to the military reservation and the position of the lone lot on Horizon Drive. The department would proceed in whatever manner the board directs, and the recommendation is that if the state does proceed to transfer it to the city that the lot go with it since it provides access off Horizon Way. If the community doesn't want to see that type of thing, then it would come back to the board to talk about the disposition of the lot.

Mr. Williams moved to approve the department recommendation. Jerry Evans seconded. The motion passed unanimously.

#### **Timber Sale Plan Adjustment**

Mr. Hamilton reported that because of the recent fires and the timber salvage work that's been going on, the department has taken a look at the timber sale plan for the next few years and is proposing some changes.

Winston Wiggins advised that 1994 was a bad fire year in general and a significant amount of endowment timberland was burned. That timber is being salvaged as quickly as possible. Today the board approved the sale of the bulk of that salvageable burned timber. The bulk of the timber was burned in two areas -- one near McCall which burned 2,000 acres of endowment timberland, and the Star Gulch fire which occurred near Idaho City which burned about 8,000 acres of state timberland.

Mr. Wiggins said the Blackwell fire occurred on the Payette Lake supervisory area which currently has an annual allowable timber of 17 million board feet. The department is proposing a modification in the current timber sale plan for that area, the FY-95 plan. None of the sales listed on the original plan have been sold to date and the department is proposing to substitute the two fire salvage sales approved today onto the FY-95 plan and defer the original sales until the FY-96 plan. The Star Gulch fire area is on the Southwest supervisory area currently with an annual harvest of 10 million board feet. Again, the department would substitute for sales on the FY-95 plan. The Big Deer salvage sale has already been sold and harvested. The Easter Bunny sale approved today would fill in the remainder of FY-95 and be pro-rated onto the FY-96 plan. The Minneha Star Fire approved today would be the major part of the FY-97 plan.

Mr. Wiggins explained that these sales defer green timber that currently is not at risk for later sale and keeps the state within its sustained yield harvest.

The department recommendation is for approval.

Jerry Evans moved to approve the department recommendation with regard to the adjustments. J.D. Williams seconded. The motion passed unanimously.

#### **State Timber Sale Scaling Fee Increase**

Mr. Hamilton said the department is recommending an increase in the scaling fees. He cited a letter from Potlatch representing all of the timber industry indicating that they would not object to the increase in the fees.

Winston Wiggins explained that the Code provides that the cost of scaling state timber is to be covered by payments from the purchaser that are put into a trust account. The department sees the account going negative in the near term if an adjustment is not made to the fee. The fee is currently \$3.20 and the recommendation is for \$4.75.

Pete Cenarrusa moved to approve the rate increase. Jerry Evans seconded. The motion passed 4-1, Governor Andrus opposed.

#### **Triumph Mine Update**

Nick Krema, Deputy Attorney General, who has been working with DEQ and ASARCO, provided the background information. Mr. Krema advised that the consent agreement before the board evidences the consent of the Idaho Department of Lands and the other PRP in this action, ASARCO Mining Co., to proceed with the Department of Environmental Quality to conduct a remedial investigation and feasibility study at the Triumph Mine tailings site. It also contemplates the performance of potential early actions at the site

to address the environmental contaminants that have been identified in the past. The consent order contemplates hiring a contractor which has been done (Kennedy Jenks) to perform the RI/FS and potential early action and to do that by performing the tasks identified in the document. DEQ will perform a role in that process by doing an environmental and human health risk assessment which will be incorporated by the PRPs under this process. DEQ will oversee the contracting work to be done by Kennedy Jenks. The PRPs will pay for those oversight costs. IDL's portion of that payment will come through legislative appropriation. ASARCO will pay out of their own funding.

The individual who is hired to perform the tasks at the site will devote only so much time as necessary to analyze the Triumph site and will be allowed to spend other time on other activities at the site. That position will be funded from January 1995 to June 1995. At that time all of the parties will approach the legislature and attempt to get funding for that individual for the time not spent on the Triumph Mine tailings site. IDL retains the right to challenge costs incurred. There is a dispute resolution provision in the agreement.

Governor Andrus asked whether all of the parties have basically agreed to this to date and Mr. Krema said they have. Mr. Krema also commented that this consent order was presented to the community at an open meeting. No comments have been forthcoming.

Jerry Evans moved the approval of the consent order. Pete Cenarrusa seconded. The motion passed unanimously.

At this point Governor Andrus turned the chair over to Mr. Cenarrusa and left the meeting.

#### **9th Circuit Court Decision -- Ownership of Lake Coeur d'Alene**

Clive Strong updated the board on this court decision which was received yesterday dealing with the Lake Coeur d'Alene case. The opinion basically says that the 11th Amendment precludes a lawsuit against the state agencies for the ownership of the beds and banks of Lake Coeur d'Alene. The opinion then cites a case which provides that if an officer is acting in violation of federal law, the officer can be subject to suit under the 11th Amendment. Therefore, the rationale is that the officers are still subject to suit. The decision recognizes a conflict between circuits on this issue. Mr. Strong explained that they are still analyzing the decision and will probably appeal. This is to be brought back to the January meeting.

#### **Conflict Auctions**

Mr. Hamilton updated the board and handed out a sheet summarizing conflict lease auction information for 1994.

#### **Information**

Other informational reports provided were: timber sale report, gypsy moth report, interest rate report, fire report, Shoshone-Paiute Tribes v. State Land Board -- Petition for Judicial Review, and Idaho Watersheds Project, Inc v. State Land Board -- Order and the lease auction update.

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**Other Business**

Mr. Hamilton reported that a letter has been received from the ACLU who seeks an audience with the board to discuss the cross on Tablerock and transfer of that land to the JayCees. This will be brought to January meeting.

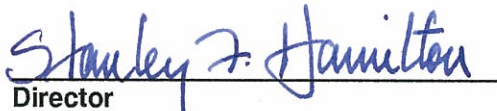
There being no further business brought before the board, the meeting was adjourned.

**STATE BOARD OF LAND COMMISSIONERS**

  
\_\_\_\_\_  
President, and Governor of the State of Idaho

**Countersigned:**

  
\_\_\_\_\_  
Secretary of State

  
\_\_\_\_\_  
Director

