

**SPECIAL MEETING
STATE BOARD OF LAND COMMISSIONERS
January 13, 1995**

A special meeting of the State Board of Land Commissioners was held at 9:00 a.m., Friday, January 13, 1995, in the Governor's conference room in the State Capitol Building. This special meeting was held to discuss whether or not to intervene in the Hells Canyon Alliance's appeal of the USDA Forest Service Wild and Scenic Snake River Recreational Management Plan with a deadline date for filing of January 17, 1995.

Those members present were:

Honorable Philip E. Batt, President, and Governor of the State of Idaho
Honorable Pete T. Cenarrusa, Secretary of State
Honorable Alan G. Lance, Attorney General
Honorable J. D. Williams, State Auditor
Honorable Anne C. Fox, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

Hells Canyon Alliance Request for Board to Intervene in Appeal of the Forest Service Wild and Scenic Snake River Recreational Management Plan -- Audience with the Board

Mr. Hamilton introduced Sandra Mitchell and Sue Buxton who had requested an audience with the board to request that the Land Board intervene in an appeal of the Hells Canyon and Snake River Recreation Management Plan. This was on the agenda for the regular meeting which was canceled and this special meeting was scheduled because there is a January 17 deadline for the filing of an intervention. Mr. Hamilton pointed out the board members were each provided a package of materials including a copy of the record of decision and a copy of the management plan, along with other materials.

Sue Buxton made the presentation. She said that the Hells Canyon Alliance represents approximately thirty groups made up of mostly Idaho related businesses and other people who use the Hells Canyon. Hells Canyon is a National Recreation Area set by Congress in 1975. In 1975 Senators McClure and Church were very clear in their intent that the use of motorized boats was to be a valid use of the canyon and was to remain so.

In 1980 the Forest Service tried to get motorized vehicles out of the canyon and a number of people then got together to say they wanted to continue the valid use of motor boats in there because for over a hundred years they have used motorized vehicles up and down that canyon. There has been mining, ranching, timber, and other industry through the canyon and most of the transport for all those goods was by a stern-wheeler or other types of motorized vehicles. At this point most of the motorized use is by private people who go there to fish or for other whitewater adventures such as floating down and then jetboating

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back up because access into and out of the canyon is very limited. There is also private property along the river with the only access for most of those people by motorboat. At that time, the Forest Service kept the valid use of motorized vehicles in there.

Most recently the plan came out to limit motorized access into the canyon and Hells Canyon Alliance was formed in order to advocate reasonable numbers of motorized vehicles and float boats which are also being limited. Under the new restrictions, many outfitters and guides will go out of business or have their use severely curtailed.

Over thirty-one appeals to this plan have been filed. Only four of those were from environmental groups and those were from Oregon. The vast majority of people who use the canyon are Idaho people as it is very difficult to access from Oregon.

Approximately six years ago, the Forest Service decided to do a recreational management plan which was only for the river corridor itself. Nineteen people with various interests in the canyon were on the board and they all agreed on the "Alternative B" plan which was a restriction of the numbers of private and commercial powerboats and float boats in the canyon. The Alliance did back that alternative and still does. Out of this, a year ago, the draft environmental impact statement was released and comments were received into November of last year.

The final environmental impact statement came out in July and out of that came "Alternative G" which was something that had never been seen before by anybody outside the Forest Service. The Forest Service severely curtailed access to the canyon. Comments were submitted as to why this alternative would not work and how it would put people out of business. A number of communities are very upset about Alternative G, especially the city of Riggins who will be intervening in this case along with others such as Idaho County, Gem Communities, and the Clearwater Resource Coalition.

Alan Lance asked if any public hearings were held on Alternative G. Ms. Buxton said no, they were not. The Forest Service contends that Alternative G was a compilation of a number of other alternatives which is an issue in the appeal. It is the Alliance's position that it was not properly scoped nor was it properly given out to the public for their comment and for their review before it was made final. The Forest Service did give thirty days to make comments. They have never responded to the questions regarding the state's interest in its management of the navigable waters and the streambeds of its river. They never answered questions regarding the congressional intent that was so clearly laid out by Senator Church as to how Congress wanted this recreation area to be managed. Nor have they answered any of the legal questions regarding those issues or the issues of due process and public participation. Nor do they answer the question as to why and how they have the legal authority to turn a recreation area into a wilderness area as they are trying to do.

Alternative G would establish a period of eight weeks where jet boats are disallowed from the wild section of the river. The wild section of the river is from the dam to Pittsburgh Landing. In that section there is one party with private property and their ingress and egress from that property would be completely restricted. There are other private holdings and in order to get to the property in the lower Salmon they have to go through the recreation area. They are allowing the private property owners there just one trip a day. One trip a day simply does not work. They also put in a clause that if you owned a boat in 1975, you could have a permit to get up there in an attempt to keep the later owners out.

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Ms. Buxton said the issue for the Land Board is the fact that the Forest Service has not addressed the issues that surround the state's interest in the streambed of the Snake River and in the lower Salmon. The Alliance is asking the Land Board to intervene in this case on behalf of Hells Canyon Alliance. There are two sections of the Code they are working from -- one for permittees and one for other interested parties such as the Alliance, cities, counties, etc. They are asking the board to intervene on behalf of Hells Canyon Alliance because all issues that have been raised even with regard to private property interests have all been raised by the Hells Canyon Alliance in all their documents over the years. They have been participating in this for six years.

Pete Cenarrusa asked if the Forest Service has complied with NEPA. Ms. Buxton said that in her opinion they have not, especially in regard to the state. The Alliance has alleged in their appeal that they have not properly asked the state for their input or coordination and cooperation with regard to this plan as they are required to do. Nor have they done so with a number of the counties in Idaho, Oregon or Washington.

Mr. Hamilton commented that if the board chooses to intervene in this matter, it is recommended that it be on behalf of the State of Idaho. He said there are issues that are clearly involved with the state-owned beds and banks of the Snake River and the Salmon River as well. He explained that a letter has been provided for the board's signature reflecting that change. Filing this letter by January 17 would protect the board's interest in the appeal. He also suggested that the department, in conjunction with the Attorney General's staff and working with other agencies and interested parties, prepare a letter of comment that could then come back to the board on the February 14 meeting before it is sent to the Forest Service.

J. D. Williams said he thinks the board has always tried to take the position of multiple use of the state's resources and that although it is obvious the Forest Service has done a lot of work in preparing this management plan, it appears to him that the plan is not balanced, particularly as it affects the motorized craft such as jet boats which is a very big part of the Idaho economy in that area. Also there is the question regarding R.S. 2477 roads and he believes it would be proper for the state to intervene. Therefore, he made a motion to do so and also asked the Department of Lands and the Attorney General's office to prepare the state's position on this and bring it back to the board at the meeting in February for board review. To meet the time deadline, the board needs to decide to intervene today, and therefore made his motion to do so. Pete Cenarrusa seconded the motion to intervene on behalf of the state.

Governor Batt said he thinks this is a particularly attractive vehicle for the board to challenge the sometimes untimely actions of the federal government because this concerns Idaho's water. He supports the motion.

Alan Lance said he is concerned that the federal government is talking about limited access over a traditional easement to one's property in telling landowners they can only make trip a day when historically there was unlimited access. It is that type of callous disregard to the rights of Idahoans that he thinks it needs to be challenged and therefore is in favor of the motion.

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Pete Cenarrusa said he agreed with the Attorney General and he believes this is a state's rights issue with the state owning the beds of the rivers and lakes up to the high water mark and the Forest Service restricting that use. Also, historically this is a highway. It has been used for travel historically and is an R.S. 2477 right-of-way. Therefore, he is in favor of the motion.

Anne Fox said she has met with outfitters all over the state who are becoming more restricted and are losing their businesses. It has impacted our population a tremendous amount and to allow the federal government to restrict anymore is taking away an industry. She supports the opportunity here to help.

The motion passed unanimously.

Mr. Hamilton presented the intervention request letter to be postmarked on January 17 for the board members' signatures which all the members then signed. He said the department would prepare state's comments and circulate to the board members if possible before the February 14 meeting.

R.S. 2477 -- Pete Cenarrusa

Mr. Cenarrusa requested a short discussion of this issue. He said he would like to have the board look at this issue to get support from the legislature to assert legislative authority and whatever can be done to establish the R.S. 2477 rights-of-way which belong to the state as granted in 1866. He said this issue is under the Department of Interior's consideration now in establishing rules and regulations by ballot. He has heard the comment period has been extended again, but essentially he thinks the Department of Interior will attempt to minimize the authority of the state to recognize the ownership of these R.S. 2477 rights-of-way. He would like the board to think about this.

Mr. Hamilton added that basically the R.S. 2477 rights-of-way were those authorized by a statute for mining and these rights-of-way are all over the West. When the federal government passed FLPMA, they put an end to any further claims under R.S. 2477, however, he doesn't think they could extinguish anything granted by creation prior to that time. That seems to be the battle -- what was in force at the time FLPMA was enacted. All the states have been working to see that things don't move too fast along here. He said he could have the BLM make a presentation at the February board meeting if the board wishes.

Mr. Cenarrusa said he thought that would be good. It is important for the state to gain access to some blocked state-owned lands.

Governor Batt suggested the legislature could request a memorial in support of the Land Board.

Mr. Hamilton said he would have a briefing provided at the February meeting.

Alan Lance moved to adjourn. Anne Fox seconded. Passed unanimously. The meeting adjourned.

STATE BOARD OF LAND COMMISSIONERS

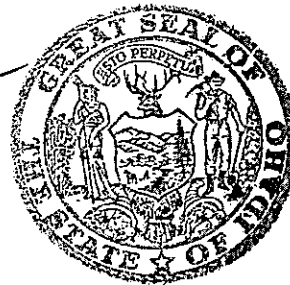
Philip E. Batt

President, and Governor of the State of Idaho

Countersigned:

Robert Casper

Secretary of State



Stanley F. Hamilton

Director