

**REGULAR MEETING  
STATE BOARD OF LAND COMMISSIONERS  
March 14, 1995**

The regular meeting of the State Board of Land Commissioners was held at 9:00 a.m., Tuesday, March 14, 1995, in the east conference of the Joe R. Williams office building. Governor Philip E. Batt presided.

The members present were:

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

The meeting was called to order by Governor Batt, Chairman. J. D. Williams moved to approve the draft February 1995 minutes. Anne Fox seconded. The motion was approved unanimously.

Consent Agenda

- C. Official Transactions -- January 1995
- D. Proposed Timber Sales:
  - 1. CR-1-0268, Caribou Pulp, 1,460 mbf -- Priest Lake Area
  - 2. CR-3-0372, Carpenter Creek, 9,035 mbf -- St. Joe Area
  - 3. CR-3-0386, Last Coal, 4,830 mbf -- St. Joe Area
  - 4. CR-3-0387, Glover-Trapper, 6,485 mbf -- St. Joe Area
  - 5. CR-4-0567, Frenchman Road, 2,645 mbf -- Clearwater Area
- E. Request for Disclaimer -- Boise River Pack, Inc.
- F. Land Sale Proposal  
Parcel #391-93, 0.097 acre, Valley County (Deferred)
- G. Request to Include 2.46 acre Ada County Parcel in the 1995 Annual Land Sale Plan
- H. Application to Extend Idaho Geothermal Leases No. H-479 and H-482  
Estate of F. Joe Kanta, c/o Davison, Copple, Copple and Copple, Boise
- I. Application for Mineral Lease #9154 for Metalliferous Minerals -- Salmon River --  
Ed Sears, Kooskia
- J. Surplus Property Sale -- Idaho Department of Fish & Game -- Kootenai County
- K. Mined Land Reclamation Awards Program

Pete Cenarrusa moved to defer Item F. for one month to allow the department time to investigate a possible trade. J.D. Williams seconded. The motion passed unanimously.

Pete Cenarrusa moved to approve the remainder of the consent agenda. Alan Lance seconded. The motion passed unanimously.

### Regular Agenda

#### Request to Open Selected Reaches of the Boise River and North Fork, Boise River, to Recreational Gold Dredging

Stan Hamilton reported that this item had been on the agenda previously and the board directed the department to hold some hearings and come back to the board with testimony.

Tom Markland, Chief, IDL Bureau of Minerals, briefed the board. In 1982 the board at the request of several fly fisher organizations withdrew that section of the Boise River and then in 1993, the legislature adopted the Water Resources comprehensive water plan and also withdrew this section from mining. On October 15, 1993, the Idaho Gold Prospectors Association (IGPA) commissioned the board to reopen this section of the river. A hearing was held and on January 11, 1994, the board denied their petition to open the river. In 1994 IGPA petitioned the Governor to revisit the issue and the department was asked to investigate. State and federal agencies were canvassed and they felt there was no new information coming forth to prove that dredge mining did not harm fisheries or the bed of the river in any way. Consequently, the board recommended that the issue not be revisited. On December 11, 1994, IGPA asked the board to enact a rescission of the previous action not to open the river and on January 26, 1995, this board authorized the department to hold hearings and collect information from the public. The hearings were held and the results were tabulated showing 635 in favor of reopening the river; 170 against opening the river; and six federal or state agencies opposed to opening the river.

Governor Batt invited those here to testify to begin.

Scott Grunder, Idaho Department of Fish and Game: Mr. Grunder testified that their two major concerns are the potential impacts on fish habitat, both short and long-term, and impacts on recreational fishing opportunities. He said that although the miners claim there are potential benefits from mining on fish habitat, scientific literature does not bear that out. There is also no scientific evidence that mining benefits fish spawning. The evidence does point to both short and long-term adverse impacts to those fish and fish habitat as a result of unregulated suction dredge mining. The anglers are concerned that their recreational opportunities will be diminished.

Alan Lance asked about the possibilities of regulations such as seasonal mining and limitations on nozzle size such as they have in California, and whether Idaho could implement something similar. Mr. Grunder said his concern is not so much with aquatic insects for food base for fish because the insects repopulate fairly quickly. But without good quality stream bottom, the population will not be healthy. He is mostly concerned

because the entire life cycle of fish depend on the stream bottom. Fish and Game is concerned about physically manipulating that habitat in summer and fall. When the spring runoff comes, they are concerned that they will get habitat type conversion. Literature does bear that out.

Mr. Lance asked if Mr. Grunder has any information regarding health and numbers of fish prior to 1982 when this section was closed. Mr. Grunder said they have some research and special regulations were issued on the river from Kirby Dam to the confluence with the North Fork where they allowed only two fish to be harvested, none under 14 inches, etc. Research shows that population structure is improving as is the size of the fish. They believe that is a result of stable habitat plus the regulations.

Anne Fox asked about supplying fish that are fished out of the stream. Mr. Grunder explained that this segment of the river relies solely on the production of wild fish.

Jerrold Gregg, Bureau of Reclamation, Snake River Area Office: Mr. Gregg said that on March 3, they sent a letter to the director recommending that these sections not be reopened to recreational dredging. When Kirby Dam failed, 116,000 cubic yards of material came down the Middle Fork of the Boise River. Those sediments that were released from the dam contained elevated levels of mercury and arsenic. Because of the threat to the water quality of Arrowrock Reservoir and to the recreationists and the irrigators, they partnered with the State of Idaho and the Forest Service to rebuild Kirby Dam to contain the sediments that were left up in the dam. They have three basic concerns. First, if recreational dredging is allowed, those sediments that are in that stretch of the Middle Fork of the Boise will be disturbed and come down into the reservoir. It decreases the storage capacity of the reservoir and they think it impacts recreation. Third, if those sediments do contain toxic chemicals as their studies show, it will be the irrigators and taxpayers who will have to pay the cost of cleaning that up out of Arrowrock Reservoir.

Stan Hamilton pointed out that a letter from EPA follows along these same lines indicating that suction dredges would oxidize the sediments and accelerate the methylation of mercury to the highly toxic form of methylmercury. In addition, there may be other concerns. The EPA recommends the Land Board delay consideration of the petition until such time that they better understand the nature and extent of environmental damage in the Middle Fork.

Ervin Ballou, Idaho Department of Water Resources: Mr. Ballou explained that they are primarily a permitting and regulatory agency. They issue permits for recreational suction dredging, commercial mining, and any activities in stream channels. The Water Resource Board has also received a petition from IGPA. That petition has requested that all of the state water plan be reviewed to open additional rivers that have been withdrawn or classified as recreational rivers to suction dredging. This does cause some concern to the staff of the Department of Water Resources because they are looking down the road at the impacts to additional recreational long-form applications. They are concerned that if both boards review this process and open the Middle Fork of the Boise to recreational dredging whether this portion of the river could then be opened up under their one-stop permit. These issues are subject to comment and are less than a sure thing meaning that additional people who want to dredge there would have to go through the long-form process and they would also have to get special use permits from Lands, the Army Corps of Engineers, the Bureau of Reclamation, or the Forest Service. The program is predicated

on what can be done and when it can be done. The Middle Fork of the Boise River was given protection because it was not recognized as an area where there could be open water dredging year-round.

Ron Mackleprang, Idaho Gold Prospectors Association (IGPA): Mr. Mackleprang said that at the request of the Idaho Department of Water Resources, the IGPA submitted this proposal three years ago. They initially went to the headquarters at the Department of Fish and Game where they were told they could do it. Then they were vetoed by Region 3 of the Department of Fish and Game. Region 3 gave them the run-around for approximately two years. The facts of the matter are this river bottom is silted. It is also contaminated with heavy metals. Both of these conditions have been proven to be alleviated by small-scale intermittent, controlled, regulated suction dredging.

Fish and Game allows fishermen to tromp down the riparian areas, trample the streams during the spawning seasons, catch fish during the spawning season, and that is acceptable. He asks why the hypocrisy. Mr. Mackleprang said he has a masters in science degree and admits that the majority of the science indicates that suction dredging will have impact. But when the science is analyzed, it shows it is the people who break the rules, dredge from bank to bank, undercut the streambank, and dredge during the spawning season who cause the problems. The recreational dredgers get no credit for anything good they do such as removing heavy metals from the river bottom or the silt or aerating the gravels. Basically, the only objection Region 3 had was that IGPA first get the approval of the fly fishermen groups. Mr. Mackleprang said the Department of Fish and Game has created a private preserve for the fly fishermen here. The Department of Parks and Recreation do not recognize mining in any form. The IGPA feels some investigations are in order. If this withdrawal is not lifted, it will validate all the abuse they have suffered. They would like to publicly challenge the fly fishermen groups to share this resource and to join with them in a partnership to adopt this river corridor. They ask the Board to lift this withdrawal. Mr. Mackleprang submitted letters from the entire congressional delegation and the Blue Ribbon Coalition, a group of over 4,000 people in support of this action.

J.D. Williams stated there is only one report that indicates there may be some positive benefits for dredging. Other than this one report, he asked Mr. Mackleprang if he knew of any other scientific studies indicating that these type of activities are not adverse to the fish population.

Mr. Mackleprang said yes, in an exhibit he submitted to the board, there is a synopsis of three technical papers and these go far beyond recreational mining. Everybody has impacts, but when suction dredges are operated properly and according to the rules, the Idaho Department of Water Resources has said their impacts are no greater than anybody elses.

Representative Ken Robison: Representative Robison commented that there is a shortage of quality trout streams in southwest Idaho, and this particular stream is extremely valuable as a recreational resource. He asked the board to consider that the salmon are nearly lost in the state of Idaho and the future of the steelhead is uncertain. Good trout habitat where it exists ought to be protected. Also, there is no out-of-pocket cost to the state or its people to maintain the habitat, but there is a large cost to attempt to mitigate for fisheries that have been damaged or lost. There are perhaps 400 resident recreational

dredge permit holders compared to 260,000 fishing license holders. Representative Robison said some of the streams open to recreational dredge mining in this part of the state include the Middle Fork of the Boise River upstream from Roaring River to the Sawtooth NRA boundary, Middle Fork tributaries, the Boise River from Star Bridge to its mouth, all of Morris Creek and its tributaries, all of Grimes Creek and its tributaries, the Elk Creek drainage above El Dorado Gulch, the South Fork of the Boise from Pine Bridge upstream, and many more. There are far more miles of stream available in relation to the numbers of recreational dredge mining permit holders than there are streams available in relation to the number of people who fish. He would urge the board to leave the policy as it is and help maintain the quality of the Middle Fork trout fishery.

Marti Bridges, Idaho Rivers United: Ms. Bridges pointed out that there is no conspiracy by conservation groups, fishing groups, recreationists or sportsmen's groups to control Idaho's rivers as asserted by Mr. Mackleprang's guest opinion in the Idaho Statesman. However, there is a genuine concern among those groups that recreational dredge mining of the Middle Fork of the Boise River and rivers that possess similar characteristics is an inappropriate use of the resource. This is a case of providing continued reasonable protection of a state resource from a biologically unsound practice. Recreational dredge mining will not help the fishery. Recreational dredge mining will hinder further meeting the statewide water quality standards by stirring up sediments and heavy metals which raises legitimate health concerns. Ms. Bridges also reported that the Middle Fork of the Boise River currently does not meet water quality standards and that the DEQ working in conjunction with EPA and the Forest Service is working on measures to improve the water quality there. She also pointed out that recreational dredge mining is not compatible with other recreational uses such as fishing, swimming, floating and camping, saying that it is comparable to a fisherman leaving his car or pickup truck running for six or seven hours. That is what it is like to be around a running recreational dredge in the river. She urged the Land Board to vote no to reopening that stream segment to recreational dredge mining use.

Walt Baumgartner, Fly Fishers of Idaho: Mr. Baumgartner stated that their group is the one that Mr. Mackleprang visited with on this issue. They feel they have been very fair and open with Mr. Mackleprang on this issue, but they just don't agree with him. He read from the letter they wrote to Mr. Mackleprang: "The Fly Fishers of Idaho recognize the well documented historical value provided to this community from the mining of precious metals and other important minerals. And while we can appreciate and understand the passion these modern day forty-niners have for pursuing whatever gold may be available in that riverbed, we believe that the extraction methods that will be utilized are inappropriate and incompatible with the other recreational pursuits on that river and we believe that the upper Boise River basin offers a great variety of benefits to a greater number of people in this community as it is currently protected." Mr. Baumgartner asked that the Land Board end this debate and reject this petition.

Anne Fox asked Mr. Baumgartner how taking fish out of the river by fishing which damages the fish population is different from damage by recreational dredge mining. Mr. Baumgartner explained that this is a small river and the potential for disturbance from several dredges would be significant.

J. D. Williams said that every year Arrowrock Dam is basically emptied in the irrigation season. He asked Mr. Baumgartner if the fisher organizations would have any

concern if when the water in the dam is lowered, that recreational dredge mining be allowed in the area of the reservoir. Mr. Baumgartner said they would be willing to discuss that and try to work something out.

Edward Liddiard, Sr., Boise: Mr. Liddiard said he is a member of a grass roots coalition for public land use and natural resources. Everybody in his organization believes in keeping a balanced use of the lands throughout the West. He testified in favor of opening the Middle Fork of the Boise River from the headwaters of Arrowrock Dam to Roaring River to recreational mining in the streambed of the Boise River up to the high watermark. He has two mining claims on the Middle Fork of the Boise River above Roaring River. He is concerned with people going on his property without permission. He would like the rest of the river opened because he is tired of people walking over his mining property. He would like to see recreational miners clean up some of the heavy metals that are in there.

Anthony Lance: Mr. Lance said he is a miner and a fisherman. He thinks the opening of the Boise River to recreational mining should be done because other entities have access to it. He cited a report by Paul J. Badali from Utah, 1988, which should answer a lot of questions about the effects of dredge mining on fish, insects, or water quality. The Boise River is a recreational river and recreational mining must be allowed as part of this status. He urged the board to open the river to recreational mining today. He suggested that the various groups meet with Mr. Hamilton and his staff to discuss and resolve the differences that have risen among them. Regarding mercury, he stated that Mother Nature does more drastic things to the water in the spring runoff than miners could do in a hundred years.

Anne Fox asked about the chemicals in the water, mercury, arsenic and lead, if there is any evidence the dredgers cause this or Mother Nature. Mr. LaVance said mercury and arsenic occur naturally but that lead comes from many sources such as shells, sinkers, etc. The miners do not use arsenic or lead. They extract that. He again asked that all the groups get together and work some of these things out.

Christopher Doyle, Boise Valley Fly Fishermen: Mr. Doyle said the question of whether or not the trout are spawning in the Middle Fork of the Boise River is unquestionably proven, it has not been proven to be too silted as Mr. Mackleprang claims. The fishing regulations and the management there has been changed since 1990 to allow for the native trout to come back because it is a native trout fishery historically. The river has responded very well with protective regulations. There is no cost to Fish and Game to artificially introduce trout into the river. As to the charge Mr. Mackleprang made regarding fishermen trampling fish, etc., this is not true. This is the only recreational user group that they are objecting to. Unfortunately, it does cause environmental damage to the river. Fly fisher organizations are conservationists and in answer to the question of Anne Fox, he said that they would like to have the regulations restricted to entirely catch and release.

Governor Batt pointed out that catch and release programs also kill fish. Mr. Doyle said that percentage-wise, they have been told by Fish and Game that there is about a 92% recovery rate of those fish carefully caught and released.

Ms. Fox asked Mr. Doyle if there is any concern about eating these fish in regard to toxic chemicals. Mr. Doyle replied that there is concern and is worried about the toxicity of fish everywhere and the need for environmental protection everywhere.

Mr. Cenarrusa asked Mr. Doyle whether he would be opposed to opening a small area, such as five miles, with a trial period on it to see how it works and then if it is satisfactory, open up more of the river. Mr. Doyle said he would be willing to consider that.

Frank Billue, Meridian: Mr. Billue said he wants to go on record as being opposed to opening the Middle Fork of the Boise River to recreational dredge mining. He cited the regulations under which recreational dredge mining is done, and said he has counted 118 stream segments that are open in the state to recreational dredge mining. He stated that he would hope the board would make a decision based on what is good for the river and good for the long-term health of the river and the majority of the people in the state of Idaho.

Herb Meyer, Mountain Home: Mr. Meyer said he fishes the South Fork of the Boise and also the Middle Fork. There is a tremendous demand for a wild trout fishery. In Montana, nearly all their streams are wild trout fisheries because it is more economical than stocking streams. Because of the tremendous amount of people at the Middle Fork in the summer, he believes a recreational study needs to be done there as well as an environmental analysis, otherwise the decision is based on guesswork.

Robert E. Donahue, Meridian: Mr. Donahue said he was speaking on behalf of the Dredge Miners Association. He said that errors have been made in judging what miners have done to the streams. Mercury, arsenic and lead occur naturally during runoff so that all the bunk stated about the mercury, lead and arsenic being caused by the miners is not true. Dust from the unpaved roads also contaminates the streams. He thinks it wrong for one segment of society to divert a recreational area for their personal use. He thinks all the users could get along on the river.

Tyrus Henderson, Boise: Mr. Henderson said he is not a fly fisherman nor a dredge miner. His concern is for campers and wonders how someone could camp with one of those dredge pumps going next to their camp. And even if there are only ten dredges operating at one time, that would still make a very muddy stream. He also wonders how this mining will be controlled with only three Fish and Game agents. He also asked where the \$10 goes that the miners pay for their permits.

Mr. Hamilton explained that it is part of the duties of the Fish & Game fish biologists. The \$10 fee for the permits goes back into the program.

Ross Stockwell, Boise: Mr. Stockwell said he is a fisherman and a dredger. The dredgers don't complain about the cost of a fisherman but the fishermen complain about the cost of a dredger. If they want to have the fish come back, Fish and Game should put some fish in there and let the dredgers clean the river up. During high water the river moves all the silt and gravel and releases all the arsenic and mercury and all the heavy metals all at once down the river. A dredger only moves a yard or two of gravel a day. The fishermen want to keep it closed for their private club up there. Regarding the streams that are open, only small portions are left to recreational miners. Cars along the river are what causes most of the silt.

Kimberly Kohler, Boise: Ms. Kohler said she is a hairdresser, aerobics instructor and a d.j. and just wanted to ask for no dredge mining on the Boise River. She needs the peace and quiet. If they could come up with a method of mining that is quiet and if it can be proved through studies that they will not let more pollution into the streams, then she could be convinced.

Amy Hawk, Boise: Ms. Hawk said she is not a fisherman but she uses the Middle Fork of the Boise River as a canoeist, floater and camper. There are many multiple uses there now, but dredge mining would preclude a lot of other uses. They are totally contrary to the rest of the experience on the river. She urged the board to continue to protect that segment of the river.

Mr. Cenarrusa cited the report by Paul J. Badali shows that recreational dredge mining is compatible with the fisheries and it does the streambed good for the fisheries. Mr. Cenarrusa said Mr. Badali has a B.S. degree and majored in zoology and wildlife management and minored in botany and has a secondary teaching certificate and is also a member of the National Audubon Society as well as the Gold Prospectors Association. The document is backed up by twelve references for scientific studies. The results of the three hearings that were held show that the public was in favor in opening the stream up for dredge mining 623 to 159. Five organizations were in favor, and five organizations were opposed. It shows that no agencies were in favor of opening and six agencies were opposed. Four county commissioners were in favor and no county commissioners were opposed.

Mr. Cenarrusa said he would lean in the direction of opening up this river for recreational dredge mining from the way it has been brought out in the testimony. He moved to open up the stream. Anne Fox seconded the motion. Ms. Fox said that if they open up the river, they may want to impose some restrictions. She commented on a suggestion from Frank Gunderson to perhaps restrict the suction nozzles to no larger than 2-1/2" in diameter and powered by engines no larger than 4 hp. Therefore, she supports opening up the areas with some restrictions if there is a problem with contamination from Kirby Dam, etc., but thinks that the recreational miners have a right to be in the stream also.

Mr. Cenarrusa asked if there are any legal restrictions on the board to open it up. Mr. Hamilton said the adoption of the water plan for that area specifies that there should be no dredge or placer mining. The department's opinion, based on the legislation, that this area is closed and even if the board were to reopen it now, it would take an amendment to the water plan which would have to go before the Board of Water Resources and then back to the legislature to be approved before the area could be officially opened.

Alan Lance said he is going to speak in opposition to the motion because he still sees no scientific evidence to support opening the river. The right way to do it would be to open a segment of the river and see what the results are. If the mining jeopardizes the habitat in some way, the board needs to know that. Maybe the groups ought to start working together on a solution.

J. D. Williams said he has found nothing that has changed since the original withdrawal was made. The Water Board was created to develop a comprehensive water plan for the state of Idaho. This was carefully worked out and approved by the legislature.

There has been a lot of study made, a tremendous amount of state money has gone into this, and he sees nothing to be gained by changing the mineral withdrawal status.

Mr. Cenarrusa made a substitute motion to open up a short length of the stream, a five-mile per year environmental impact test section, starting at the interlock backwaters with yearly environmental impact studies. If studies prove that to be an unacceptable impact on fisheries, the river could be closed. Ms. Fox agreed to second the substitute motion.

J. D. Williams said he thought this motion is getting closer, but he would prefer that someone bring a proposal regarding a certain stretch to the board and let the board respond to that. Right now, there may not be an area there where scientifically it could be done.

Governor Batt said he agrees with the Attorney General that the science isn't there to support opening the river, however, he was encouraged by the testimony that maybe both sides could get together on this.

Pete Cenarrusa withdrew his previous motion and moved to delay the issue (until there is more scientific evidence or until the dredgers and the fly fishermen reach an agreement). Alan Lance seconded. The motion passed unanimously.

By unanimous consent, the board requested the department to arrange for a recreational mining demonstration for the board members, although Governor Batt said his schedule may not allow him to attend.

#### Audience with the Board -- Andy Jolliff, Small Loggers Council

Andy Jolliff stated that he is one of the co-founders and the present chairman of the Small Loggers Council, a St. Maries based organization, that is laboring to sell the state and the nation on a sensible and environmentally sound method for logging that calls for the immediate removal of diseased trees. They have a petition with over 800 signatures from people in Benewah County in support of their program.

Mr. Jolliff said that their problem is that the Department of Lands has done everything they can to hinder the success of their program. He told the board that all they are asking for is an equal chance to earn a living. He explained that over 90% of the department's administered sales in northern Idaho over the last 20-30 years have gone to one large company and the rest was also sold to big corporations. Not even one percent has gone to the small, one or two-man operations.

Other grievances stated by Mr. Jolliff were that the endowment fund is not getting its due from the state timber sales, therefore the fiduciary duty of the department and board is not being met; when they do find harvestable timber, the department charges \$10 to large purchasers for pulp, but charges small loggers \$180 for the same dead, white pine snags at the same time it is lowering the prices on salvage sales in southern Idaho; the department does everything it can to prevent their program from working; the small loggers are asked to have \$2.5 million worth of insurance; the man who was hired to sell small, direct sales is never available; the department withholds a secret list of names from them; in regard to pole sales in the Floodwood drainage, there should be lots of butts left from the

large sales, but they get burned instead -- he sometimes earns money picking up the burned stuff. He suggested the board have a meeting in north Idaho so that other people can also come and tell them what has been going on.

Mr. Cenarrusa said that it would be a good idea to have a Land Board meeting in St. Maries.

J. D. Williams commented that in working on a public involvement policy for the Land Board, he had occasion to talk to a lot of loggers in that area. All the reports except for from this one group is that the Department of Lands is doing an excellent job. He thinks that sometimes things just don't work the way people want, but that the department is trying very hard.

Mr. Hamilton explained that the department has had a long-standing dispute with Mr. Jolliff. Mr. Jolliff has his own vision of what forest management should be. The department does not think it is very economical to try to harvest all of it. The department has put up a lot of small salvage sales all over the state. It does insist on the liability insurance because the Risk Management Bureau requires it. There are two people who each work half-time on the small direct sales. Mr. Hamilton said he has no apologies for the department's program. They have done a good job of trying to work with Mr. Jolliff who has been very uncooperative, however, he is more than willing to sit down with anybody and discuss it.

Winston Wiggins explained that at the board's instruction at the meeting in Sandpoint, the department did meet with Mr. Jolliff and Mr. Smith. There was a television crew there that day. They were unable to show the department any evidence of piles being burned or products that were being wasted or not harvested in some manner. Most of the products they showed the department were items that were still under contract and were going to be taken out by the timber sale purchaser. He stated that the department has a very good program, but that Mr. Jolliff doesn't agree, and that is where it stands.

Governor Batt announced that Mr. Williams has volunteered to meet with Stan Hamilton and Andy Jolliff in St. Maries. Mr. Cenarrusa said he would also volunteer to go. A meeting will be arranged.

#### Unsold Fire Salvage Timber

Winston Wiggins reported that the department had four large fire salvage sales resulting from the Blackwell and Star Gulch fires this summer. Those sales have each been offered twice. Three of them did not sell. Time of sale coincided with a fairly precipitous decline in the timber market. On top of that, this is damaged timber that is highly perishable. It does require expensive logging, a lot of helicopter logging, so he thinks that a variety of things have come together here. The department believes this timber needs to be sold this spring. Mr. Wiggins said the department has brought four options for the board to consider which are listed in the board memorandums.

J. D. Williams moved to approve Alternative #4: Reoffer the sales to qualified bidders at the prices in Alternative #2 (Blackwell Fire -- \$305,500; Minneha Star -- \$1,792,069; Easter Bunny -- \$2,808,035). If the sales do not sell, reoffer them the following

day at the same prices to all bidders, qualified and non-qualified. The motion was seconded by Alan Lance and passed unanimously.

#### Potato Hill Right-of-Way

Winston Wiggins reported that this is a very small sale in the Clearwater country covering about 150 acres, less than 2,000 board feet per acre planned for removal with no road construction. It was scheduled to be sold in January 1994. A right-of-way needs to be acquired in order to access the timber. Conversations began with the U.S. Forest Service in April 1993, and the Forest Service's fisheries biologist found that this activity would not likely adversely affect the salmon, but that requires that the Forest Service consult with the National Marine Fishery Service before a right-of-way can be granted. The National Marine Fishery Service has not replied to the department. The department recommendation is for authority to contact the Idaho congressional delegation for their assistance in getting this right-of-way from the Forest Service. Pete Cenarrusa moved to approve the department recommendation. Alan Lance seconded. The motion passed unanimously.

#### Audience with the Board -- American Civil Liberties Union -- Tablerock Cross Property

Stan Hamilton said that this is a request by the American Civil Liberties Union to revoke State of Idaho Deed No. 10603 issued by the State of Idaho to the Boise Junior Chamber of Commerce in 1972. The ACLU only delivered its brief on this yesterday at 5 o'clock. Mr. Hamilton handed out copies of that and also a letter received from the Idaho Center for Equal Justice.

George Patterson, attorney for the American Civil Liberties Union, addressed the board. Mr. Patterson said this issue involves a transfer of land in 1972. The land was identified as .071 acres on Table Rock, and there's presently a large Latin style cross standing on that property. He said that perusal of the Land Board documents will show that in 1970, the Boise Jaycees approached the Land Board and its agents with the intention of purchasing land on Table Rock for the purpose of transferring it from public ownership to private ownership.

Mr. Patterson stated that this land had been purchased by the Idaho State Penitentiary in 1900 and had been in their hands until the transfer of that small part and most of it still is Department of Corrections land. The Board of Corrections declared the plot in question to be surplus in 1971. It did so with the express purpose of allowing the Jaycees to keep the cross which they had erected in 1955 or 1956 on that location. The concern was because of a number of court cases that came forth indicating that religious symbols of any kind standing on public land were unconstitutional. This was creating an attempt on the part of the Jaycees to find some way of having the cross remain there in a constitutional manner. Unfortunately, the Land Board at that time exerted its efforts in order to see that happen.

Mr. Patterson asserted that the Land Board was trying to find a way to allow the Jaycees to keep what was otherwise an unconstitutionally erected cross on public land. He read aloud part of the discussion that took place at the Land Board meeting when they decided to authorize the sale: "Commissioner Trombley: At least if it doesn't get a lot of publicity, it may attract minimum attention and conceivably the Jaycees could buy it and get

on with their worthy project. Commissioner Engleking: I would make one suggestion, I would get the thing identified other than by a cross and I think you would be all right with your advertising. Commissioner Trombley: All the advertisements will show will be a parcel of land. Governor Andrus: I would make a further suggestion that the terms of that sale be listed so that the board reserves the right to refuse any and all bids. If someone makes the motion, this would protect the Jaycees. Mr. Engleking: I would move that the department be instructed to proceed with the provision of advertising for sale of a parcel of land so described, etc., and that the board reserve the right to refuse any and all bids."

Mr. Patterson explained that their position is that effectively the intent of the Land Board at that meeting was to close all bidding to anyone but the Jaycees and to use an arm of the government in order to effect the maintenance of a religious symbol on what was otherwise public land. On the one hand, it is their contention that this was outside the mandate of the Land Board; that the action was not taken to further the endowment fund; it was only to benefit the Jaycees. Secondly, he said that the action constituted effectively a constructive or actual fraud on a public trust. For those reasons, they would ask the board to reconsider the granting of that deed and that it be reverted to the public, or at the very least, to acknowledge that the transfer of land was done outside of the law.

Alan Lance asked Mr. Patterson if the property was in fact bid in accordance with Idaho statute at the time prior to the sale.

Mr. Patterson said that he believed that indeed the statutory provisions regarding advertising were followed, but if they would look at the accompanying exhibits in their memorandum, they would see that there was a request from the Jaycees to the board that there be no advertising and that the media be shut out in this. It's a question of fact as to whether that was done. It certainly did have the effect of discouraging all bids. There was only one bidder, and that was, not surprisingly, the Jaycees.

Mr. Lance commented that the fact of the matter remains it was publicized and anyone could have bid had they chosen to.

J. D. Williams clarified that the land in question was not endowment land. Mr. Williams further stated that what the ACLU is doing is accusing Cece Andrus, Tony Park, Joe Williams, Mr. Engleking, and Pete Cenarrusa of constructive or actual fraud. He has read the transcript. He pointed out to Mr. Patterson that the members of the board say a lot of things in these meetings, but what you have to look at, is what actually occurred. This was discussed in two public meetings. Also in the spring of 1971, the law was changed regarding sales of lands that allowed the board to set terms and conditions on sales. The sale was advertised in the paper and there was an auction. The land sold for appraised value. He asked Mr. Patterson why they think that is fraud.

Mr. Patterson replied that if you read the transcript, you have individuals who are trying to effect a sale and clearly shut out everyone else. He does not think there's any doubt that that was what was occurring in those minutes. Mr. Patterson stated also that only the Jaycees appeared to bid.

Pete Cenarrusa commented that he was there, and that he does not recall any discussion of any type of even a hint of collusion. Everything was done legally. It was

advertised several different weeks in the Statesman and that the language that the board reserves the right to refuse any and all bids is in the law.

Mr. Lance noted that it seems there was a good faith purchaser for value of an acreage 23 years ago and asked Mr. Patterson under what legal authority does he think this Land Board has the right to go back 23 years to set aside a sale that was, in fact, in compliance with the Idaho Code at that time.

Mr. Patterson remarked that if indeed it is in compliance, then there is not, but he thinks if the board looks at the record, they may find that indeed there are questions about whether it was in compliance. If it was not in compliance, then he believes the board would have the jurisdiction to do that.

Mr. Lance asked Mr. Patterson if he could show where the board was not in compliance. The land was advertised, it was open to the public, a bid was entered at appraised value, and it was transferred by the state to the Jaycees.

Mr. Patterson said the purpose of the board doing this was to allow a religious monument to stand on what was otherwise public land. He thinks there was a constitutional violation at that point and regarding the procedural aspect, it would require looking at the discussion that takes place to see whether that was open, fair, bidding or whether it was established that the Jaycees could bid on it and if anyone else bid on it, that bid would be refused.

Benjamin Bull, representing the Boise Junior Chamber of Commerce, next spoke to the board. He said he represents this matter along with Barry Peters, Chris Brown, and Robert Aldridge, city attorneys.

Mr. Bull remarked that Steven Schuster from the Attorney General's office made the most salient statement in his board summary which said, "The public sale was conducted in accordance with Idaho Code as required." There was a public auction open to the public and it was well advertised. There was one successful bidder and that was the Jaycees who bid an amount that was equal to the appraised value of the property at that point of time. Mr. Bull also commented that other potential bidders had registered to participate in the auction but then did not submit a bid.

They submit that what the ACLU is asking this board to do in this particular instance is to violate the due-process clause and the impairment of contracts provision of the United States Constitution. Another point is that the statute of limitations on this alleged fraud is three years.

Mr. Bull also submits that the Jaycees had a first amendment right to engage in religious expression. Their religious expression is taking place on privately owned land which they purchased for value from the State of Idaho. For the board to follow the recommendations and urgings of the ACLU in this particular case, would violate the Jaycees' constitutional right to exercise their religious expression on private land. In fact, it would be hostility to religion which itself would be a separate violation of the establishment clause of the first amendment. Mr. Bull said he has looked at the record as several members of this board have and there's no evidence that the statute was not strictly

enforced and applied to the Jaycees by the members of this board in 1972. He urged the board to reject the request from ACLU.

Chris Robin, representing the Idaho Center for Equal Justice, spoke very briefly in opposition to the ACLU's request.

Pastor Brian O'Grady with Amity United Methodist Church offered his testimony as a Christian leader in the community. He said this is a clear case of misunderstanding concerning the nature of the religious symbol of the cross in public view. He has come to this conclusion based on the fact that the cross rests upon private property. To date, no impropriety has surfaced over the transfer of this property to private hands.

Mr. Cenarrusa moved that the Land Board proceed in accordance with the resolve of the 53rd session of the Idaho Legislature in House Joint Memorial No. 4 to reject any and all efforts by the American Civil Liberties Union to require the State Board of Land Commissioners to revoke or set aside the Boise Jaycees' title to the land on Table Rock on which the illuminated cross is maintained.

There was no second to the motion. Governor Batt called for a second motion.

Alan Lance said that because he did not want to tie the board up with a legislative enactment, he would move that the board reject the application of the ACLU to revoke State of Idaho Deed No. 10603. J. D. Williams seconded the motion.

In explaining his motion, Mr. Lance said that he does not think there is any evidence of any fraud on the part of the Land Board of 23 years ago, and the sale was made in accordance with Idaho statute at that time.

Mr. Williams commented that it really bothers him that a letter would come from an organization like this that says it was "clearly the intent of the state in collusion with the Jaycees to circumvent the law." As he has read the documents, there was a preference for a certain outcome, but at the same time, it is obvious that every legal procedure was properly employed by the board. And to say that's collusion is an insult.

Mr. Cenarrusa asked for clarification as to what year the cross was placed on the property. The answer to that question was established to be 1955.

The motion to reject the request from ACLU passed unanimously.

Audience with the Board -- Samuel Routson, Attorney -- Representing Mr. Ron Lawrence

Samuel Routson said he is present as a friend and neighbor of Mr. Lawrence. Mr. Routson said they are here to ask the board to reconsider the cancellation of Mr. Lawrence's grazing lease which he had adjacent to his deeded land along the Brownlee Reservoir. For Mr. Lawrence, this is a matter of his livelihood and the investment he and his family have put into that property for the last number of years. It is a matter of equity and fairness procedurally for Mr. Lawrence. They are hoping the board would consider a motion to extend Mr. Lawrence's grazing lease for a period of one year, with the proviso that Mr. Lawrence and the Department of Lands enter into renegotiations for a long-range management plan. Once that is achieved, reissue a permanent or a ten-year permit.

Mr. Routson made allegations that the state had been trying to acquire that property to the jeopardy of Mr. Lawrence through their negotiations beginning as early as 1989 with Fish and Game personnel, IDL personnel, third-party individuals, etc., for a wildlife laboratory. They entered into negotiations with a third-party private landowner who had land adjacent to Mr. Lawrence based upon his giving the state a wildlife easement and that the state in turn would take grazing leases and give them to this third-party individual. Because of that, they believe that the negotiations with the state and Mr. Lawrence were tainted and they are prepared and would request the board's approval for the reinstatement of that grazing lease for a one-year period so that this lease might continue.

Mr. Routson said that regarding the stewardship issue which the state questioned, the state was not able to indicate what the level of the condition of the grazing should be, and in fact, a third party, an extension agent from University of Idaho, made an on-ground inspection of the area three times last year, and stated in a letter to the board that the range condition is good to excellent. The extension agent indicated that the position of IDL and what they were asking Mr. Lawrence to do was extremely unreasonable, that the costs would add up to at least \$30 per AUM. Regarding the issue of trespass against Mr. Lawrence, those charges were unsubstantiated and there was no proof given that would verify those charges. Regarding the issue of Mr. Lawrence's failure to enter into the state with a long-range management plan of that range, Mr. Lawrence disagreed with much of what the state had wanted or proposed that he do, but through the auspices of the Secretary of State's office, he did enter into discussions and agreements with the state to achieve a long-range management plan. However, the state failed to provide Mr. Lawrence in a timely fashion with their proposal and the plan provided to him was incomplete and was not made complete until the Secretary of State intervened. The land is located such that Mr. Lawrence is the landowner of choice for that permit and he is willing to continue to work with the state. The grazing season is upon us and they are making preparations to turn out and believe it would be fair and equitable for the board to extend or to offer a one-year extension of the grazing permit. They are prepared to work with IDL to reach a management agreement for the purpose of continuing at the end of one year for a ten-year period.

Pete Cenarrusa commented that when the motion was made at that meeting to cancel Mr. Lawrence's lease immediately and put it up for auction, he opposed that. He voted against it because Mr. Lawrence was denied due process and because as he told the board at the time, they did not understand what problems they were getting into. He explained various problems Mr. Lawrence would have such as fencing in the rugged terrain, etc. Mr. Cenarrusa said that at one point, the lease was worked out by both parties, and then Mr. Lawrence was denied use of that area for himself.

Mr. Hamilton commented on an allegation or insinuation that a conspiracy occurred here between a group of government agencies, and maybe a Land Board member. He stated that the Department of Lands acquired that land from the BLM in an open selection process. It was selected because of the good potential grazing land. There was an indication that IDL acquired it for a wildlife park. He would like to see anything that indicates that the Department of Lands ever had any interest in a wildlife park.

Mr. Hamilton stated that the Department of Lands has struggled with Mr. Lawrence's ranch since about 1978 when they started working with Mr. Lawrence on a coordinated resource management plan. Mr. Lawrence did sign that plan, but he never

followed through with it. Ultimately the ASCS took the money back they were going to put into it, and IDL went out and picked up the materials it had purchased for fencing. From that time, the department could never reach any kind of an agreement with Mr. Lawrence on a grazing management plan for this area. This property can never reach its considerable potential until there are a number of spring developments and a pasture rotation system is implemented. There is a legislative bill going through now that strongly advocates the use of grazing management plans. The department is trying to do that and has since 1978. The Land Board supported the development of a grazing management plan and a year ago directed the department to work with Mr. Lawrence and work out an annual operating plan. Department staff has struggled in working with Mr. Lawrence because they do not seem to be able to reach a closure. The department has been concerned that the lower part of the ranch adjacent to the reservoir was being overworked and the objective is to force the livestock to higher ground where there is good grass. Also, there needs to be spring development and some fencing will be necessary. The department agreed to putting some money into the development of this ranch.

Mr. Routson said that Mr. Lawrence has come to terms with that, and he is willing to sit down and enter into a good-faith discussions and whatever is required to reach a management plan that is acceptable and realistic to all parties. Again, the request is to extend Mr. Lawrence's lease for one year. Then if it is successful, to go ahead with a ten-year permit.

J. D. Williams commented that management plans on these lands is the only way they can be improved to maximize the return to the endowment. Mr. Williams briefed the board on last year's happenings and stated that he had made the motion to give Mr. Lawrence one more chance. He agrees with Mr. Cenarrusa that splitting up this lease will be tough, but he believes the board dealt in very good faith and bent over backwards to assist Mr. Lawrence. To change it now would be a step backwards.

Mr. Cenarrusa said this is a highly visible area. Fish and Game wants it. The Rocky Mountain Elk Foundation wants it. There are 600 elk and 600 deer up there. It's not only a cattle operation. He compliments the department on their efforts, but questions why the department was late in getting the management plan to Mr. Lawrence leaving only three days for him to consider it. He believes with three or four more days, they could have worked it out. Mr. Cenarrusa offered his help to try again.

Governor Batt said he was not that familiar with the history of this issue and he would not be willing to wait until the season is out. If Mr. Lawrence could come up with something that would work right now, he might be willing to go along with it.

Alan Lance said he would not be inclined to give Mr. Lawrence a third strike. He has had every opportunity to do what was needed to be done to make sure the lease was not terminated, but he didn't get it done. However, if the chairman is inclined to extend this a little bit, he might go along with the Governor's recommendation of giving a limited amount of time to get this worked out or be done with it.

Anne Fox made a motion to have Mr. Routson and Mr. Cenarrusa put together a plan to present to Mr. Hamilton within the next month, and if that isn't done then Mr. Lawrence wouldn't have access to the grazing, but to get the plan done between the two in place, get it signed, and then give him consideration for renting the land for one year.

Pete Cenarrusa said he would second it, working with the Department of Lands.

J. D. Williams asked Mr. Hamilton what this would do to the opportunities to find a lessee for this year. Mr. Hamilton replied that it would significantly reduce the opportunities. The department had intended to try to get this leased within the next few weeks for a term of one year.

Ron Lawrence said he would have no problem with a management program as long as it is cost effective which was what took him out the last time.

After some further discussion, the Superintendent's motion passed 4-1, J. D. Williams opposed.

#### Mineral Lease Issues -- Lois Tomchak

Sharon Murray presented the department's answers to Ms. Tomchak's questions as requested by the board at the February meeting. The department feels it has done everything they could do in reference to administering the leases according to the law. The department feels it has been paid for all the material that has been removed from the site and has no knowledge of any material being removed after the lease was canceled in 1990. The department did sell ten cubic yards of material from one of the stockpiles to Mr. Knutson of the Idaho Falls area. That was with the understanding at that point in time that the stockpile belonged to the state; later it was ascertained the state did not have full title to that, therefore everyone else that approached the state has been told that they have to talk to Ms. Tomchak and if she was interesting in selling, the state would only have a royalty interest in it. The department is satisfied in the way it has handled these leases and does not think there is anything further that can be done in regard to this issue.

Lois Tomchak stated that she did not think her questions were completely answered.

Alan Lance made a motion to tender to Mrs. Tomchak any and all documents and records of the department relative to the undermining mineral lease. J. D. Williams seconded. The motion passed unanimously.

Secondly, Mr. Lance asked the department to determine what the royalty interest is in the stockpile in letter form to Ms. Tomchak. Mr. Hamilton said the department did identify what was there, but a royalty agreement could be worked out with Ms. Tomchak. Also, Mr. Lance assured Ms. Tomchak that he would be available to talk with her attorney if that would be of any assistance.

#### Development of Strategic Plan for Land Board -- State Controller J. D. Williams

This was deferred to the April meeting.

#### Executive Session

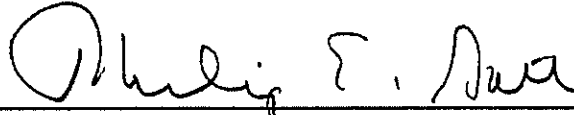
Steve Schuster briefed the board on a litigation matter involving Mineral Leases 8778 and 8779, Nelson Construction.

Information

Informational items provided to the board were the Triumph Mine update, timber sale report, gypsy moth report and the interest rate report.

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

**STATE BOARD OF LAND COMMISSIONERS**

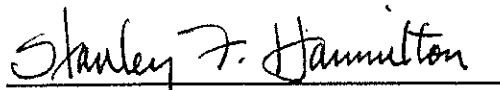


\_\_\_\_\_  
President, and Governor of the State of Idaho

Countersigned:

  
\_\_\_\_\_  
Secretary of Site



  
\_\_\_\_\_  
Director