

**SPECIAL MEETING
STATE BOARD OF LAND COMMISSIONERS
April 7, 1995**

A special meeting of the State Board of Land Commissioners was held beginning at 8:30 a.m., Friday, April 7, 1995, in the east conference room of the Joe R. Williams office building. The purpose of this special meeting was to hear appeals of grazing lease conflict auctions.

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 Controller
Honorable Anne C. Fox, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

Request to Address the Board

Mr. Hamilton announced that Mr. Walter Minnick has asked to address the board for a few minutes as a member of the public.

Mr. Minnick said he is speaking as a concerned Idahoan and not as a representative of any organization or special interest group. He urged the board to do their constitutional duty by awarding state land leases to the highest bidder because: 1) to do otherwise violates their duty under the Idaho Constitution to manage these lands exclusively for the benefit of school children; 2) it is time for government to get out of the way and let free market forces work; 3) it is the right thing to do.

AGENDA

1. Faulkner Land and Livestock Co., Appeal No. L-GR-94-006
2. Idaho Watersheds Project (IWP), Appeal No. L-GR-94-004, (Fence Issue)
3. Committee for Idaho's High Desert (CIHD), Appeal No. L-GR-94-007

Faulkner Land & Livestock Co. -- Appeal No. L-GR-94-006

Tracy Behrens, Range Management Specialist, IDL, provided background information. Faulkner Land & Livestock Grazing Lease 7219 expired December 31, 1994 for 1,080 acres and 135 AUMs. Faulkner Land & Livestock submitted application for the full amount of acreage. IWP submitted an application for the state lands in Section 16. The original application submitted by IWP indicated that they intended to apply for the entire Section 16, however, the application did not contain the full legal description. IDL contacted IWP to verify what they intended to apply on. IWP replied that they did indeed plan to apply for all the state lands in that section, which does not include the acreage in the adjacent state lands. The auction was held in November 1994. IWP

made the final bid for \$400. On December 16, 1994, Faulkner Land & Livestock submitted a formal appeal of the auction.

John Faulkner, Faulkner Land and Livestock Co., explained the importance of this acreage to their operation. In a year their sheep travel a 400-mile circle to graze. There is a stock driveway that goes across this land. He had not realized that a portion of a lease could be split off like this taking nearly the only water available and isolating 40 acres of his lease which makes it worthless to him. If there is a riparian problem in this area, he thinks it would be from the road that is used as a cattle trail. If that is the problem in there, he suggests the state close that road. If IWP is successful in obtaining this lease, then he will remove the existing fencing which would require IWP to build approximately five miles of fence. He also thinks that if IWP gets the lease, it could lead to confrontations between Mr. Marvel and the local citizens. Responding to the figures that Dr. Richard Slaughter presented a week ago, Mr. Faulkner explained that they pertained to cattle operations but that sheep operations are very different and more expensive to run. He said that the accusation by Ms. Kronenberg that the ranchers had conspired on the bidding process was totally false. He is a sheep man and the cattlemen did not talk to him about this at all. He thinks if the state was interested in managing the land, it does not make sense to split off part of that acreage for a grazing lease. Mr. Faulkner stated that they have applied for a management plan and that they are well ahead on it.

Debra Kronenberg, legal counsel for IWP, advised that the presentations of the following witnesses who appeared last Friday are also a part of this record: Mr. Osborne Case, Mr. Fred Christensen, Dr. Donald Johnson, Mr. Al Logozs, Dr. Steve Novak, and Dr. Richard Slaughter.

Ms. Kronenberg said a simple solution to a problem that has been presented would be to grant an easement for the trail. She commented that if this state land was so important to the smooth flow of Faulkner Land and Livestock's operation, then why didn't Mr. Faulkner bid for it. If Mr. Faulkner was granted an easement for the trail, but didn't have to pay the lease rent on this land, then he would be coming out ahead. The real issue is that Faulkner wants use of the land without having to bid.

Janet OCrowley, Picabo, Idaho, spoke as a witness for IWP. Mrs. OCrowley said that the cost of education is not cheap and she hopes to see a change in direction. She has observed that state and federal lands are going downhill and the cause of it is overgrazing and roads. For seven years, she has been a designated wilderness volunteer for the Shoshone District of the BLM. On September 11, 1994, she visited Chimney Creek specifically to look at the condition of that watershed. This area is a treasure that should not be allowed to go downhill. If it is possible to make money for the school board to distribute and at the same time build up the riparian areas, it is a win-win situation. She urged the Land Board to think about giving the IWP proposal a ten-year try.

Jonathan Marvel, Hailey, IWP, said they applied for this expiring grazing lease last fall because of the degraded areas in the riparian zone on the lease. This is consistent with what his group was formed to do because there is no management of riparian areas on state lands. Everything they have done has met every requirement test of the department. He pointed out on the map that the heart of this lease is the private land where there is water. If IWP gets this lease, in no way will it affect the accessibility of water or take the heart out of this lease. Their intention is to protect the stream and to request that the board consider requiring riparian management for all leases.

Debra Kronenberg commented that the concept of taking the heart out of state leases comes into this discussion late. At the time the applications were made in September, the department determined these to be manageable units.

Attorney General Alan Lance advised he would make a motion, but first he wanted to state that his motion was not predicated upon the statute recently passed by the Idaho Legislature, SB-1194 nor is it predicated upon the fact that this is the heart of the lease as indicated by Ms. Kronenberg. Mr. Lance moved that:

- 1) The board reject the IWP proposal;
- 2) The board accept the Faulkner Land & Livestock proposal to pay the annual rental set by the Land Board and the one-time premium rental of \$305 offered by Faulkner at the auction;
- 3) The lease be awarded to Faulkner Land & Livestock on the basis of the information submitted to the Land Board today to include, but not be limited to:
 - a) That the existing lessee has a long-standing lease relationship with the board;
 - b) That the state parcel is operated as part of a larger grazing allotment that includes considerable private land, state land and Forest Service lands;
 - c) That the issuance of the lease to IWP for this parcel would be disruptive and not conducive to harmonious relationships with tenants;
 - d) That the issuance of a lease to IWP for this parcel could possibly interfere with the movement of livestock between pastures;
- 4) A standard 10-year lease be issued with provisions which address riparian concerns on state endowment lands;
- 5) Faulkner Land & Livestock Co. be required to enter into a long-term, written, grazing management plan for all endowment lands contained within this allotment.

Anne Fox seconded the motion.

J.D. Williams requested that the record include testimony of the other witnesses in the prior appeals. One of the reasons he will vote for this motion is because of the indirect economic benefits.

Chairman Cenarrusa asked if there was unanimous consent of the board to allow Ms. Kronenberg to make a comment. Hearing no objections, it was so ordered. Ms. Kronenberg said that she objected to having Mr. Nalivka listed as a witness for Mr. Faulkner as IWP had received no notice of this.

The attorney general amended his motion that Mr. Nalivka's testimony not be included.

The motion passed unanimously.

Idaho Watersheds Project, Appeal No. L-GR-94-004 involving Faulkner Land & Livestock Co.

Attorney General Lance stated that it is understanding that IWP would be willing to stipulate that L-GR-94-004 dealing with the matter of the fences is now moot by virtue of the previous decision of the board, however, not withdrawing the appeal, but merely stipulating that it is moot. Ms. Kronenberg said that was correct. The other parties, Gray Young for Simplot Livestock and John Faulkner for Faulkner Land & Livestock agreed to the stipulation as well. With no objections, Governor Batt so ordered.

Committee for Idaho's high Desert (CIHD), Appeal No. L-GR-94-007, Grazing Lease G-6316 involving Dick Shooter Cattle Co.

Don Hobbs, Chief, Bureau of Range Management and Surface Leasing, IDL, provided background information. Mr. Hobbs explained that the parcels involved are two separate parcels in one large allotment with three permittees. Willow Springs has permanent water and is the only source of year-round water on the state land. The other springs and Cottonwood Creek have intermittent water. Simplot Livestock acquired these lands in 1994. They have asked the BLM for approval to convert the allotment from an April 1 through September 30 cow-calf operation to grazing yearlings from April through July 31. The department thinks the shorter season would benefit the riparian areas. The main emphasis of the appeal is that CIHD filed two separate applications for these parcels. Dick Shooter Cattle Co. failed to get their application in by the deadline of September 30 because the lease was in transition of assignment from one leaseholder to another. Department policy does allow a deadline extension for these cases, but also in that new deadline period, anyone else can also apply. The department announced prior to the bidding that the two parcels would be auctioned as one.

Cristel Nordhausen, CIHD, stated that at the auction she had not known about her right to object to the two parcels being auctioned as one.

Ms. Nordhausen read aloud a statement from Pam Marcum who was not present. The letter stated that he has visited this area on several occasions over the years and enjoys the recreational opportunities it provides. During his visits he became concerned about resource degradation occurring there due to excessive livestock grazing. The Big Springs allotment is 192,000 acres or approximately 300 square miles. CIHD has applied to lease 960 acres or less than two square miles of that. Without protection, the wet areas will dry up and die.

Ms. Nordhausen said that CIHD claims that the department incorrectly and arbitrarily combined the Willow Springs and Cottonwood Draw parcels on the day of the auction. CIHD was given no prior notification of this action which was announced just prior to the bidding. Regardless of whether CIHD voiced an objection at that time or not, the combining should never have been done nor considered valid. She said the parcels are not contiguous, there is no state management plan that links these parcels, they were applied for separately, each is a manageable unit, each is in a totally different drainage, and there is an AG Opinion that the board may lease any portion of the land of the state.

Alan Lance asked if CIHD had lodged an objection prior to the bidding. Ms. Nordhausen replied no.

Ms. Nordhausen said that auctioning the parcels together failed to maximize the commercial return for these lands. Also, she said that Bob Snapp of the department made another announcement just prior to the bidding at the auction that a special provision would be attached to the lease to allow for access at certain points for livestock. CIHD received no prior notification of this and was not asked if they had any objections to that. In essence, the department withheld information that totally changed the terms of the lease for which CIHD applied.

Mr. Lance asked Ms. Nordhausen if she had requested information relative to special terms, conditions, provisions of the auction sale of the lease. The reply was that they had requested some information such as how a management unit was determined. He asked if, in using the term "withheld information," Ms. Nordhausen was suggesting that any member of the department did not give her any information that she had specifically requested. Ms. Nordhausen said she would have to go over every bit of correspondence to determine that.

Ms. Nordhausen submitted that the department has acted in a biased manner on behalf of the Simplot Livestock Co. regarding the conflict parcels. She stated that the department failed to extend the deadline date and failed to advertise the lease which discouraged competition for the lease and thereby failed to maximize the potential financial return for this state land. Also, their name was not kept confidential as required in IDAPA rules. The department did not inform them their applications were unacceptable as stated in a department memo written by Bob Snapp. The memo also stated that these applications would obviously disrupt management and efficient use of the area. She said the issue of water is repeatedly brought up in this conflict. There is water on Simplot's private land. Also, if Simplot grazes early, there will be water at intermittent drainage areas and ponds and puddles throughout the allotment.

Randall Morris, Elmore County resident, spoke as a witness for CIHD. Mr. Morris questioned the bidding process itself. He finds it remarkable that in the Big Springs allotment there is a water situation because most of the water out in that area is already controlled by the Simplot Co. When the history of the Big Springs bombing range proposal is written -- which falls adjacent to the Big Springs Ranch -- there will be questions by writers about how it came to be that despite the bidding process of the state that the Simplot Co. acquired the Big Springs Ranch without there ever having been a public auction held on these lands and that the water then became surrounded by those private lands. Essentially every wet area on the desert lands of Idaho is in a degraded condition and some have disappeared.

Dale Dunn, Golden Eagle Chapter of the Audubon Society, Boise, testified that they are in support of the lease bid by IWP and CIHD. He has had 35 years of natural resource management in both the U.S. Forest Service and the BLM. The society's interest in this matter is the restoration of the avian riparian habitat for the benefit of all wildlife and to restore the natural and historical biodiversity to the extent practicable. If there is a plan for the riparian zone, it is not working, and if there is not a plan, there should be one. He read from a report of U.S. Fish & Wildlife pointing out the effects of degraded riparian areas on vegetation and wildlife. Mr. Dunn explained some pictures that were taken in the general area illustrating these effects.

Frank Monasterio, Mountain Home, Director of CIHD, said that the grasslands and riparian areas would be best served by granting them this appeal. The degradation of these grassland areas and the riparian areas in the state land areas of Idaho is a serious impediment to long-term maximum yield.

J. D. Williams said it is important to note that the photographs, numbered 16, 17, 18, 19 and 20 in the memorandum books are not of the area involved.

Anne Fox asked why these pictures are being used rather than in the area involved. Mr. Monasterio said that there needs to be a general improvement in management practices in these kinds of areas.

The photographs were turned in for the purpose of comparing with the pictures in the record. Mr. Hamilton said the photographs would be returned.

Bill Collins, witness for CIHD, said his comments concerned the economic evaluation of Owyhee County. He said the per capita income in Owyhee County is \$12,712. That is the poverty level. Agricultural employment experienced a steady decline from 1980 to the present. The majority of the citizens have never had the chance to manage the state endowment lands in the county in a more beneficial way than the state or the federal government. He suggested alternatives to grazing such as recreation, wilderness and cultural resource management. Tourism, travel and a primitive or a wilderness experience is Idaho's third major industry. Simplot Livestock Co. supports only that company's singular use for public lands. There is much information available supporting other future economic trends and conditions in Owyhee County. It is in the best interest of the state of Idaho and the school endowment lands to consider other values.

Christel Nordhausen stated that the biggest issue here is maximizing the long-term financial returns to the state endowment fund. The question is how to do this. CIHD feels it can best do this by enhancing the riparian areas of the two conflicted parcels. Simplot claims this action will economically sterilize the parcels for the next decade, but if CIHD acquires the lease it will have paid a premium bid for the parcels; it will also be paying the yearly rental fees regardless of whether there is livestock there or not. The parcels are severely degraded and unless the riparian areas are rested, this state resource will decrease in value. Simplot does not have a good track record of stewardship of state and federal land. Regarding the conflict auctions in general, she referred to an IDL memorandum from Stephen Schuster, legal counsel, to Fred Kisabeth, March 23, 1989, which basically states that the state should encourage conflict auctions to assist in maximizing income.

Ms. Nordhausen asked to read letters from two more witnesses.

Alan Lance asked why CIHD did not bid more. Ms. Nordhausen said the strategy for the bidding was set by the (CIHD) board and it was based on the fact that these two parcels would be bid on separately and that they would not have a provision allowing access for cattle. They felt they could not go higher without consent of their board since the terms had changed just prior to the bidding.

Ms. Nordhausen was allowed to read a letter from Jeff Swanstrom, Boise, Idaho. Mr. Swanstrom's letter as well as the other letter was submitted for the record.

J. D. Williams pointed out that he was in support of the Owens Trust land exchange because the state acquired property near the airport that will net a minimum of \$25,000 a year; on a long-term basis, at least \$50,000. Before that, the state was getting about \$2,300 a year from the grazing leases. There were no objections to the trade until after it happened and that was by the tribe. There was no conspiracy.

The board adjourned for lunch. Governor Batt reported that he would not be able to attend the afternoon session.

The Dick Shooter Cattle Company presented their testimony. Tom Basabe stated that he would like his comments from the last special meeting to be a part of this record. The property referred to as the Owens Trust closed August 31, and the Dick Shooter Cattle Co. (DSC) has not been there a year yet. If there are things that need to be improved there, they will do it in cooperation with the department. He reminded the board that DSC was the high bidder at this auction.

Gray Young, legal counsel, for Dick Shooter Cattle Co., said that portions of the economic and land use testimony the board heard on the Clover Creek appeal on Friday, March 31, and in the pre-meeting memorandum, also apply today, including the testimony of Senator Laird Noh and Representative Frances Field. Mr. Young said that all the participants, including CIHD, had agreed in the March 6, 1995, meeting that all parties would be permitted to incorporate witness testimony from the first round of appeals into this record. He noted that the issues being raised by DSC today were outlined in the pre-meeting memorandum and its exhibits which were provided to CIHD in mid-March.

Mr. Young said that the Dick Shooter Cattle Co. was the high bidder in the conflict auction that took place last December. CIHD's primary, substantive argument appears to be that its proposed use of the leasehold constitutes the best use and will maximize long-term return to the endowment fund. They do not believe that CIHD's presentation has shown that fencing off water and terminating grazing on the leasehold will maximize the long-term return of the Willow Spring and Cottonwood Draw leasehold. They also believe that CIHD's selective conflict strategy of bidding only on state parcels that contain water will erode the financial return value of this and other state lands.

John Nalivka said he would not repeat all of his comments from the last meeting. In regard to the DSC lease and in relationship to the work he did last week on Clover Creek, the per AUM value would stand. He submitted a report for the record regarding cost of production. He said that cost of production is what generates the per AUM value which leads to the value of the economic impact. The two major costs in the cost of production schedule for most western ranches are feed and labor. In a study he did on 28 Nevada ranches in 1983, of the total cash costs, 21% of that went to feed and 21% went to labor. In other later studies, the feed was 30% and labor 12%, with the two resulting in the same 42% overall. The difference is due to family operations versus corporate operations. Simplot's costs in the Clover Creek operation are 40% feed and 26% labor. 66% of their cost of production goes into feed and labor, generating the economic impact.

Frank Bachman said he would clarify a few points -- one, this is a private allotment belonging to DSC. A map of the area was presented by Mr. Bachman and was entered into the record. He used the map to explain their plan for grazing. If the water was fenced off, it would leave 6,000 to 7,000 acres with no water. Also, there is state land adjoining which would have no water. This means the board decision could greatly affect the values of those lands. He also pointed out that wildlife has been flourishing in the area. He said Simplot's record of stewardship would stand up against anyone's.

Mr. Bachman said that on the points raised regarding cents-per-acre value of the state lands, the state assesses them at a price per AUM which is set by the state and reflects the market value of the forage. That does not reflect values of acres and he wanted the record to show that.

Charles Jones, Public Lands Coordinator for Simplot Livestock Co., said that he hoped he conveyed to the board at last week's meeting his company's commitment to improving the range resources they deal with. He reiterated that the Dick Shooter Cattle Co. would gladly work with the staff of the Idaho Department of Lands to create a management plan which sustains long-term productivity of these lands.

Mr. Lance asked Mr. Jones what can be done to protect some of these riparian areas better.

Mr. Jones replied that he agrees with CIHD that there is a need to protect these springs from trampling. If the Department of Lands gives them permission, they would be glad to install structural facilities to water their livestock and also protect the spring sources. He also pointed out that Dick Shooter Cattle Co. is not responsible for past grazing activities that occurred on these parcels since they only acquired these lands last August. He is confident that their proposed change in management will result in improvement to the range resource.

Christel Nordhausen recommended that the board incorporate a riparian management plan if the lease is granted to Simplot.

Chairman Cenarrusa said the question is whether the auction was conducted properly by auctioning the two units as one unit and to whom the lease should be awarded with conditions or without conditions.

Alan Lance made a motion that the board reject the Committee for Idaho's High Desert proposal and accept the Dick Shooter Cattle Co. proposal to pay the annual rental set by the Land Board and a one-time premium rental of \$1500; to award the lease to the Dick Shooter Cattle Co. on the basis of the information submitted to the Land Board and including the following factors:

- 1) That Dick Shooter Cattle Co. was in fact the high bidder in this bid situation;
- 2) That the state parcel is operated as part of the larger grazing allotment that includes other state land and considerable BLM land;
- 3) That the issuance of a lease to the High Desert group of small parcels within a larger allotment would be disruptive to the overall operation of the rangelands and not conducive to harmonious relations between tenants;
- 4) The combining of the two state parcels into one unit prior to bidding was consistent with the state's authority and adequate notice was provided to the applicants and that no objection, in fact, was made by the Idaho High Desert group at the time of the auction;
- 5) To require development of a written grazing management plan for this parcel which addresses the riparian concerns heard here today and to be included as a condition of the lease;
- 6) Until the plan is completed, require that the special provisions be incorporated into the lease that allow use from April 1 to July 31, 1995, and require fencing of Willow Spring with construction of a pipeline to a water trough or other alternate means of delivery -- those specifications to be approved by the department;

- 7) Require Dick Shooter Cattle Co. to sign a land exchange addendum for this parcel;
- 8) Issue a standard ten-year lease.


During discussion, Mr. Lance commented that he commends the efforts of CIHD for their interest in riparian areas. However, there was a bidding process which was followed and Dick Shooter Cattle Co. was the high bidder. No objection was lodged at the time of the sale relative to the combining of the two parcels. The winning bid was \$1500 and that is significant from the standpoint of what CHID was willing to bid whether the parcels were combined as one sale or two sales, the total available capital to them with authority from their board was \$1450. The commitment has been made to protect the riparian areas by the successful bidder and they ought to have the opportunity to make good on their word.

Mr. Williams said one significant factor is the available water source out there. If it was fenced off it would impair the value to other adjacent state lands. Another factor is the economic ripple effect of the return of the total operation.

The motion was seconded by Anne Fox and passed 4-0 with Governor Batt being absent for the vote.

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

STATE BOARD OF LAND COMMISSIONERS



President, and Governor of the State of Idaho

Countersigned:



Secretary of State



Director

