

**REGULAR MEETING
STATE BOARD OF LAND COMMISSIONERS
May 5, 1995**

The regular meeting of the State Board of Land Commissioners was held on May 5, 1995, at 1:15 p.m. in the east conference room of the Joe R. Williams office building. The meeting was chaired by Attorney General Alan Lance at the request of Governor Batt and Secretary of State Cenarrusa who both had laryngitis.

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

Consent Agenda

- A. Official Transactions -- March 1995 -- Consideration and Approval
- B. Proposed Timber Sales:
 - 1. CR-1-0220, North Indian OSR, Priest Lake Area
 - 2. CR-1-0229, Little Trapper, Priest Lake Area
 - 3. CR-1-0263, Uleda Poles, Priest Lake Area
 - 4. CR-1-0266, Camel Soldier, Priest Lake Area
 - 5. CR-1-0267, Upper Abandon, Priest Lake Area
 - 6. CR-2-0166, Lower Bloom, Pend Oreille Lake Area
 - 7. CR-4-0565, Bingo-Butte, Clearwater Area
 - 8. CR-4-0590, Fall Creek, Clearwater Area
 - 9. CR-4-0591, Fir Bluff, Clearwater Area
 - 10. CR-4-0593, North Purdue Commercial, Clearwater Area
 - 11. CR-4-0596, Oviatt Creek OSR
- C. Request for Inclusion on Timber Sale Qualified Bidders List -- Luck E-G Post & Rail, Blanchard, Idaho
- D. Fees for Land Sale Transactions
- E. Emerald Creek Garnet Co. Applications:
 - 1. Amendment of Dredge & Placer Mining Permit #288
 - 2. Application for Dredge & Placer Mining Permit #301
 - 3. Application for Dredge & Placer Mining Permit #302

4. Application for Dredge & Placer Mining Permit #305
5. Application for Dredge & Placer Mining Permit #306
6. Application for Dredge & Placer Mining Permit #307

- F. Disposal of Surplus Real Property -- Department of Employment -- Amendment of Sale Agreement
- G. Continuation of Deficiency Warrant Authorization for Gypsy Moth Work
- H. Director's Salary -- 2% Increase to Match Department Pay Plan.

Pete Cenarrusa moved to approve the consent agenda. Seconded by Alan Lance. Passed 4-0 (Anne Fox absent for the vote.)

Regular Agenda

Amendments of Administrative Rules -- 1) IDAPA 20.02, Selling of Forest Products on State-Owned Endowment Lands; 2) IDAPA 20.02.11, Timber Supply Stabilization Act of 1989 on State Forests

George Bacon, Timber Sale Supervisor, explained that various types of state timber sales are defined by two criteria, volume and value. This year legislation was passed giving the State Board of Land Commissioners authority to establish the value limits on small sales -- salvage and direct sales. Previously the value limits were established in Idaho Code. The department is seeking board approval to the rule-making process so that the rules governing the sale of state timber may be amended to reflect the code changes. This law takes effect on July 1, 1995. The department will make recommendations concerning salvage and direct sale values at the next regular meeting of the board.

J. D. moved to adopt the recommendation. Pete Cenarrusa seconded. The motion passed unanimously.

Mr. Hamilton advised the board that after these rules have gone through the process they will be brought back to the board for final consideration and action.

Audience with the Board -- Mark Solomon -- Grazing Lease at Moscow Mountain

Tracy Behrens, Range Management Specialist, said this issue concerns the appeal of Mark Solomon of the department decision to not renew his grazing lease which expired December 31, 1994. The original lease was issued in January 1987 for approximately 600 acres of land near Moscow Mountain outside of Moscow, Idaho. In 1992 that parcel of land was included in a potential land trade to Bennett Lumber Co. Through the request of concerned citizens in the Moscow area and after discussion by the board, approximately 300 acres of that lease were withdrawn from the proposed trade because of the esthetics of that piece of ground and a stand of high quality, old-growth, red cedar. That left approximately 300 acres in Mr. Solomon's lease. Last year, Mr. Solomon presented the department with a draft grazing management plan for that ground with the objective being to manage the wildlife and water quality concerns. He did not intend to graze any livestock on that property.

The department felt the best approach for management of this ground was to work with the University of Idaho College of Forestry to enter into a special lease agreement allowing them to manage that ground providing students the opportunities to experiment with management practices. The department's long-term goal is to trade that parcel with the university. The university has sent a letter requesting the department enter into a special lease agreement for this parcel.

The department recommends that the board not renew this grazing lease and enter into the leasing agreement with the university beginning at the minimum charge of \$100 per year for special use and then increasing that in increments based on their proposed management objectives.

Mark Solomon said that this land and all of Moscow Mountain is in a classification under state law called open range and neighboring cattle wander into this area up to the top of Moscow Mountain. The cattle do significant damage to the state's resource and to the property where he lives, 120 acres immediately adjoining this state parcel. He first approached acquiring this grazing lease in the 1980's as a method of physically protecting his own property from the possibility of having someone graze cattle there. In his view it is necessary to continue under a grazing lease as opposed to any other form of lease because of the department's regulations. Without a grazing lease, there is no specific authority to remove trespassing cattle from that state land. If it is the board's intent to reclassify the land for recreation and biodiversity, he could support that, but the grazing would still have to be excluded.

J. D. Williams said he thinks it would make sense to try to exchange out of this parcel and asked Mr. Solomon if he would object if the board did both things -- approve his lease, but still have the university proceed with the special use consideration putting a condition in the lease that the state would try to exchange out of the lease as soon as possible. Mr. Solomon replied that if it is legally possible to have both kinds of leases there, he has no specific problem, but offering it directly to the university rather than to a coalition of community groups that have been active in working to facilitate the exchange or see other management activities take place on that ground, is still questionable. However, one of the members of the coalition is the university representative, Harold Osburne, School of Forestry, so there are many opportunities there.

Tracy Behrens commented that the department does feel that a special use lease to the university could address trespass grazing concerns. The reason the department is working directly with the university is that it wanted the College of Forestry to be ultimately responsible for the management working with the student groups. Mr. Hamilton added that ultimately the objective of IDL would be to exchange the parcel.

J. D. Williams moved to approve the grazing lease for a year with some conditions attached to it, that it be subject to exchange and also to a special use permit to the University of Idaho for the purposes as outlined subject to their making a concrete proposal regarding it. Pete Cenarrusa seconded. J. D. Williams clarified his motion at the request of Anne Fox. The grazing lease is for one year with a condition in the grazing lease that the department can negotiate with the University School of Forestry in order to come up with a management plan for their purposes through their student organizations or whatever they decide that would be an additional use on this property and the board could review that. That would also increase the revenue from \$50 to \$150.

Governor Batt commented that he did not understand the one-year condition being placed on the lease.

The motion passed 4-1, Governor Batt voting no.

Audience with the Board -- Brent Hill and Len Hensy, Custer County Commissioner --
Falconberry Ranch Property

Mr. Hill said there is a piece of property that was homesteaded about 100 years ago in Custer County known as the Falconberry Ranch which is within the Frank Church River of No Return Wilderness. Around 1980, the Forest Service enticed the deeded owner of the property into a purchase situation. They do not feel the Forest Service went through the appropriate procedures to purchase private property. At the time, the county commissioners protested the sale which would mean a loss of the tax revenue to the county. The family does not feel the Forest Service met its obligations and would like to reclaim the property or see it back in the hands of the state and county. Their attorney cannot find any reason the deed to the Forest Service would be valid but the opinion from the Attorney General's office was that the Forest Service owned the property. Mr. Hill said they are asking for assistance or backing from the state in their belief that the Forest Service is not authorized to buy private property for no reason and take it off the tax rolls.

Mr. Cenarrusa asked whether the Forest Service paid a sum of money and was it for an easement or full title. Mr. Hill said the Forest Service paid Mr. Hatch \$1,351,662 for an outright purchase of the property and deeded a life estate back to Mr. Hatch. Mr. Cenarrusa said he feels it would be better if this were in private hands rather than the Forest Service owning it, however, it could cause some problems with the Forest Service legally.

Mr. Lance said this would be a county responsibility and whether or not the Forest Service can buy land is irrelevant to the State Land Board. A lawsuit may benefit the county or the estate of Mr. Hatch but there would be no benefit to the State of Idaho.

J. D. Williams explained that the Board is bound to follow the law and the basic law right now is that the Forest Service can own private property even if it has very little use. Although he is sympathetic to the tax problem, the State has no interest.

Custer County Commissioner Len Hensy spoke to the board briefly about his concerns with the tax base in Custer County. He said this could be an opportunity to get some more tax base and perhaps use the property for people who want to fish or whatever.

Mr. Lance explained that the state is not authorized to lease property that it doesn't own. That would draw the state into a lawsuit. If the county chooses to assert that they could not have made this sale in 1980 and they owe you taxes since they have taken over, that is something that the county should talk about with its attorney. He also advised that if the Hatch family would quitclaim to the county any interest they may have in the property, and if the county then takes legal action, to keep the Land Board informed of how it comes out.

J. D. Williams stated that he does not think there is anything the Land Board can do.

Pete Cenarrusa suggested studying and exploring this further to see what standing the state might have.

Al Lance said that if the county takes action, his office would help in any they can, but it is up to the county.

Audience with the Board -- Jim Lyons

Mr. Lyons put the Land Board on notice that they will be served papers involving them in a lawsuit regarding a claim of the Pack River Co. concerning 80 acres of timberland in Boundary County. In 1905 a homestead entry was made on this property and until 1983, it remained on private property tax rolls. In 1912 the Government Land Office canceled the homestead entry and proper notice was not made in 1912. In 1959 a private party purchased it and put a road into the property to log it, and a federal employee appeared and said they could not log the property. The land remained on the tax rolls until the indemnity selections in 1983. The result was litigation and the Pack River Co. has taken their claim back. He is trying to see if the BLM will release replacement lands back to the Pack River Co. The title is in the state now subject to the claim of the Pack River Co. although the action is primarily against the BLM.

Mr. Hamilton said this property was clearlisted to the State of Idaho in 1983. If the BLM is found to not have title, the state could still file for other indemnity land to make up for the loss.

Land Sale Request -- Mark and Joyce Rupe

Perry Whittaker, Chief, Bureau of Real Estate, advised this is a request to place a small, 2-1/2 acre, parcel of land on the 1995 land sale plan. This situation was brought to the attention of the state when Mark and Joyce Rupe were unable to get title insurance this spring to allow them to sell their house. The underlying land the house sits on is still owned by the State of Idaho. It is a public school endowment parcel about 2-1/2 miles south of Pingree. The department had issued an easement for this parcel to the Department of Public Works in 1946 for use as a materials site. It was never put to that kind of use. The surrounding 37-1/2 acres in that 40-acre parcel were then sold in 1951 and are being used as farmland. The Bingham County assessor's records indicate that taxes have been paid on this parcel since 1964. A ranch-style house was built on this property in 1978 without authorization of the Department of Lands. Mrs. Rupe has serious health problems and needs to be located closer to health facilities. Department staff have inspected the property and coordinated with Mr. and Mrs. Rupe and their attorney regarding a solution to this trespass.

The various alternatives would be: 1) move the house; 2) land exchange; or 3) land sale. Mr. Whittaker said it would be impractical to move the house since half of the living space is in the basement. A land exchange would be the preferred alternative if possible, but the Rupes do not have any land nor are they in a financial position to purchase land to trade. The department recommends land sale as the best alternative for resolving this particular trespass situation. It will allow the state to receive fair market value for the 2-1/2 acres. It will allow the Rupes the opportunity to buy the land although they would have to compete at a public auction. The Eastern Idaho Area office has found there was no willful intent to trespass on the state land. Mr. Whittaker said it would be appropriate to allow the Rupes to have improvement credit based on the appraised value of the house.

Regarding outstanding back rental, the board's options would include: 1) no charge based on an assumption that the house was not knowingly placed on state land; 2) a partial charge of triple Class II cottage site rent; or 3) the full charge for the full 17 years which would amount to \$8,854.

J. D. Williams moved to approve the department recommendation with the additional proviso that the successful bidder pay a minimum back rental of \$50 per year for 17 years. Pete Cenarrusa seconded. The motion passed unanimously.

Michael Norkevich, Lava Hot Springs Foundation, Easement #5402

Mr. Hamilton said this issue involves an easement that was placed through a campground. There have been some disputes about the manner in which reclamation has occurred.

Perry Whittaker reported that the department issued an easement to Commercial Energy Management (CEM) in 1989 for the Portneuf River hydroelectric project. Construction was completed in the spring of 1993 and they hydroseeded the disturbed areas at that time. The hydroseeding was only partially successful and Mr. Norkevich notified the department that the landscape restoration may not be in compliance with the terms of the easement. This was verified by department inspection. A landscape agreement was developed last October to facilitate completion of the necessary restoration work, particularly on the campground spaces. That work was not accomplished until the first week of April. With warmer weather and adequate water, it is hoped the seeding will be established by Memorial Day weekend which is the first big weekend for the campground for the summer. The department will inspect the site again the week of May 22, and will bring back a recommendation to the board in June that either CEM or their banker sod those unsatisfactory areas by June 15. Otherwise, it would be necessary to look at their bond or terminate their easement at the July board meeting.

Michael Norkevich, Lava Hot Springs Foundation campground operator, addressed the board. He said he takes issue with the seeding process that is being done by David Crea of Intermountain Landscaping, and that the timeframes as outlined by Mr. Whittaker are not acceptable.

J. D. Williams said he agreed this project has not been handled right, but if the problem is not taken care of by June, the state is going to cancel the easement. He said he does not know what more the state can do. He thinks the state has to live by the agreement until May 31 and agrees with the department's recommended timeframes. Mr. Hamilton commented that, as well, the department will bring this to the attention of the bank. Mr. Lance also thought the department should notify the bonding company and agrees that the state is bound by the agreement to at least give them until the May 31 deadline.

No action was taken, and the board members agreed that the department is doing is all that can be done at this time. Mr. Lance assured Mr. Norkevich that if this is not remedied by the time specified in the Department of Lands' recommendations, he will be voting along with the controller to terminate this easement.

Update of State Cropland Rental Rate Formula

Mr. Hamilton advised that periodically the department reviews the process for setting rental rates for croplands. This has not been done for several years. He asked a group of people to review the process and update it.

Lou Benedick, Area Supervisor, Eastern Idaho, explained that the department currently administers about 14,000 acres of cropland contained in about 79 leases. It is administered by a cropland formula created in 1970 by the University of Idaho. It consists of a base rate with adjustments for major commodity price changes and this was done both in 1981 and in 1990. The present rates for dry cropland run from \$10 to \$12 an acre. For irrigated cropland, the rates run from \$40 to \$60 an acre.

The committee studied the rental rate formula and found a few problems: 1) The use of a crop rotation of one-year crop/one-year fallow when the usual practice now seems to be somewhere between a two-year crop/one-year fallow; 2) The department has been taking one-third of the crop share for the landlord and the usual system now is about one-fourth for the landlord; 3) In the space rate determination, the late 1970's commodity prices are still being used; 4) The old formula incorporated a system that is now terminated, the Consolidated Farm Services Agency, with a wheat allotment payment program when there is now a federal price support payment program. The committee decided to consider several new methods, and Mr. Benedick explained some of the methods they looked at. They decided to stay with a cash-rent system based on an updated formula.

They eventually came up with a revision to the present formula that added current information and a few new procedures. It incorporates three-year actual planted crop acres as reported to CFSA by the lessee; the three-year average of the actual crop yields as reported by the lessee; three-year grain prices at the nearest elevator during August, September, and October of that year; use of same site specific modifiers taking into consideration precipitation, growing season, distance to market, soil class and farmability, the addition of access as a factor; taking one-fourth of the realized production income; and taking one-fourth of a three-year average price support paid by the CFSA following changes in the federal farm bill.

They tested the system on five representative leases in Madison, Bonneville, and Bingham counties. The rents came in higher, about \$3 to \$4 more on dry cropland, about a 25% increase; and \$8 to \$10 on irrigated cropland, about a 15% increase. The new rates would probably come out at about \$14 to \$15 an acre on dry cropland and about \$50 and \$70 on irrigated cropland.

The department recommendation is to revise the present system by incorporating those changes listed above into the formula. The leases could be ready by 1996 for billing. It is also recommended that during the ten-year lease, that there be at least one new base-rate evaluation done. Mr. Benedick said that a conservative estimate is that this change would increase the annual revenue by about \$30,000.

Governor Batt made the motion to accept the recommendation. Anne Fox seconded. The motion passed unanimously.

J. D. Williams moved that the Land Board resolve into executive session; Pete Cenarrusa seconded. The motion carried unanimously.

Executive Session

Stephanie Balzarini, department legal counsel, briefed the board on the Crown Point Fire legal issue involving Idaho Power Co.

Steve Schuster, department legal counsel, briefed the board on the Kootenai County Case #85186, Erickson v. State involving a high water mark issue.

The board resolved back into regular session.

No action was required and none was taken.

Regular Session

Other Business

The director advised the board of a letter received from Jim Jones asking for postponement of the sale of Parcel No. 391-93 in McCall due to questions regarding title.

Pete Cenarrusa commented that the Blaine County Planning & Zoning Commission is holding up the state on the land exchange issue at Clear Creek. Mr. Hamilton said that the P&Z decision will first need to be appealed to the Blaine County Commissioners. Also, condemnation is a potential solution to the access problem.

Director Hamilton reminded the board of the tour that the Idaho Citizens Grazing Association has planned for June 8 in Soda Springs. He asked them to advise the department of their travel requests.

Information

Informational reports were provided on the Triumph Mine remediation project; timber sales, gypsy moth; interest rate; and endowment fund.


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

STATE BOARD OF LAND COMMISSIONERS

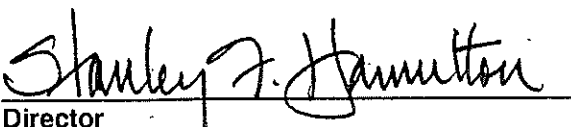


President, and Governor of the State of Idaho

Countersigned:



Secretary of State



Director

