



Idaho State Board of Land Commissioners

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

Stanley F. Hamilton, Secretary

MINUTES
REGULAR MEETING
IDAHO STATE BOARD OF LAND COMMISSIONERS
March 12, 1996

The regular meeting of the Idaho State Board of Land Commissioners was held on March 12, 1996 in Boise, Idaho. The Honorable Philip E. Batt presided.

The following members of the state board of land commissioners were present:

Honorable Philip E. Batt, President of the land board and Governor of the State of Idaho
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

In deference to Secretary of State Cenarrusa's being unable to stay for the duration of the meeting, Governor Batt asked him if he had issues to address before leaving.

Secretary Cenarrusa requested that agenda items #7 and #8, Development of Cottage Site Land Exchange Procedures and Valuation Processes, be deferred. He recommended that the board take the testimony of those witnesses but defer any decision until the full board convened. With unanimous consent of the board, action on agenda items #7 and #8 was deferred.

CONSENT AGENDA

The consent agenda was approved in its entirety by a vote of 5-0.

1. Official transactions for the month of February 1996
2. Entry of proposed amendment to *Rules for Easements on State Owned Submerged Lands and Formerly Submerged Lands* (IDAPA 20.03.09) into the administrative rule making process.
3. Entry of *Proposed Rules for Leases on State-Owned Submerged Lands and Formerly Submerged Lands* (IDAPA 20.03.17) into the administrative rule making process.
4. Addition to qualified bidder's list, timber sales:
 - A. Mountain Valley Timber

- 5. Timber sales:
 - A. Boehl's Finn, 262 acres CR-3-0392
 - B. Upper Snake, 310 acres CR-4-0630

REGULAR AGENDA

Long term lease - Kristy Pigeon. Deferred.

After an introduction by Director Hamilton, Bryce Taylor, Chief, Bureau of Range Management and Surface Leasing, reminded the board that in June of 1995 a long term lease proposal for 49 years on 7 acres of University endowment land had been presented. Rent was proposed at 8% of land value or 4% of gross receipts, whichever is greater. Rent and land values to be adjusted by the Implicit Price Deflator (IPD) and land re-appraised every 5-10 years. All improvements were to revert to the state at the end of the lease term. A new 10 year grazing lease for the remaining 11.8 acres would also be issued.

At June's meeting, there were two issues of concern: appraised land value was too low and 49 years was too long.

The revised lease proposal is for seven acres, 40 years, and rent at 8% of land value. The parcel would be appraised for three acres of year round use and four acres of limited use (outdoor recreation). Total rent would be increased from \$2,975/yr to \$5,475/yr, an 80% increase. Land values would be still be adjusted annually by the IPD and appraised every 5-10 years. At the end of the lease term, the state would own 60%, the lessee, 40%. An appraisal based on highest and best use would be conducted when there was use other than for which originally appraised. Also, if 80% of the surrounding lands were developed for residential use, then the 4 acres set aside for limited use, would be re-appraised for similar use.

The lease on 11.8 acres for grazing remained unchanged from the previous proposal.

Issues considered in the development of the new proposal included: the irregular shape of the parcel, and its isolation from other state ownership, existing use of adjacent lands, current zoning and development of surrounding lands, demand for the land, evaluation of potential rents from other use, potential future land sale or exchange, maintenance of land base, continuing appreciation of land, and interest by other parties.

Assuming a 3%/yr growth, Mr. Taylor projected that annual rents over a 40 year term would return \$375,640. The improvement value, using 60% of today's values, would be \$321,600 (end of lease term, assuming good condition).

[The governor was absent briefly, Secretary Cenarrusa took over as acting Chair]

Secretary Cenarrusa noted the use of the pathway near this property for use by sports enthusiasts - bicycling, walking, skiing. He said that he was in favor of the proposed lease.

Attorney General Lance was concerned that the proposed lease had not been reviewed by his staff contract specialists, that a 40 year lease might not be in the best interest in the state of Idaho, and he was not in favor of the proposal.

Mr. Lance proposed a ten year term, with options to renew for two successive ten year terms; rent at 8% of land value with land appraised for highest and best use and/or percentage of gross receipts; annual rent adjustment based on IPD; appraisal of land values every five years based on highest and best use; reporting requirements to document non-profit, rehabilitative use; and, stricter language within the lease.

Attorney General Lance was against the idea of sharing ownership of improvements because of obvious potential for litigation. He said that financing was available on a fixed lease and that there were tax benefits for vacating lease improvements.

The governor agreed with Mr. Lance and reminded the board its primary concern had to be its fiduciary responsibilities. He questioned why the appraised value of the land was so low.

Mr. Taylor explained that comparable "limited" use lands had similar low values, but changing from limited to year round use would increase the value.

Controller Williams liked the proposal and the idea that the land base would be retained, allowing land values to appreciate.

Ms. Pigeon, lessee, added that Hailey has a sewer moratorium and development of the lands for residential use would not be in the near future; that she has a conditional use variance and the only other use for the land would be grazing which would return half as much as the proposed use; and, that her proposed lease would be an asset to Idaho by the benefitting children and adults.

Attorney General Lance remarked that Idaho Code § 58-307 (4) speaks to commercial leases and identifies them as: industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, etc. It does not indicate that a therapeutic riding center, such as the one proposed, would be a proper consideration for the board; the board has to look at dollars and cents.

Superintendent Anne Fox suggested the issue be deferred. She also said a 40 year lease was too long.

Ms. Pigeon said a delay would probably not present undue hardship and directed the board's attention to the fact that the amortization schedule was for 40 years, in response to the board's earlier concern that the amortization schedule be consistent with the term of lease.

Mr. Taylor noted that this was the department's first long term lease. He said that the difference between this proposal and cottage sites, for example, was the value of the improvements to be placed and the time needed to realize a return on those investments.

Governor Batt asked if quiet title could be obtained for jointly owned improvements and Mr. Taylor said it could be a problem. Controller Williams suggested that improvements could be handled in a manner similar to how department currently handles cottage site improvements.

Controller Williams moved that this matter be delayed to allow legal review and full board consideration. The motion was seconded by Superintendent Fox and received unanimous consent.

Superintendent Fox suggested that she and the Attorney General spend some time together to develop alternatives. Attorney General Lance requested that the lease be staffed through the contract specialist for review.

Discuss Proposed Cottage Site Land Exchange Procedures and Discuss Valuation Processes of State-Owned Cottage Sites to be Exchanged.

Director Hamilton said that Jon Steele, an officer for the Payette Lake and Pilgrim Cove Cottage Site Association, asked these agenda items be deferred to a special meeting. At that time, he and others would present their testimony.

The board agreed to convene a special meeting.

Soulen Livestock - Reforestation Yield Tax. Deferred.

This matter was being revisited pursuant to the direction of the board to gather new information. He distributed a letter from Harley Hinshaw of the Valley County Assessor's Office.

Assistant Director of Forestry, Winston Wiggins, briefed the board on the data that had been collected and reviewed the department's three proposed options:

A - that the land board certify the timber value based on the values during the year immediately prior to the expiration of Soulen contract: \$760,697.91 timber value and \$95,087.24 in reforestation yield tax;

B - that the land board certify the timber value based on timber sales in the Payette Lakes area for a three year period prior to the expiration of the contract: \$696,446.48 timber value and \$87,055.81 in reforestation yield tax; and,

C - that the land board certify the timber value based on timber sales in the Payette Lakes and Southwest areas for a three year period prior to the expiration of the contract: \$650,292.87 timber value and \$81,286.61 in reforestation yield tax.

Valley County Assessor, Harley Hinshaw, said that Valley County would consent to a three year average on the timber sale values even though they did not believe it was fair to other taxpayers to do so. He also said that because other landowners had their timber sales values taken only from the Payette Lakes area, Soulen Livestock's consideration should be the same. He recommended the board approve option "B" for a certification of \$696,446.48 in timber value with an \$87,055.81 reforestation yield tax.

Nicholas Bokides, counsel for Soulen Livestock, distributed documents and reiterated their contention that Soulen Livestock had already paid more than their fair share. He directed the board's attention to Exhibit B.

Governor Batt asked if it was still their contention that repealing the Reforestation Act eliminated the board's authority to act.

Attorney General Lance interjected that the statute had been in place for a number of years, the lease expired, and then subsequently, the legislature repealed the Act. He noted that Soulen Livestock was under the statute at the time their contract expired and the repeal came after the contract expired.

Mr. Bokides claimed that no *assessment* of taxes had been made prior to the repeal of the statute so a tax could not be levied by the County.

Governor Batt didn't think the board could authorize the relief requested.

Attorney General Lance asserted that the rules in effect at the time of the expiration of the contract, not the rules in effect at a later time, would be those to which one would answer. The Controller agreed that the statute in effect at the time of the expiration of the contract would prevail.

Soulen Livestock offered to pay an amount equal to the highest per acre amount that had ever been paid - \$34.75/acre (based on 1989 figures).

Attorney General Lance said he believed he could render an Opinion regarding the repeal, but said the issue before the board was whether or not to certify an amount to Valley County.

Mr. Hinshaw added that the county could not act, in any capacity, until the board provided the county with a certified a value.

Controller Williams said that since the Secretary of State was not in attendance, the matter should be deferred. With the unanimous consent of the board, the item was deferred.

Statewide Fire Agreement. Approved. John Crumb, Chief, Bureau of Fire Management, presented a Cooperative Fire Protection Agreement which included the Idaho Department of Lands, USDA Forest Service, USDI Bureau of Land Management, USDI Bureau of Indian Affairs, and USDI Fish & Wildlife Service as signatories. Mr. Crumb said the Agreement was last reviewed in 1984 and explained that the board's authorization was required before the department could sign. He noted that this Agreement would replace an existing Agreement.

This new Agreement, he said, provided for across-the-board cooperation amongst the agencies and provided an easier, more efficient way to reimburse one another for mutual assistance.

He also said that clause 13, Exchange Zones, on page 3 of the Agreement, had been modified to include the sentence: "Neither the federal agencies nor the Idaho Department of Lands are authorized to, or responsible for, providing structural fire protection on any lands within the State of Idaho." He said this was added for emphasis because neither the Forest Service nor IDL are responsible for protecting structures in wild lands outside of Fire Protection Districts.

Mr. Crumb elaborated the primary responsibility of the department is to protect wild lands or forest lands but that each agency has an obligation to attempt to keep fire from a structure.

However, if a structure catches fire, it is not the responsibility of the agency to put it out - it is the responsibility of the private land owner.

Director Hamilton added that the intent of the clause was to address concerns by the agencies that they do not have the responsibility, authority, direction, or training to enter a burning building and try suppress fire.

Controller Williams asked what kind of impact this new Agreement would have had if it had been in effect during the fires of 1994 - especially Idaho City.

Chief Crumb suggested that for the 1994 fire season, the most significant impact this Agreement would have had is that the department would have known the costs of receiving mutual assistance sooner, which would have eased the processing of paying bills. Procedurally, Mr. Crumb said that in Payette National Forest, for example, both County and the State agencies would have been asked [by the federal agencies] to participate in the decision making process regarding threatened structures.

Superintendent Fox moved that the Agreement be approved. The motion was seconded by Controller Williams and it passed unanimously, 4-0.

Proposed Hauser Lake Settlement Offer (Everett v. State of Idaho). No Action Taken.

Mr. Garth Everett, Plaintiff, said that all of the lake front on Hauser Lake was privately owned except for the public beach on the south side and a little public boat launch on the northeast side. He added that their property was being singled out because of the fishing access and because they had tried to erect a fence. He alleged that one reason for putting in a fence was to keep users out because they were littering the land/waters.

In this new proposal, no fence will be built and the number of dock permits had been reduced from three to five.

He said the new proposal would effectively retain some land for public use whereas a court decision could turn it all over to the state.

Director Hamilton said that under this new proposal, the Everett's would gain the reach between CL 28 - 32, as well as CL15. 5 - 16 [referring to Attachment 4].

Governor asked what concessions Mr. Everett was making in return for adding CL15.5 - 16 and CL 28 - 32.

Mr. Everett said they would not build a fence which is what the original permit was for. Since then, the issue has turned into an ownership question.

Controller Williams summarized that this proposal removed 207'± of prime area from the state's claim to ownership in return for not installing a fence and two docks. He further suggested that at the September 1995 meeting, the public had been clear that they would rather go to litigation than give up access through settlement; he said the proposed counter-offer was not acceptable.

Mr. Everett said that they would be willing to compromise and give the state the 207' if that would expedite matters.

Since this case is being litigated and Mr. Everett has been represented by counsel, the Attorney General said discussion should take place with Mr. Everett's counsel in attendance. Attorney General Lance suggested that if the Everetts wanted to revise their offer of settlement, pursuant to the preceding discussion with Controller Williams, that it should be discussed with counsel first.

Mr. Everett said that he would waive that right.

Attorney General Lance said he didn't want to get caught in a technicality and Controller Williams agreed. The Controller then asked Mr. Everett what his intentions would be, regarding public use, if he had no fence in place.

Mr. Everett said he might put up little metal signs to identify the lands as private or public.

Under further questioning by the Controller, Mr. Everett stated that he would not ask people who were fishing on his property to leave - he said compliance would be voluntary, that he wouldn't make anyone leave.

Superintendent Fox moved that the board dissolve into executive session. The motion was seconded by Controller Williams and it passed unanimously.

After resolution into regular session, Attorney General Lance said that because this matter is in litigation, any proposals for consideration needed to come from the Everetts' attorney; that legal staff needed to have an opportunity to review any proposal; and, that after legal review, the land board could authorize counter-proposals.

Triumph Mine. No Action Taken - informational agenda. Director Hamilton reminded the board that the department had asked JFAC for \$750,000 for future work. The department's request was denied. Because the department was nearing the expenditure mark of \$250,000, board approval was needed to proceed - per JFAC - and a Supplemental for 1997 may be needed. Actual expenditures for site study will be submitted to the board in April. He advised that as of 1/31/96, the amount spent was around \$220,000; DEQ was working on a Risk Assessment and had retained a contractor for that purpose; and, that the department would be paying for half of that. Also, Kennedy-Jenks, the department's consultant will be reviewing the Risk Assessment to design a remediation plan. The remediation plan will be subject to approval by DEQ.

Grazing Fees for Calendar Year 1997. Director Hamilton said the rates were based on a formula the board adopted several years ago - the fee for 1997 will be \$4.58/AUM for cattle; the rate for sheep may be different. The reason sheep prices may be different is that if sheep prices are 30% or more less than cattle prices, then the AUM rate for sheep is 25% less than the AUM for cattle.

Other issues that were on the information agenda, but not discussed, included: Timber sale activity report; Interest rate update; and, Gypsy Moth update.

Superintendent Fox moved to adjourn and by unanimous consent, the meeting was adjourned.

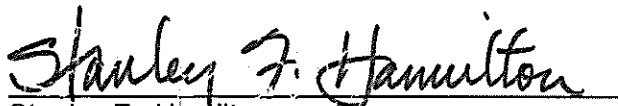
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President, State Board of Land Commissioners and
Governor of the State of Idaho



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