

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 to the Board

MINUTES SPECIAL MEETING - GRAZING IDAHO STATE BOARD OF LAND COMMISSIONERS April 5, 1996

The regular meeting of the Idaho State Board of Land Commissioners was held on April 5, 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
Honorable Pete Cenarrusa, Secretary of State

Stanley F. Hamilton, Secretary to the Board

A special meeting of the Idaho State Board of Land Commissioners was held to discuss grazing lease applications. All members of the board and Stan Hamilton were present.

Review of board actions at December 11, 1995, and February 13, 1996, board meetings.

Director Hamilton noted that the first item was for information only for the board to review what has taken place at past meetings. This was a refresher for the December 11, 1995, and February 13, 1996, meetings.

Reconsideration of Qualified Applicant Status for Idaho Watersheds Project Conflict Grazing Lease Application Numbers 45, 47, 48, and 49, incorporating lands awarded to Simplot Livestock Company in lease G-6639.

Director Hamilton reviewed the Land Board Memorandum and provided background for the reconsideration.

The issue before the board is reconsideration of qualified applicant status for IWP conflict applications number 45, 47, 48, and 49 for grazing lease G-6639 which had been awarded earlier to Simplot Livestock Company.

At the December 11, 1995 special board meeting, the board addressed the qualified applicant status for IWP with regard to these conflict applications for lands in lease 6639 that were formerly held by Simplot Livestock Company.

Based on the material presented to the board and the statements made at the meeting, the board determined that IWP was not a qualified applicant with regard to the above-listed applications. In early February, the Attorney General became aware of materials that should have been included in the record concerning the board action on these applications but were inadvertently omitted.

The February 13 board meeting, based on that information and the petition of IWP to consider the board's earlier action that determined IWP was not a qualified bidder, the Attorney General moved that the board reopen and reconsider the award of lease G-6639. The motion passed with four members voting aye and the Governor abstaining.

The description of lands under conflict and a description of the current management status are in the current Land Board memorandum.

Based on information and materials before the land board regarding IWP's 1995 conflict grazing lease applications, number 45, 47, 48 and 49, as well as other information of record before the board relating to IWP and other current and prior conflict applications and in accordance with the land board's authority and discretion as trustee of endowment lands under Idaho Code § 58-310 (b), the department recommends as follows:

- REJECT IWP's 1995 conflict grazing application numbers 45, 47, 48, and 49 submitted by Idaho Watersheds Project for lease G-6639. Award the lease for the conflicted parcels to the former lessee, Simplot Livestock Company.
- DIRECT the Department of Lands to continue pursuing the development and implementation of grazing management plans in accordance with § 58-310 (b) and to continue its consideration of other management options for the protection and enhancement of the state's range lands, including riparian areas.
- Reaffirm that state range lands are to be leased for grazing purposes and managed, to the extent possible, in cooperation with adjacent land owners in order to maximize the direct and indirect financial returns to the endowment over the long term and to

maintain the productivity of the land through the development and implementation of appropriate grazing management plans, including provisions for riparian areas.

- Simplot should sign a lands exchange addendum for each parcel to be offered a standard ten year lease and that the offered lease should be limited to three years if they fail to sign the addendum. Further, that Simplot be required to update the existing grazing management plan or enter into a new management plan agreement to meet department standards and specifically address riparian management concerns on state lands.

Extensive discussion followed with testimony from all parties involved. Mr. Marvel addressed the board, stating that, as the President of the board of Idaho Watersheds Project, he would like to object to the procedure the board has chosen to take at this meeting in that specifically, IWP had just received the staff memorandum to the board - not twenty minutes ago - and in addition, they received the supplemental information from Simplot Livestock Company about five minutes ago.

He stated that IWP had had no opportunity or time to review what is presented in the documents and no opportunity to develop a response to the documents in a timely fashion in order to present that information to the board. He requested that IWP be given the time to do that.

Attorney General Lance moved that IWP be given a period of one week to file any responsive documentation they would like to file; that the material would be subsequently considered by the board at a regular noticed meeting; that no other or additional testimony be taken, except for the dispensation given to his counsel or organization.

Controller Williams seconded the motion, after clarifying that additional testimony would not be taken at the time a decision was made - based on the full record before the board at that time - but that further testimony would be taken during the meeting at hand.

Attorney General Lance agreed Controller Williams' interpretation was correct.

The motion passed unanimously, all members being present.

Consideration of Qualified Applicant Status for Idaho Watersheds Project Conflict Grazing Lease Applications listed below.

Director Hamilton provided background information on the following Conflict Grazing Lease Applications:

<u>App #</u>	<u>Lease #</u>	<u>Prior Lessee</u>	<u>Allotment Name</u>
#14	G-9740	San Felipe Ranch	Spring Basin
#15	G-9740	San Felipe Ranch	Broken Wagon
#16	G-9740	San Felipe Ranch	Bear Creek

#36	G-9755	Eldon Ward	Ice House Creek
#38	G-7390	L.C. Skaggs	Poison Creek
#41	G-7576	Sawtooth Grazing Assoc.	Dry Creek
#42	G-7576	Sawtooth Grazing Assoc.	Croy Creek
#43	G-7576	Sawtooth Grazing Assoc.	Hash Springs
#44	G-7576	Sawtooth Grazing Assoc.	Quigley Creek
#50	G-4215	Hoisington/Mathison	Purdue Creek
#51	G-4252	Kendrick Cattle Assoc.	Moose Creek

Director Hamilton stated this is a consideration of qualified applicant status for IWP on several grazing lease applications - numbers 14, 15, 16, 36, 38, 41, 42, 43, 44, 50, and 51. H proposed to have Department staff people who are field people and who are very familiar with these sites to come forward and provide the Land Board with a very short summary of the group of applications.

Director Hamilton stated that the staff memorandum in item 2 would also be incorporated in item 3 by reference and that once the staff has completed their very brief summary, they would stand for questions. Then each of the parties that are involved here would have an opportunity to comment at that time.

Director Hamilton recommended that because the department had incorporated, by reference, the materials in agenda item #2, that all IWP's applications be rejected, except for Application #36 and that for application #36 (Eldon Ward/Ice House Creek) IWP be considered a qualified applicant.

Governor Batt asked for Director Hamilton to explain again the inference - adoption of item 2 if item 3 is adopted. Director Hamilton stated, "It is intended governor, that the staff memorandum in Item 2 be incorporated as a part of the staff memorandum in item 3." Governor Batt asked, "how does that square with our action of allowing a week's deferral to comment on item 2." Director Hamilton said, "I think, governor, you would ultimately defer this to be treated the same way. I think the information contained in item 2 is important to these issues and the staff, at least would recommend that it would be incorporated, and it is our intent and we did reference that in this memorandum."

Controller Williams said that his understanding of how this is going to work is that - as to the memorandum, anything new that was contained in the book today, Mr. Marvel, as conflictor, will have time, a week, to prepare a written response. Today, we will take all testimony from anyone who's traveled here regarding these leases and then we'll make a decision. He stated that he too had some reservations about some of the things in the staff memorandum and when we make the decision, we can make it clear why we're making a decision one way or the other. What they present may or may not be the basis of those decisions.

Extensive discussion was held regarding these applications. Current lessees or representatives and conflictors were all given time to address the Land Board with their testimony.

Attorney General Lance stated as a result of board's decision relative to agenda item #2 and in fairness to Mr. Marvel and his organization, the board ought to follow the same procedure as it did with action item #2 and give IWP a chance to say whatever they want to say in writing and proceed thereafter.

Attorney General Lance moved to adopt the same procedure as with action item #2. The motion was seconded by Superintendent Fox. The motion carried unanimously, all members being present.

Attorney General Lance stated that it was his interpretation that once we've each had the opportunity to review the written materials that Mr. Marvel is going to submit, we would then publish the notice of a meeting, discuss action items #2 and #3 and come up with whatever conclusions the board or majority there comes up with.

Controller Williams stated that there is one application that the board may want to look at now, Application #36, Lease #9755. Mr. Ward's here, they've got to make some decisions on what they're going to do. The staff recommendation is that on that particular allotment, Ice House Creek over by Island Park, that the conflictor, IWP be allowed or be qualified to bid.

Discussion followed regarding Lease #9755 with testimony from Mr. Ward, prior lessee and Mr. Marvel, IWP.

Superintendent Fox stated that she didn't hear anything in today's testimony which told her that the board should switch this lease to a miscellaneous lease. Governor Batt stated that it seems to be a very good piece of grazing land.

Superintendent Fox made a motion for that piece of property to be listed as a grazing lease and be considered in the whole group, not as a separate item. Secretary of State Cenarrusa seconded the motion.

Discussion followed. Director Hamilton stated that when the agenda was put together the Board memorandum from Item number 2 was incorporated into #3. In order to dispose of application #36, which is Lease #9755, you have to dispose of that issue. He recommended that it be considered with the others next week.

Superintendent Fox withdrew her motion and Secretary of State Cenarrusa withdrew his second. There was no further discussion on this item.

Consideration of Qualified Applicant Status for Golden Marmot Farm (GMF) Conflict Grazing Lease Application Number 72.

<u>App #</u>	<u>Lease #</u>	<u>Prior Lessee</u>	<u>Allotment Name</u>
#72	G-4008	Duane Beale	Swamp Creek

Robert Brammer, Lands & Range Specialist provided the background information for Grazing Lease Application Number 72. Duane Beale is the prior lessee for the Swamp Creek allotment. This allotment was discussed in detail at the December 11, 1995 board meeting.

The Department recommended that Golden Marmot Farm be rejected as a qualified grazing lease applicant.

Discussion was held with interested parties giving testimony. Director Hamilton suggested that the decision be deferred to give Mr. Marvel time to prepare a response, as in agenda items #2 and #3. By unanimous consent the board agreed to the same process used in agenda items #2 and #3 for this agenda item.

Consideration of Qualified Applicant Status for Mike Tomchak Conflict Grazing Lease Application Number 35.

<u>App #</u>	<u>Lease #</u>	<u>Prior Lessee</u>	<u>Allotment Name</u>
#35	G-8500	Crystal Brothers	Sage Junction

James Wood, Range Resource Supervisor, provided the background information on Application #35, Lease # G-8500, Sage Junction Allotment. The prior lessee is the Crystal Brothers and the conflictor is Mike Tomchak.

Controller Williams moved that both the current lessee and the conflictor be considered qualified grazing lease applicants.. Attorney General Lance seconded the motion. The motion passed unanimously with all members being present.

Consideration of Golden Marmot Farm request to assign lease (Conflict Grazing Lease Application Number 71) for the Bates Creek section to Idaho Watersheds Project.

Bryce Taylor, Chief, Bureau of Range Management and Surface Leasing presented the background on this issue. This particular lease was auctioned January 4, 1996, after having been deemed both qualified applicants in the December Land Board Meeting. The bid was one hundred dollars (\$100) from IWP. There were no other bids placed. The opposing party chose not to enter a bid. The former lessee had not applied to renew this lease, therefore Idaho Watersheds Project was easily qualified under the earlier negotiations. At this time the lease is still within the hands of the Department. Golden Marmot Farms has not signed it as yet, nor have the Board Members; the Secretary of State, The Governor or the Director.

The Department's recommendation is to authorize the Department to assign the lease from Golden Marmot Farms to Idaho Watersheds Project. The basis for that recommendation is that grazing is the highest and best use on this particular parcel, however since it is totally fenced separate from other lands , the parcel also lends itself to additional or other uses. It is a totally independent unit.

Superintendent Fox stated that she thought Golden Marmot Farms was approved for this lease because they were going to put cattle on this property. Mr. Taylor stated at this point in time, by the newspaper at least, Golden Marmot Farms or IWP, whichever one ends up with the lease has stated that they would rest the property for the entire ten-year period.

Superintendent Fox made a motion to not allow the transfer. Attorney General Lance seconded the motion. Director Hamilton reminded the Governor that there is the memorandum from Item 2 and the Board has been deferring those. Attorney General Lance stated that agenda item number 2 is totally distinct and different as far as he's concerned. The motion carried on a vote of 4-1 with Controller Williams voting no.

Consideration of Idaho Watersheds Project offer of additional monies for the award of certain conflicted grazing leases.

Tracy Behrens, Range Management Specialist provided the background information. Last October, in preparation for the Land Board discussion on all the conflict grazing leases the Department contacted all the applicants and asked them to submit a statement of qualifications for evaluation. In the majority of the statements that were submitted by IWP, they included a statement that should they be awarded a specific lease, they would submit an additional amount of money based on whichever lease it was. In addition, they offered to pay two dollars (\$2) additional per AUM for every dollar per AUM increase that the AUM increased by the Board.

Mr. Behrens stated that the Department believes that it would be inappropriate to accept any monetary offer for a lease, except within the context of an auction. In fairness to all parties involved with an auction, all monetary offers should be submitted at the time of the auction. No monetary offer should be accepted outside the normal auction proceedings. In the announcement that went out to the parties involved in three of those, the Department included a statement that said, all monetary offers for the auction parcel must be presented during the auction proceeding. No offers will be accepted after the auction is completed. None of those scheduled included additional offers.

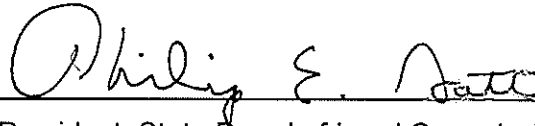
The Department thinks it would be appropriate to have the Board make a policy and the Department recommends that the Board reject all offers of additional compensation for a lease above the amount specified as the annual rental by the Board, except for those monies gained through the premium bid provision set forth in Idaho Code Section 58-310(b).

Secretary of State Cenarrusa made a motion to approve the Department's recommendation. Attorney General Lance seconded the motion. The motion passed unanimously with all members being present.

IWP was presented with the book used by department staff during the special meeting. Laird Lucas, counsel, represented IWP during the meeting both when Mr. Marvel was and was not present. Mr. Lucas stated he did not represent Golden Marmot Farm.

The board is to reconvene (within a week or so) and revisit each agenda item for which a decision was deferred at this meeting.

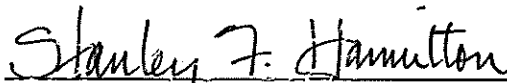
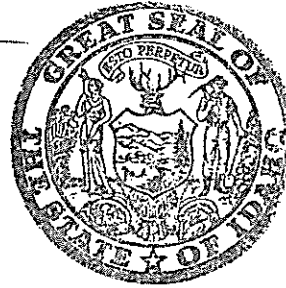
IDAHO STATE BOARD OF LAND COMMISSIONERS



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



Pete T. Cenarrusa
Secretary of State



Stanley F. Hamilton
Director, Idaho Department of Lands