



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  
July 9, 1996

A regular meeting of the Idaho State Board of Land Commissioners was held on July 9, 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 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

Stanley F. Hamilton, Secretary to the Board

Director Hamilton explained that Consent Agenda item #4 was withdrawn because the department had not received a signed agreement from Mr. Strode in time to have it included in the meeting. The signed agreement was received on Friday, July 5, however, and Stan asked the board to address the matter at their next meeting in order to meet public meeting requirements.

**CONSENT AGENDA**

Controller J. D. Williams moved to approve the consent agenda and the motion was seconded by Secretary of State Pete Cenarrusa. After much discussion, the motion passed on an amended count of 5-0 with Superintendent Fox clarifying her earlier vote of "nay" as specific to Range Management & Surface Leasing Bureau Official Transactions, lease G-6191, only.

1. Approve official transactions for the month of June 1996
2. Approve proposed timber sales
  - a. Deadlock, 232 acres . . . . . CR-3-0419
  - b. Beaver Mtn, 425 acres . . . . . CR-3-0415
  - c. Johnson Creek Park, 554 acres . . . CR-5-0082

3. Approve addition of qualified bidder, timber sales:
  - a. William Wise Partnership, Kingston, Idaho

Discussion, as initiated by Superintendent Fox, centered on Official Transactions for June - specifically, grazing lease G-6191 for Golden Marmot Farm. Dr. Fox questioned if this lease should be approved, given the Ice Creek grazing lease the board would be discussing. She was concerned that the issue of Golden Marmot Farm's (GMF) being a valid bidder may yet be unresolved. She said that they had received new information received by Givens, Huxley et al, and was concerned that a precedent may be set that would be inappropriate.

Director Hamilton said that grazing lease G-6191 was authorized previously by the board, was located in the Owhyee's, and had no bidder's.

The Superintendent's second concern was related to timber sales and whether or not the department, and these sales, would be following the guidelines presented by Steve Mealey, of the USFS, at the last board meeting and, specifically, if the same type of trees would replace those that were removed.

Director Hamilton responded that natural regeneration is used whenever possible, allowing trees best suited to that site to return. If natural regeneration is not feasible, then the site would be planted with mixed specie to provide the best seed match for the area and to provide good diversity. Stan said that Ponderosa Pine, White Pine, and other naturally occurring species are used, with White Pine being desirable because of its high commercial value.

Stan concluded that he believes the department is following the recommendations of the EIS study group.

In response to Governor Batt's question about grazing lease G-6191 being uncontested, Stan said that it was an uncontested bid at the time the board approved issuance of the lease to GMF and the Official Transaction merely ratifies the board's action. In addition to G-6191, other leases approved for issuance by the board are included in the Official Transactions for grazing.

It was also noted that this lease had a bid of \$100 from GMF and that a request by GMF to assign the lease had been denied by the board.

Controller Williams added that this parcel has no grazing management plan, no grazing allotment, has no water resource issues, and is all fenced. In this case, he said, reasons for disqualifying GMF, as may have been considered in other leases, were not applicable.

Superintendent Fox asked if the qualifications of the bidder were not also a criteria to be used in awarding a lease.

Controller Williams responded that while qualifications of bidders may be applicable at times because of site specific conditions, but that in this situation, under the Constitution, GMF could not be excluded from bidding - regardless of their occupation or situation.

Secretary Cenarrusa asked if only one party showed up to bid, was there really an auction - doesn't it take two?

Stan Hamilton said that the long-standing policy of the board and the department has been that if an opportunity to bid has been given and one or more parties choose not to participate, an auction has still taken place. For instance, if the conflictor does not bid at auction, then the lease is awarded to the existing lessee.

The Director summarized by saying that the board had previously determined that GMF was a qualified bidder, along with the existing lessee; an auction was held; GMF was the successful bidder; and, the board awarded the lease to the successful bidder.

Attorney General Lance added that GMF had attempted to assign the lease to Idaho Watersheds Project (IWP), who had been denied qualified bidder status and that the board had determined that for lease G-6191, GMF was a qualified bidder and to reverse its decision now would make it difficult to defend in court.

Superintendent Fox asked how GMF was related to IWP.

Attorney General Lance answered that some of the people involved with GMF may also be involved with IWP but that they are separate entities, the distinction being that GMF reports agricultural operations and IWP does not.

Controller Williams asked if a miscellaneous lease to an outfitter and guide was typical of something done before and if the land leased to an outfitter would still be open to the public.

Mr. Hamilton responded that land leased by an outfitter and guide remains open to the public; the Board of Outfitters and Guides issues area specific licenses and controls the type and number of operators using the land.

Superintendent Fox voted nay at the time of the vote on the previously noted motion, due to her concerns regarding grazing lease G-6191.

## REGULAR AGENDA

Audience with the board - Mark Hintze, POLYSI, Inc. Tabled.

Mr. Hintze was not in attendance at the meeting.

Smith's Ferry land exchange - Boise Cascade. Approved.

Winston Wiggins, Assistant Director-Forestry & Fire, noted that in its September 1995 meeting, the board had approved beginning the process to exchange land between the state and Boise Cascade: the state would acquire a site and facility in Cascade for the Southern Idaho Timber Protective Association (SITPA) and Boise Cascade would acquire general fund land in Smith's Ferry.

The agreement required that IDL appraise the land and that SITPA clean up all hazardous waste on the site to be vacated. Mr. Wiggins said that those conditions have been met - the state contracted the appraisal of the land, Boise Cascade cruised the timber on the land, the state confirmed the cruise with a check cruise, and the timber was appraised by the contract appraiser - and the state and Boise Cascade are ready to proceed.

Value of the timber is \$420,000 and the estimate for the facility (to be constructed) and site at Cascade is \$300,000±. Boise Cascade is to pay any difference in values by check payable to the state.

Mr. Wiggins added that \$300,000 for the facility and site was an estimate, based on unconfirmed bids, and that Boise Cascade would actually be paying the cost for the building and the site. The price to be paid for the land may be negotiable to a lesser amount.

Winston clarified that the state paid for the appraiser and that the appraisal included valuation for standing timber. Boise Cascade measured the standing timber and IDL verified the measurements on 6 of the 30 plots (chosen by random selection). The appraiser then valued the timber, based on volume of standing timber and other considerations.

Mr. Malaney, of Boise Cascade, offered that they had hired a private firm to cruise and calculate the volume of standing timber. That information was then provided to the appraiser to determine a value. Mr. Wiggins "checked" the cruise, to confirm the contractor's numbers.

Attorney General Lance clarified that the state had, in fact, selected the appraiser and then asked that all 30 plots be "checked" to verify the standing timber and provide the results at the next meeting of the land board.

Controller Williams reminded the board that this exchange involves general fund land, not endowment land.

Attorney General Lance asked Stephanie Balzarini if the recent Utah Supreme Court ruling would apply in this instance.

Ms. Balzarini, Deputy Attorney General, said that the Utah case did involve endowment lands and this land was general fund land, so the application may not be the same.

Superintendent Fox moved to approve the land exchange between the state and Boise Cascade. The motion was seconded by Controller Williams and it passed on a vote of 5-0.

Appeal of lease auction results for G-9755 - Ice House Creek/Eldon Ward & Sons. Denied.

Director Hamilton noted that on Friday he received a letter from the Land & Water Fund of the Rockies which he distributed to the board and noted that Bob Sears of the Idaho Cattleman's Association had asked permission to address the board.

Tracy Behrens, Range Management Specialist, Bureau of Range Management & Surface Leasing, summarized the issue as being an appeal by Eldon Ward & Sons concerning a grazing lease auction held for their expiring grazing lease G-9755, Ice House Creek Section.

Mr. Behrens reminded the board that they had approved Idaho Watersheds Project as a qualified applicant for this parcel in April 1996 and that the only other qualifying applicant was Eldon Ward & Sons (former lessee) who was qualified at the December 11, 1995 land board meeting.

A lease auction was conducted on May 9, 1996, by the Idaho Falls Department of Lands office. At the auction, IWP submitted the first bid - for \$12,000, Eldon Ward & Sons submitted the second and highest bid - \$12,050.

On May 29, 1996, Eldon Ward & Sons filed an appeal to the board to reject all bids submitted at the auction and the board order a new auction for qualified applicants. Their arguments in support of their appeal were:

- 1) IWP was not a qualified applicant because they do not meet statutory criteria per I.C. § 58-310B
- 2) The department failed to follow normal bid procedures; and,
- 3) The contested parcel was not an isolated unit.

Hugh O'Riordan, counsel for Eldon Ward & Sons, referring to his letter and analysis dated June 28, 1996, asserted that IWP is subject to the same laws as the former lessee but the department's handling of the auction and bid has created a separate criteria for IWP which allows them, as a non-profit organization, to take advantage of tax laws to bid on commercial leases.

Mr. O'Riordan pointed out that he believed the auction or bidding process had been manipulated by puffing. He defined "puffing" as a secret understanding with the seller to bid up prices. He also noted other types of manipulations: "secret arrangements" to stifle competition; "fictitious bidding" to mislead bidders; "combination bidding" to chill bidding; and, "bid rigging" which is to bidding by undisclosed principals or real property and interests.

Essentially, Mr. O'Riordan, asserted that IWP, a non-profit organization, was seeking to bid on leases in order to increase the prices - or, puffing, while claiming to be assisting the land board fulfill its fiduciary responsibilities.

Mr. O'Riordan also said they had reviewed documents for IWP and noted that recent tax returns indicated the corporation had no employees, no apparent resources, and no commitment to grazing or commercial leases. They requested that the auction be voided because of "puffing" and because IWP applied for leases in 1994 and 1995 when it had inadequate funds/resources to fulfill its financial obligations to the state for those leases.

He said it was within the purview of the land board to deny qualification to any bidder who had inadequate resources to fulfill its contractual obligations and that, in fact, obtaining a bid without those adequate resources was the epitome of bid manipulation.

Attorney General Lance asked if it was Mr. O'Riordan's intention that the structure of any bidder such as a church be examined and that non-profit organizations should be excluded from the bidding process.

Mr. O'Riordan clarified his statement to mean that the board should look at the bidders, not preclude them and added that there appears to be significant indication of manipulation.

Dr. Fox asked Mr. O'Riordan to clarify how he believed the bid had been "puffed."

Mr. O'Riordan replied that

- (1) The Articles of Incorporation for IWP do not state their purpose to be grazing of state lands and is set up as a charitable corporation;
- (2) Does have language of "any legal purpose" but it is vague;
- (3) The By-Laws do not indicate a purpose to graze state lands;
- (4) Application for Employee Identification Number, filed by the corporation in January 1994, indicates 0 employees - for agricultural, nonagricultural, and domestic;
- (5) Application for Recognition of Exemption indicates activity codes of 350, 352, and 351 all of which nothing to do with grazing, agricultural or farming properties;
- (6) Page two, paragraph one state IWP's intent is to not to graze state leases for profit but to acquire leases for protecting riparian habitat and to improve the environment of which neither are a basis for bidding on commercial grazing leases
- (7) The tax returns for 1994 and 1995 indicate proposed office expenses, travel and legal of \$2750 and \$4900, respectively, indicating an inability to seek and operate 16 grazing leases;

(8) Total fund balances or net assets are \$2500 and liabilities are \$1500

Mr. O'Riordan stated that in his view all of this should disqualify IWP from all the bids because they are not in the real business of managing state lands. Mr. Cenarrusa asked him if he meant that IWP is just a scheme to raise the bid against the existing lessee and have no intention of upholding the law or grazing any cattle.

Mr. O'Riordan said it depends on how you interpret scheme. It is clear what IWP is doing for the land board. They are bidding the leases up to make more money for the land board. He stated that in his view, IWP is bidding without assets or intent to comply with the statute. Mr. O'Riordan added that in essence what is happening is a form of "puffing" but is different than what is traditionally done because it's being done by a non-profit organization for other purposes.

Mr. Michael Ward, President of Eldon Ward & Sons, addressed the board about page 3, section C, sub-section 6B, stating that if it applies to the current lessee, it should also apply to the conflict applicant as well. If not, he concludes that both parties are not treated equal or provided equal protection under the law. Also on page 3, section D, sub-section 6E, he does not recall the land board giving Eldon Ward & Sons' response any consideration in their discussions. In his view IWP should be disqualified under this sub-section.

Mr. Ward stated that he is confused about item 3 on page 4 - "leasing is open to either grazing purposes or other miscellaneous uses." Grazing purposes is easily interpreted, but what is meant by "other miscellaneous uses." In his opinion, this should be defined before an entity is allowed to bid on that basis. Also on page 4, section B, item 1 - the filing date deadline of June 30 was moved to give more time to settle all conflicts. Auctions are not done in a timely manner and are thereby causing impossible situations of finding alternate grazing source in a short amount of time. This is unfair to the current lessee.

Mr. Ward's bid of \$12,050 was for two reasons; 1) being placed under duress with no place to go with their replacement heifers and 2) there was a distinct possibility if they did not bid at least once, they would be ineligible to file a protest which has now become reality.

The Attorney General stated that the only way the land board could address Mr. O'Riordan's comments would be to require that each bidder bring with them a letter of credit from their bank. It would be true to say also, that if in fact IWP would have been a successful bidder and were unable to come up with the money, the second bidder in terms of amount would have been awarded the bid.

Mr. O'Riordan agreed and thought it would be appropriate for the land board to require security, especially for unknown/new bidders.

Mr. Williams wanted to know if Mr. Hamilton or Mr. O'Riordan knew if there was any time that IWP has failed to comply with any financial requirements, like pre-paid bids. Mr. Hamilton said he did not recall any instances.

Mr. O'Riordan added that the law doesn't require they have to fail. Under regulations, once they fail they are disqualified. What he is pointing out is that at the time they bid on Ward's lease there was little or no money reported at the IRS and there were no cattle or the ability to graze.

Dr. Fox said that people are trying to do business in grazing and here is an organization coming up with money not to do business, but to stop business. She stated Mr. Marvel doesn't think we as elected officials are getting enough money out of grazing and is taking it upon himself to "puff" the price which in turn will put these farmers out of business. IWP is playing this like a game.

The Attorney General said the Land Board would get into trouble with the Supreme Court by suggesting that someone couldn't come up with the money (based upon tax return information) so they can't participate in the auction. There would have to be a breach of contract - like failing to comply with the management plan which requires a certain number of animal units to actually be grazed. He also added that Mr. Ward would have only needed to be a bidder, not the successful bidder to have an interest in this proceeding. If IWP had been the top bidder and been able to come up with the money, regardless of the source, the objective standard was whether they could or could not perform.

Mr. Williams had a question about the \$10,000 improvement credit, the fence. On the notification of auction letter that went out from Ken Crane, it stated that any bidder had to make payment before the start of the auction, but on the side there was a "no" with initials.

Mr. Hamilton stated that the letter was contrary to department policy. Ken Crane is a young Resource Manager in eastern Idaho who made a mistake. It wasn't caught before it went out. Our policy says that the payment has to be made after the auction and the parties were apprised of that before the auction.

Dr. Fox asked Mr. Hamilton if there was a minimum bid they have to start at on a parcel. Mr. Hamilton stated typically not. The auctioneer simply says that the bidding is open and may establish a minimum of \$1, \$2, \$5 or something like that. That is fairly standard. Dr. Fox also asked what was anticipated or what is a normal bid. Mr. Hamilton said there are no normalities in bidding. It may be zero where no one bids to as high as \$140,000. This particular one would have increased the annual grazing fee by \$2.68 an AUM over the life of the lease.

Mr. Ward stated that his first statement still hadn't been addressed. Why is it that I have to comply with certain requirements where I am already the established lessee. I think it is unfair that I have to answer certain questions on the application and the conflicting applicant doesn't (do you have adequate land and resources to feed the livestock over the winter that they are not on that parcel). To my understanding this could disqualify me and yet it's not required to be answered by the other party, clearly this is unfair.

Mr. Hamilton stated that these questions are looked at by the way they are written in the code. Some of the questions are directed to either the applicant or the conflict applicant and some are

addressed to both. The fact the Mr. Ward doesn't have adequate land to run his operation would work in his favor rather than against him.

Governor Batt added that the staff said this wasn't the case in this particular instance. Is Mr. Ward saying that the staff is incorrect, that this parcel isn't an interval part of his operation to where it could not be judged separately? Mr. Ward argued that it's a very important part of his operation.

Governor Batt asked Mr. Hamilton what kind of standards the staff uses to establish that. Mr. Hamilton said that Eldon Ward and Sons has stated that they own or control adequate land to provide for all livestock that they graze on state land. We would have accepted that response at face value and it was provided to the board just as they provided it to the Department. We would not use this particular statement to disqualify a conflict applicant because it specifically addresses the current lessee and would not apply it to a conflict applicant. That is what the code says.

Governor Batt stated that was what he based his vote on. It was a stand alone venture and couldn't be bid upon separate because it wasn't striking at the heart of another operation.

Mr. Hamilton stated that the staff's position on that came from discussions the board had earlier on intermingled parcels dealing with allotments. There would be a serious concern if you had intermingled parcels and a parcel was removed from the allotment. It may have an adverse affect on one or more operators. This parcel is fenced and is certainly used by Mr. Ward in his operation, but doesn't think this is a valid criteria other than in cases where it might be a clear hardship.

Mr. Ward spoke about the importance of the parcel. He said that it is a very good parcel of land and has high quality grazing. He currently uses it for his replacement heifer herd. They are different from cows and calves, they graze the land very lightly, they don't congregate and stay on the creek banks. It is a critical part of our operation and without it would probably be forced to buy outside replacement heifers.

Mr. Williams added that this parcel is in great condition. He wanted to know if Mr. Ward let people camp in the southern part toward Island Park Reservoir? Mr. Ward said that people use it year around to hunt, fish and float the creek.

Mr. Williams also wanted to know if he thought \$7.50 per AUM for that parcel was fair. Mr. Ward replied that at \$7.50 plus his costs of labor and management, he is basically working for free. Mr. Cenarrusa added that we are getting a fair market price for that parcel.

Mr. Hamilton said in 1986 the bid was \$4,050 and that was a premium bid for a 10 year period. In 1976 the bidding was a little different because the law was different, it was \$2,304 a year. Mr. Ward has 450 AUM's per year on 958 acres.

Mr. Cenarrusa stated that it has been said this parcel is in excellent condition. Mr. Marvel said his program is to improve the grazing situation and the riparian areas. Wouldn't we be wrong in making Mr. Marvel a qualified applicant when his intentions are not what he says. How would the department go about awarding the lease if Mr. Marvel was the only bidder and the Ward's didn't bid? Mr. Hamilton said the department would develop a grazing plan saying that the parcel would rest for 10 years. We would look at the impact, but that is how we would proceed under the current situation.

Mr. Cenarrusa added that one of the biggest fires that started this week, started on land that hadn't been grazed for 3 years. It burned 120,000 acres of matted forage. This is what would happen in this case if you let it rest for 10 years without any grazing. I don't think it would be practical to award Mr. Marvel's applicant status. Dr. Fox agreed with Secretary Cenarrusa.

Governor Batt proceeded with more testimony.

Mr. Sears, Vice President of the Idaho Cattle Association, appeared in support of the appeal of the Eldon Ward and Sons lease. He stated that three years ago they became aware of some confusion in determining the intent of the Idaho Code in dealing with grazing land leases. The Idaho Livestock Association encouraged the legislature to clarify the criteria to be considered in determining the awarding of state land leases. He also had the same arguments against IWP being a qualified bidder as previously mentioned. He stated that there was a good management plan in place now on that parcel and that IWP would not be able to maintain the plan with no cattle to graze. He also mentioned that the auction was held too late for the Ward's to find another place to graze and the bidding process left the Ward's no choice but to bid. These lands are for grazing leases, not Idaho conservation leases or watershed beautification riparian leases. By definition, grazing leases suggests the necessity of grazing livestock and the overall management plans for those lands. It is quite apparent that Eldon Ward and Sons has done an excellent job of utilizing grazing management of those lands and keeping them in the prime condition that they are. He called the board's attention to the remarks of the Honorable Judge Clarence A. Brieber of the US District Court of Wyoming, June 12, 1996 decision in public lands council vs. Bruce Babbitt. "...Allowing individuals who are not actually raising livestock to obtain grazing permits frustrates the legislatures intent. These individuals should not be able to obtain grazing permits they cannot use and thereby preclude livestock operators from grazing the livestock of public lands." Mr. John Marvel has publicly announced his intention of removing livestock from public lands which would disqualify him as a bidder under the current classification of this land. He petitioned the board to uphold the appeal of Eldon Ward and Sons on the Ice House Creek lease and reduce the amount they are required to pay to a reasonable level.

Dr. Fox asked Mr. Sears how all of Mr. Marvel's contested bids have affected the members of his organization.

Mr. Sears stated they have been on edge with regard to their position in future grazing on state lands. In many cases, especially with the way the market is right now, many of them have state lands scattered among their private or BLM leases in which the state lands are probably the

poorest land they have. It has been an insignificant amount to them, but they have paid for those sections simply because they feel they have an obligation to the schools and the state. Many of the isolated sections have not been grazed for a long time and many people have talked about dropping those leases because they have no use for them.

Mr. Laird Lucas, representing Idaho Watersheds Project, then presented his testimony to the board. He stated that IWP is not just engaged in confrontation tactics, they are trying to cooperate with ranchers to improve allotments. IWP is interested in increasing school returns from the lands and protection of riparian resources. IWP is an environmental, non-profit organization and has never tried to conceal that fact. His first response to what Mr. O'Riordan said, is that this is an appeal that was brought after Mr. Ward won the auction. I understand he has accepted the benefits of the lease and has turned out his cows on the lease. He agreed to pay the amount of money at the auction and is now trying to pay less even though he has received the benefits from it. In legal terms, I think there is waiver or stopple here. He should be stopped from pursuing this appeal where he has accepted the lease. It is not an appropriate motion for reconsideration after the lands board's decision in April 1996, as to whether IWP is qualified as a bidder. He presented Mr. Hamilton the original sworn affidavit of Mr. Marvel, to have entered into the record, stating that he had sufficient funds to pay the bid amount at the Ice House auction as well as for the fence. H said that the Board had heard unsworn allegations from Mr. O'Riordan which continued after he received this affidavit. If the Land Board wants to reverse the auction results on Ice House Creek, Mr. Marvel authorized Mr. Lucas to bid again, the amount he originally bid at the auction. Mr. Lucas said he had not heard Mr. Ward make any offer or new bid that he would be willing to pay for this lease. Apparently, he would like the results overturned and obtain the lease at existing rates without paying any premium.

Dr. Fox asked Mr. Lucas why Mr. Marvel only bid \$12,000, why not \$12,065. Mr. Lucas stated that he felt Mr. Marvel bid the amount the allotment was worth.

Mr. Cenarrusa then asked Mr. Lucas what Mr. Marvel's intentions were with the lease if he was the successful bidder. Mr. Lucas stated to the best of his knowledge, Mr. Marvel's intentions were to management the allotment, ensure against fire hazards, maintain the fences and he might consider subleasing rights for grazing.

Mr. Hamilton stated that the proceeding here is perfectly appropriate as to the land board reconsidering it's motion. The issue here is whether or not the board should award the lease to IWP or Eldon Ward and Sons based on the auction. The appeal here is the amount that was bid at auction and whether or not you should award the lease.

Governor Batt questioned now that Mr. Ward has enjoyed the benefit of the contract, can it be rescinded. Attorney General Lance said he thinks enjoying the "fruits" of the bid only pertains to this grazing season, it wouldn't be for the full 10 year lease.

Governor Batt also questioned whether the staff was in error by saying this was an independent parcel. That is mainly what I relied on with my vote to begin with. Mr. Cenarrusa said he didn't

think it was an independent parcel. The board acted upon it and there was a motion made to reclassify which didn't carry. It's highest and best use for 90 years is grazing and you can't change that. There is no other apparent classification for it now, nor was there at the time that Mr. Marvel was awarded applicant status.

Governor Batt wanted to know, if this is such good grazing land, why didn't another grazer come forward and bid. Mr. Cenarrusa responded by saying that many contestants do not want to participate when Mr. Marvel is bidding. Governor Batt said that by disqualifying Mr. Marvel's application, it would have eliminated any change of competitive bidding by other grazers. Mr. Cenarrusa said he thought if any of the other grazers knew that Mr. Marvel was not a qualified applicant, there is a chance there would have been more bidders.

Mr. Hamilton stated that this parcel is 960 acres and not associated with another other state lands. It has good road access as the county public road goes right by it. It is fully fenced and has good water. From that standpoint, the question is could that parcel be used by an operator under any circumstances. The staff arrived at the conclusion that it could, with a minimum of disruption, be used by any other cattle operations.

Mr. Williams said we should look at whether or not it makes a difference to the endowment. He thinks it does make a difference when you talk about long term management and who the operators are. With this particular case, he doesn't think it makes a difference to the endowment who the operator is. If that is the case, the constitution is very clear in that we have an auction.

Mr. Cenarrusa disagreed that the constitution is not clear that we have auctions when land is to be leased. The Admission Act states that when endowment lands are to be disposed of, an auction shall be held. The way it is written in the case of a lease, it is up to the legislature for determination. It is not only in the Admissions Act, but the Constitution as well. Mr. Marvel is not a qualified applicant and we should follow the law. The law prevails until the courts do otherwise. I think the auction should have been held later than it was, like one year, not 30 days later, to give the current lessee time to find somewhere else for his cattle to graze. I think we should retract somewhere and allow the Ward's a one year lease at the existing fair market price and then hold another auction which is timely by having their applications in by June 30 so it gives everybody a fair chance.

Attorney General Lance and Governor Batt agreed that there is a lot of work to be done in terms of definitions and everyone would like the answers. Mr. Lance said he thought the starting point would be for somebody to make a determination whether we are talking about grazing lands or multiple purpose use lands. We need to be classifying these tracts of lands to the best and highest use and make sure the people we allow to be qualifying bidders are interested in grazing. Mr. Lance stated that members of his staff would meet with the State Department of Lands this week to discuss this issue.

Mr. Cenarrusa agreed and moved for the auction that was held to be invalidated, the auction amount be returned to the previous existing lessee and Eldon Ward and Sons be offered a one

year lease to complete this season at a charge of full market price, and hold another auction in a timely fashion according to law. All qualified applicants will have their applications in by June 30 and the auction will be held no more than 45 days later.

Governor Batt stated that the legislature needs to clarify this first.

Attorney General Lance said he is inclined to follow the staff's recommendation to permit Mr. Ward to have the lease for the next 10 years with the premium he bid at the auction.

After much discussion, Mr. Cenarrusa retracted his first motion and made a second motion. He moved for a compromise to award Eldon Ward and Sons a two year lease at full market value plus an average between the 1986 bid and the 1996, then have a new auction starting with the application being in by June 30 then holding the auction soon thereafter. The motion was seconded by Superintendent Fox. Attorney General Lance was against the motion.

After more discussion, Superintendent Fox moved that the auction was not appropriate and declared that the auction be invalid. The motion was seconded by Secretary Cenarrusa. The motion failed by a vote of 3 to 2. The chair explained his vote by saying he doesn't think we can go back and declare the bidder disqualified after taking a bid from him in the auction. The whole issue demands clarification by the legislature.

Mr. Cenarrusa moved that the board study and research all the testimony that was given today and meet at a special session to make a proper decision. Superintendent Fox seconded his motion.

Attorney General Lance made a substitute motion that the 10 year lease be approved for Eldon Ward and Sons for the premium as bid at auction. Mr. Williams seconded the motion. The motion passed on a vote of 3-2.

Mr. Williams proposed a motion to have the staff develop a policy for the bidding process. In a conflict auction, the current lessee has the option to make the first bid and consider the ramification of moving the date of the conflict applications back from July 31 to March 31 so people who lose their leases can make arrangements well in advance of the next year. Attorney General Lance added to the motion that the highest and best use of the land should be determined, with reasons for that determination, before land is put to auction. The motion was seconded by Attorney General Lance and passed on a vote of 5-0.

Status Report - Evergreen Forest Products land exchange. No action taken.

Perry Whittaker, Chief-Real Estate Bureau, said that appraisals to re-appraise timber land parcels and cottage site parcels are in the process of being contracted. The appraisals will be administered and paid for by the department and may be complete during the week of August 5th.

Regarding future exchanges, Perry recommended that the department select the appraiser, administer the contract, and collect the appraisal fees from the lessees' to cover the costs of independent fee appraisals. The proposed process is modeled after the one now being utilized by Utah Division of State Lands & Forestry as a result of the recent state supreme court ruling.

As well, Mr. Whittaker said that range lands were also being re-appraised

Regarding the land sale parcel in Butte County (#393-94), Mr. King indicated that he would not be interested in joining the Evergreen exchange process. He did say that a future multi-parcel exchange might be of some interest.

Chief Whittaker reported that IDL met with several experts to create an economic financial analysis of the Evergreen land exchange proposal: Doug Dorn, Chairman of Dorn, Helliesen & Cottle; Don Reading of Johnson & Associates and a professor of economics at BSU; Michael Ferguson of the Bureau of Economic Analysis; and, Bob Maynard, Chief Financial Officer with PERSI. Mr. Whittaker said that their analysis should be ready for review at the July 29 meeting although the new appraisals will not be complete.

Stan Hamilton suggested that the successful bidder for the contract to conduct the appraisals be asked to provide a "preliminary" estimate of value (based on the prior appraisals), by the July 29 meeting.

Governor Batt stated that the board was in agreement that this matter needs to be expedited to resolution. Also, Controller Williams asked that removal of the grazing parcels in the Weiser area from this exchange package be considered.

Terms of sale of state lands, Idaho Code § 58-314. Revised.

At the June 18 land board meeting, the board discussed the possibility of changing the terms for state land sales. The department's recommendation was to stay with existing policy.

Attorney General Lance remarked that the math on the spreadsheets was in error - 8% invested remains the same, regardless of where it's invested. So, the error is that in the IDL scenario, interest is charged from day one but in the other scenario, interest is charged after year one.

Mr. Lance suggested some problems inherent in installment contract sales:

- 1) The department leaves itself open to having to pay for damages caused by a purchaser who defaults on their contract - such as pollution of the land by hazardous waste and necessary clean up;
- 2) The department could lose money when a purchaser declares bankruptcy because the value of the asset may be reduced by the bankruptcy court; and,

3) The department ends up in the "banking" business and has to spend money collecting its own contracts.

Attorney General Lance also said that he had discussed the department's spreadsheets with the treasurer and the treasurer also disagrees with the department's conclusions and recommendations.

He suggested that the department get cash for land sales and use installment contracts only in the absence of alternative financing.

Controller Williams suggested that if we were to dispose of property, we first try to exchange it so that the land base can be maintained; second, sell the property for cash; and, third, use an installment contract.

The Attorney General added that five bankruptcies have had state land confirmed at a lower value (by the bankruptcy court). He also said that under federal regulations, if a purchaser pollutes land that we are selling on contract and defaults, then the department has to clean up the site and bear the burden of cost - not only risky, but expensive.

By unanimous consent, the board agreed that no land is to be advertised for sale on contract without prior land board approval and as sales will be approached from the perspective outlined by Controller Williams.

#### FY 97 Land Sales Plan. Denied.

Chief Whittaker said that during 1996, there were ten parcels on the Land Sales Plan: four were sold, three were withdrawn, three parcels would be sold at auction in FY 97, one of which has drawn strong public interest and the other two are little value or use to the state. The department considers sale of these parcels as best use for them.

The parcel generating considerable public interest is southeast of Bliss, partly overlooking the Snake River Canyon, so it may have some residential potential.

Controller Williams suggested that perhaps the department could auction the parcels for "trade" rather than cash. The proposal would indicate the amount and value of the property to be offered for trade. Mr. Williams believes there are numerous parcels throughout the state that could be exchanged by calling for Requests for Proposals for Land Exchange.

Perry Whittaker replied that in the case of low valued property, such as these particular parcels, it is not often feasible to exchange it for property that is commercial or otherwise is of greater value to us. A multiparty exchange, similar to Evergreen's, may be more suitable for these parcels and others like them.

Controller Williams suggested that by exchange, the land base could be maintained, and that generally results in a better position for the state.

After discussion regarding value and in response to Governor Batt's question, Perry explained that a member of the public can request that any parcel be put up for sale. Some years ago, during a time of high property sales, parcels were evaluated and either classified for sale or not. Those that were, were placed on a Land Sales Plan.

Director Hamilton added that the department had developed the Land Sales Plan during a time of high land sales so that the board could review what was scheduled to be sold. However, since the department now has only three parcels for sale, Director Hamilton suggested that the Land Sales Plan be discarded. Future sales could be reviewed by the board as they arise - but the options of exchange, sell for cash, and sell on contract would be the guide.

Controller Williams, in a bipartisan move to reduce bureaucracy, moved that the Land Sales Plan for 1997 be discarded, that no future Land Sales Plans be developed, and that sale of lands proceed as outlined in the preceding agenda item. The motion was seconded by Superintendent Fox and it passed unanimously.

OTHER BUSINESS: Land classification, categorization, and rating.

Superintendent Fox asked the department to provide a print-out of all the lands and the revenue generated by each. Further, she suggested that the lands should be categorized (timber, minerals, grazing, etc.) and then rated (residence or whatever). The purpose would be to provide the board with a better "picture" of the lands.

Director Hamilton responded that this could be done and he would pursue something along those lines using maps or print-outs.

OTHER BUSINESS: Financial consultants

Stan Hamilton advised the board that the department had talked with Doug Dorn and others regarding the Evergreen exchange. Additionally, Stan said that the department had viewed its charge to consult financial experts outside the department as a two-fold mission: 1) the Evergreen exchange and 2) long-term analysis of the lands in the "portfolio."

Nominations for members to serve on the Federal Lands Task Force. Deferred.

Stan Hamilton said that the subcommittee had met. He suggested that the board defer discussion about appointees to the Task Force until the next land board meeting.

Secretary of State Cenarrusa requested unanimous consent of the board to defer discussion until the July 29th meeting. There were no objections, and the matter was deferred.

### INFORMATION AGENDA

No action necessary.

#### OTHER BUSINESS: Sound system for meeting room

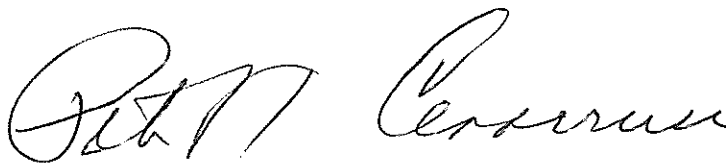
Governor Batt requested the department provide some sort of amplification system so the proceedings could be heard more clearly.

The board then resolved into Executive Session to discuss state ownership of Sand & Gravel/Split Estates after which it convened into Regular Session and the meeting was adjourned.

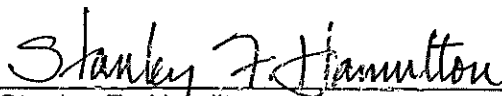
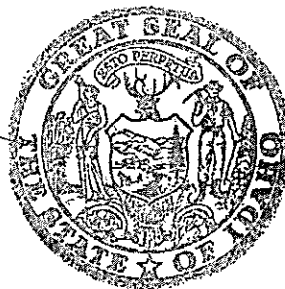
### IDAHO STATE BOARD OF LAND COMMISSIONERS



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



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Pete T. Cenarrusa  
Secretary of State



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Stanley F. Hamilton  
Director, Idaho Department of Lands