



IDAHO STATE BOARD OF LAND COMMISSIONERS

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

Stanley F. Hamilton, Secretary
(208) 334-0200

MINUTES
Regular Land Board Meeting
State Board of Land Commissioners
December 10, 1996

Members of the State Board of Land Commissioners 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

CONSENT AGENDA

1. Official Transactions
 - Minerals/Leases, Permits - October
 - Land Leases - October
 - Land Sales - October
 - Timber Sales - November
2. Supplemental Agreement request for 1997 installment on Land Sale Certificate No. 25735, Karl & Janet Smith, Public School Endowment
3. Disclaimer of Interest to Urrusuno, Boise River, Canyon County - 9.14 acres of former riverbed.

4. Disclaimer of Interest to Harris Family Ranch, Ada County, Boise River - 30.49 acres of former riverbed.
5. Timber Sale - CR-1-0283, Lower Tarlac Poles; 140 acres; Priest Lake Area

Governor Batt requested additional information on Item 4, Disclaimer of Interest to Harris Family Ranch. Director Hamilton stated that disclaimers of interest, particularly along the Boise river are a fairly common practice for the Department. There are lands that are added to adjacent private land holdings by the river. They do not have a deed that covers that, however, it is legally their property through accretion. They come to the Board and the staff has reviewed this and made a determination if the state has any interest in the property, due to ownership of riverbed lands. If there is an interest the Department proceeds with discussions, if not, the Department proceeds with a disclaimer which states the state has no interest.

A motion was made by Secretary of State Cenarrusa, seconded by Superintendent Ann Fox to accept the consent agenda. Motion passed on a vote of 5-0..

REGULAR AGENDA

Audience with the Board: Idaho Conservation League

Director Hamilton informed the Land Board that the original request for an audience with the board was made by Mike Medberry.

Rick Johnson, Executive Director, Idaho Conservation League (ICL) addressed the Land Board regarding the potential reform of the Idaho Surface Mining Act, which he would like to be considered in the upcoming legislative session. He addressed 3 specific amendments that the ICL would like the Board to consider. He said that these amendments would provide greater protection for Idaho environment and also greater protection for the Idaho taxpayer. He stressed that the ICL would work collaboratively with all interested parties on this issue and would encourage the Land Board to consider in concept the following amendments.

- (1) The Idaho Surface Mining Act should be amended to allow the state to collect a reclamation bond in the amount that reflects the actual costs of reclamation including protection of clean water.
- (2) The Idaho Surface Mining Act should be amended to require miners to submit and receive approval from the Idaho Department of Lands for a plan of operations.
- (3) The Idaho Surface Mining Act should be modified to bring the surface effects of underground mining under the regulatory authority of the Idaho Department of Lands. This is meant to primarily address the impact of tailings from underground mining on human health, water quality and safety.

Mr. Johnson provided the Land Board with considerable detailed information on each proposed amendment. He stated that he, Mike Medberry or his staff would be available to answer any additional background information on these proposals.

Attorney General Lance stated that his understanding was that these proposals were directed to the legislature. Since the Land Board is not members of the legislature and asked Mr. Johnson what, precisely, did ICL want the Land Board to do. Mr. Johnson stated that he understood there is a possibility that the Department of Lands would be putting together their own proposal to be provided to the legislature.

Director Hamilton stated that the Department is looking at draft legislation to deal, primarily with bonding. The operating plan is something that will be looked at. Surface effects of underground mines - will be looking at drafting some legislation. Any legislation that the Department takes to the legislature has to come before the Land Board and the Board has to indicate whether or they wish to have the legislation go forward.

Controller Williams suggested a working group to come up with some ideas. Governor Batt asked what group was he suggesting. Controller Williams thought ICL and any other groups interested might have such a group. Governor Batt stated that he questioned ICL involvement in the Proposition 3 debate. Rick Johnson stated that ICL was not directly involved. Governor Batt stated that Mike Medberry, Wendy Wilson & other folks were involved. Rick Johnson stated that they were not representing ICL.

Superintendent Fox asked Mr. Johnson is he was aware of the efforts of the Land Board to work with the mines for changes in mining reclamation. She stated that the Land Board is excited about the changes in mining and the efforts the companies are putting forward. Mr. Johnson stated that he was aware of changes and felt mining in Idaho has come a long way in terms of dealing with the environmental effects. He felt one issue being dealt with is simply the risk that some newly patented mines, potentially the Thompson Creek situation, could pose for taxpayers in the state of Idaho. The Environmental Impact Statement is in preparation right now for the Thompson Creek Mine and the tailings issue to foster this environmental stewardship. He stated that he felt any kind of proposal regarding the Idaho Surface Mining Act is not saying that is not a good thing.

Jack Lyman, Idaho Mining Association addressed the Board. He stated that his association has been examining the Idaho Surface Mining Act and working with Jim Yost, of the Governor's office, have had some discussions with Tom Markland, Department of Lands and Director Hamilton about the kinds of things we might be interested or willing to consider.

He stated that he was not aware of any major mining operation where a bond has been used for reclamation. He feels there are some positive changes to be made to the Idaho Surface Mining Act to assure the Board, the legislature and the citizens of Idaho that the miners of this state are responsible and willing to consider some changes that will avoid the possibility, in the future, that the taxpayers might be placed in a situation of having to take responsibility of some reclamation.

They are willing to increase the cap, maybe creating a mechanism where the Land Board could impose bonding requirements, even in excess of the cap on a site specific basis. There is some concern regarding plan of operation review and approval by the Department of Lands, if in fact this is going to duplicate an extensive effort undertaken by federal land managers. He stated that he hoped to be back at the next meeting with a proposal for the Land Board to consider.

Governor Batt stated that this is a legislative matter, but possibly a recommendation could be made. Mr. Lyman stated that if it is a Department sponsored bill, they would like to work

cooperatively with the Department and discuss this with Senator Noh who has been active in this issue. If this is something the Board and the Department could endorse, it would go a long way to assure legislature that a responsible state agency has been involved in drafting the legislation.

Director Hamilton stated that a bond has been used occasionally over the last decade and have been small, generally dredge and placer type miners who simply left or decided they couldn't afford to clean it up. He stated that we have then reclaimed the sites, and have been pretty successful in doing so. There were very few situations where the bond didn't cover adequately what was proposed. The large mining industry has a good record as far as reclamation is concerned, probably some of the best in the world.

Consideration of Grazing Lease Application G-9355 - formerly held by Lee Pritchett

Tracy Behrens, Range Management Specialist provided the Land Board with the background on this item. An application was received on grazing lease G-9355 from Idaho Watersheds Project on June 30, 1996. This lease was scheduled to expire on December 31, 1996 however, the lease was canceled for non-payment on June 19, 1996. The former lessee was contacted, with no response. This section is located in a BLM grazing allotment and the former lessee grazed sheep in the allotment. There is no evidence that the parcel was grazed this year. The former lessee owns the deeded land to the north and to the south and the BLM surrounds it. The Department recommends acceptance of application by Idaho Watersheds Project.

Secretary of State Cenarrusa asked if IWP expected to put the parcel in exchange of use. Mr. Behrens said that IWP stated on all their applications this year that the parcel would be grazed by livestock owned by them or a sub-lessee. The parcel is not fenced. The former lessee was the only one using the parcel.

Attorney General Lance asked if a range management plan and a grazing plan had been discussed with the proposed lessee. Mr. Behrens stated that he could not verify if area staff had directly contacted IWP concerning specific management on this parcel. He is aware that the Department is looking toward achieving improved management on all parcels and has expressed willingness to cooperate with the Department in developing management plans. The Attorney General felt that time would be better spent if we were presented with the range management plan. We're concerned about noxious weeds, fire suppression, etc. He stated it appears to be the consensus of the Land Board that we are not going to hand out grazing leases without a range management plan or grazing plan. Controller Williams said, "not any of them?" The Attorney General stated it was his understanding, on grazing type properties such as this. He stated he would like to see a plan while considering the lease. Look at the whole package. Mr. Behrens said that all lease applicants were requested to submit detailed information concerning management for the parcels applied for. The response from IWP was one response for all conflict applications they submitted. Their response stated they would be willing to work with the Department on development of management plans but they declined to give specific information concerning each of the individual applications.

Controller Williams said he had two points. He stated to Mr. Behrens that there is a pipeline that is on the lease that is apparently not being used right now. Mr. Behrens stated that this pipeline is in disrepair. He asked if this were reactivated could sheep have access to the water. Mr. Behrens stated that this pipeline originates on deeded land. There is no record of an easement

for it. If leased to another operation, Controller Williams would like to see a reservation in the pipeline. This is dry country. Regarding the management plans, Controller Williams said he felt unless we required management plans from everyone before we award a lease, we cannot impose this as a condition because it would not be equal to everybody.

Superintendent Fox stated a concern. IWP stated they are not going to put livestock on the parcel unless required. She felt the Board needs to know the level of intent for this parcel. Are they interested in just holding the parcel, not grazing it? Mr. Behrens stated the Department's intent is to have the parcel grazed. Payment is based on caring capacity whether or not the parcel is grazed.

There was considerable discussion regarding management plans and grazing intent.

Attorney General Lance said he was unwilling to consent to the application without a plan in place. He stated he did not like this "open-ended" approach. Secretary of State Cenarrusa stated he felt there are a lot of these throughout the state. He said we need to find out what IWP intends to do with the parcel.

Superintendent Fox made a motion that this lease be deferred to next month's meeting after a management plan has been submitted by Idaho Watersheds Project. The motion was seconded by Attorney General Lance. Motion passed on a vote of 5-0.

Consideration of Cropland Conflict Applications; C-7438 - James Mizer

Tracy Behrens, Range Management Specialist provided the background information for an application to lease land in expiring cropland lease C-7438 which was filed by the current lessee, James Mizer, and a conflict application which was filed by Ms. Donna Rose. The application filed by Ms. Donna Rose stated that she intended to use the parcel for affordable senior admittal to low income housing and that she would need a 40 year lease to accommodate financing and economic life for the project. Based on the proposed use by the applicant, the Department feels it is not an appropriate use for lands classified for cropland use. Therefore, the Department recommends that that application be rejected and that the lease be reissued to the former lessee, James Mizer.

Controller Williams stated that it was brought up in the briefing meeting what Mr. Mizer would be charged for the alfalfa lease, irrigated ground. \$18.00 per acre appears to be low. He asked Mr. Behrens if he had had time to review this information. The preliminary charge was apparently made on outdated information. The lessee has been informed that the rental would be raised to \$32.50 per acre for the irrigated cropland and he voiced no opposition to this increase.

Director Hamilton said if this parcel were to be used for low income housing, the applicant would need to file for reclassification. This can be filed at any time. The Land Board could then consider this. In this case, she filed a conflict application which came under the cropland classification, not a new application. Superintendent Fox stated that had looked at this site and it is extremely valuable. This may be an area where quantity for the schools could be increased by getting better rent. She asked how many years Mr. Mizer's lease would be for. Director Hamilton stated that there is a clause in the leases for grazing or cropland which states if there is a higher or better use is determined for the property and the Board and the Department receive an application for that use and choose to accept it, all or any portion of the grazing or cropland lease at any time. This

would be reasonable notice - basically the season currently in. There may also be improvement credit type things to be worked out.

A motion was made by Attorney General Lance and seconded by State Controller Williams to adopt the recommendation of the Department. Motion passed on a vote of 5-0.

Consideration of Cropland Conflict Applications: C-8096 - Gene Bauer

Tracy Behrens, Range Management Specialist provided the background information for the application to lease land in expiring cropland lease C-8096 which was filed by the current lessee, Gene Bauer, and a conflict application which was filed by Bob and Jim Smith. Both applicants intend to farm the parcel. The parcel had been in the conservation reserve program through the federal government. Both intend to put the parcel into grain production with a rotation of wheat, barley and possibly some alfalfa. As terms of both applications are acceptable to the Department, the recommendation is to auction the parcel and bring the high bid back to the Board for consideration.

A motion was made by Controller Williams and seconded by Superintendent Fox to accept the recommendation of the Department. Motion passed on a vote of 5-0.

Consideration of Cropland Conflict Applications: C-8829 - Merle Hone

Tracy Behrens presented the background information on an application to lease land in expiring cropland lease C-8829 which was filed by the current lessee, Merle Hone, and a conflict application was received from an adjacent landowner, Randy Pherson. When the original lease was issued ten years ago, there was a portion of the parcel seeded to alfalfa and the Department established a cropland lease on it. The current lessee had worked the parcel in with the federal cost share program to include it in the base farm acreage and subsequently, he has been receiving government cost share. Both applicants have stated they intend to continue grazing the parcel. The federal government has stated that they will continue to offer the barley based share acreage on that portion that has been farmed. The Department's recommendation is to auction the parcel and bring the high bid back to the Board for consideration. The Department recommends that a cropland lease be maintained on this parcel as long as the Federal government is providing the crop share for the barley base. When this Federal program is terminated, the department would reclassify the parcel for grazing management.

Attorney General Lance asked if the land were not leased, would the state of Idaho be entitled to the barley based payment. Mr. Behrens stated that in order to receive the barley based acreage, the parcel would have to be enrolled in a larger farm operation.

Controller Williams asked if this is the best we can do? Mr. Behrens said he felt this was the best - it follows the Department's standard procedure for getting 25% of the government cost share on farmed acreage. Secretary of State Cenarrusa stated he felt this was correct under the circumstances. Controller Williams asked if the results of the auction could come back to the Land Board for review, with the participants informed that the Board is looking at it feeling it should be somewhere in the 50% area before being seriously considered. Governor Batt stated that he was not sure that this was a legitimate comment on this. He asked if we weren't looking at the highest

bid to us. Director Hamilton stated that in the auction, we could seek a premium bid, which is a one time payment for the lease and then they have to pay the annual rent each year in addition.

Director Hamilton stated that the bigger question here is that there are other situations out there where we may have land that is under a subsidy type program. There are varying amounts of work the farmer has to do to get the check and at what level should the Board and the Department be participating in this because we do own the land.

Superintendent Fox said that this is the first time she can remember since serving on the Board where taking a cut of something good happening to a piece of property has been discussed. She stated that before the Board moves in that direction, shouldn't the take a look at all the leases to find out how many of them were subsidized by the government. If we look at this lease, we should be consistent. The Board needs to be fair.

Secretary of State Cenarrusa stated the lessee is getting subsidy in lieu of harvesting/selling the crop. This is like taking a bigger share of the crop - more of the income.

Motion made by Attorney General Lance and seconded by Secretary of State Cenarrusa. The Attorney General stated that the participants might be informed that the Land Board is very familiar with the subsidies that are provided by the federal government. Director Hamilton stated that the results of this auction will be brought back to the Land Board. Motion passed on a vote of 5-0.

Controller Williams referred back to the question Superintendent Fox raised about looking at all these issues. He stated that the Governor's Committee for Endowment Fund Reform is looking at maximizing returns on the endowment lands. This might be an issue that could be given to them or a sub-committee of that group to come up with some recommendations for the Board. To see what the practice is in private industry. Director Hamilton stated that the Department will take a look at these issues and provide their available information to the Board.

Consideration of Nature Conservancy Lease Application - Moscow Mountain

Alvin Carr, Real Estate Specialist provided background information on the issuance of a miscellaneous lease to the Nature Conservancy for a parcel of land located on Moscow Mountain to be used for educational purposes, research and use of the public. For the Board's consideration this is a reclassification of this state parcel to the special management zoned recreation, biodiversity research with the highest and best use timber recreation and also the issuance of the lease for a 10 year term with the initial rent at \$250 per year subject to the development of a management plan and appropriate rent adjustment over time.

Mr. Carr stated this parcel has received considerable attention in the past. At the September 8, 1992, Land Board meeting, the parcel was deleted from the proposed Lindstrom Peak Land Exchange due to local interest. The Nature Conservancy is interested in acquiring a 10-year miscellaneous lease and will work with the Department to properly develop a long-term management plan that will be incorporated as a part of the lease.

Attorney General Lance asked is 10-years was a magical number or would a lesser number of years be consistent with the intended use. Mr. Carr stated that the Department can lease up to a 10-year time frame. Superintendent Fox stated she like the idea, however, her concern is the \$250

per year charge. If this is being opened up for recreation, what about potential damage, hazards, etc. Will this be covered in the plan with the Nature Conservancy or could they potentially leave with the state incurring a lot of expenses cleaning up things. Mr. Carr stated that the management addresses those issues and will cover requirements for rehab work relative to any damages.

Controller Williams stated that this piece of ground, in his recollection, was originally involved in a proposed exchange for Lindstrom Peak near St. Maries, with Bennett Lumber Co. and other property called Snow Peak that the Fish and Game ended up with. Bennett Lumber ended up with Elk River. This 295 acres was taken out of that exchange. This is old growth cedar, hollow inside, with not a lot of value any more. Mr. Carr said that if this parcel were to be harvested, it would be cedar products.

Director Hamilton said that the important thing to remember about this parcel is that this is a defacto regional park, a major recreation area for students from the University. An agreement with the Nature Conservancy finds us a custodian who would take care of the property. The Nature Conservancy will work to develop a long-term plan for the property and hopefully, will be able to find an exchange which will allow us to get out of the area. Controller Williams said he felt the Board ought to go ahead with this. It is a beautiful area. He felt that in doing a lease with the Nature Conservancy emphasize that the Board would like them to look for exchange land.

Mark Elsprey, North Idaho Program Director for the Nature Conservancy gave background information on the Conservancy. They work cooperatively with farmers, ranchers, timber interests and other landowners to protect properties for wildlife habitat and recreation. They are not a politically active organization. They work on constructive, proactive types of projects to protect a lot of what is important about Idaho. Their interest in securing a 10-year lease would be to develop a management plan cooperatively with Department and also put together a local advisory council in the area. Bennett Lumber Products, the University of Idaho, and City of Troy have all been spoken with and are receptive to this idea. The Conservancy isn't really opening this land up to public use. He feels they can take better care of the recreational use that occurs on the property. The lease has been crafted with the Attorney General's offices input. The state will be named as an additional insured on a policy up to a million dollars for liability reasons. Superintendent Fox ask what the economic value was of the Nature Conservancy. Mr. Elsprey stated that the Nature Conservancy is a non-profit organization with additional funds coming from donations in the community. Superintendent Fox asked if the Conservancy was well enough off to handle a land exchange. Mr. Elsprey stated that this would be difficult at this time, however, they would be in the future as they build support.

Superintendent Fox asked who harvests the timber that falls. Director Hamilton stated that, if necessary, they would have a blow down salvage sale. This is the Department's responsibility. The Department would work with the Conservancy or do anything that would interfere with the direction of the Conservancy.

Mr. Elsprey stated that the state has reserved all timber rights to the property. He said he had discussed with Bennett Lumber Products the possibility of working with the state foresters and Bennett foresters in doing a forest health assessment.

Attorney General Lance stated his concerns of establishing rent later on without some sort of formula and also he would like to have the ability to check with Risk Management. They are paid

to evaluate the exposure of risk to the state of Idaho. He suggested that the Department of Parks and Recreation might be willing to work with the Nature Conservancy in assisting with a land exchange.

Governor Batt questioned the statement "appropriate rent adjustment over time." If we come to an impasse over rent, do we then break the lease? Director Hamilton stated we probably could if we had major problems. Attorney General Lance stated that we come up with a rental figure in the lease. Mr. Elsprey stated that the lease is worded that way now. If the Nature Conservancy is unable to come up with the rent above any beyond the \$250 rental fee the lease is terminated. Director Hamilton stated this lease is like all other miscellaneous leases and cottage site leases. A minimum rent is set and that on 6 months notice, the rent can be raised.

A motion made by Controller Williams and seconded by Attorney General Lance that we approve the lease at \$250 with two conditions. These conditions are that the rental adjustment procedures be approved by the Attorney General's office within the lease before it is signed and secondly that risk management procedures be in place before the execution of the lease. Motion passed on a vote of 5-0.

Request for final consideration and action on a proposed land exchange between the State of Idaho and Potlatch Corporation

Perry Whittaker, Chief, Bureau of Real Estate provided background information on a request for final approval on a proposed land exchange between the State of Idaho and Potlatch Corporation. The Davis Creek Exchange is one of several planned exchanges between the State of Idaho and Potlatch Corporation have worked on to consolidate respective ownerships for improved more efficient resource management. The exchange involves acquisition of about 4108 acres of Potlatch land for approximately 3285 acres of state land. There are 21 separate parcels of state land that we would exchange for 4 parcels of Potlatch property. Potlatch did their appraisal and the Department did their appraisal of all parcels involved. Mr. Whittaker stated that based on the state appraisal, this is a good move for the state. Benefits for the state are: consolidation of lands, reduce maintenance of boundary lines and corners, lesser logging costs and closer proximity to mills. Administrative costs will decrease which will imply increased revenue to the endowment beneficiaries over the long term. There was only one comment during the comment period and there was no opposition to the exchange.

A motion was made by Controller Williams and seconded by Superintendent Fox that the land exchange be approved. Motion passed on a vote of 5-0.

INFORMATION AGENDA - NO ACTION TAKEN

13. Update on Environmental Audit Protection Rules (20.01.02), to continue as temporary rules
14. Triumph Mine Update
15. Timber Sales
16. Interest Rate on Departmental Transactions

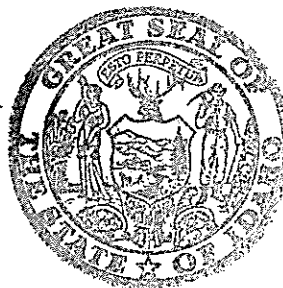
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