

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
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MINUTES
Special Land Board Meeting
(Grazing)
December 18, 1996

The special meeting of the Idaho State Board of Land Commissioners was held on December 18, 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

REGULAR AGENDA

1996 Conflict Grazing Applications

Director Hamilton gave the board members several items that had very recently arrived at the office.

1. Three letters that arrived prior to the meeting will be incorporated into the record specifically, at the writers' request, and will be available for review. They are: a letter from Jean Bray, a letter from Mr. Roger Rosentreter and a letter from Julie Wiethorn
2. A letter was received from J. H. Griffin, attorney, conveying word from Mr. Robert Rosenthal that his daughter, Brooke Peterson and son-in-law Barry Peterson were to act on his behalf at the meeting.

3. The next item was a letter from Mr. Pat Kane to Mr. Don Stockton which conveyed information regarding the Shirley Cox ranch - the Shirley Cox lease application, and he indicated some changes have taken place in the recent past. Mr. Robert Thomas of Thomas Brothers Ranches has purchased that lease and ranch. Mr. Thomas was at the meeting and indicated that he would like specifically to speak if he could because of his so recently acquiring the ranch.
4. The last item in the packet was a letter from Mr. Tom Bray.

Director Hamilton stated that the board agenda was divided into 5 action items. The board's action will be two-fold - (1) to determine whether or not the board should accept all conflict applications and (2) if the board accept the applications, it will determine whether or not an applicant is qualified to bid a conflict at auction. If the board determines that the lease applications are accepted, and are qualified to bid then the Department will set up the appropriate auctions at a future date. This does require 14 days written notice from the Department to establish the auction and the results of the auction will be returned to the board at a future meeting for consideration and final awarding of the lease.

Governor Batt stated that in order to establish some kind of orderly procedure, the board should confine the discussion as to whether or not to accept the recommendation of the Department.

Attorney General Lance stated if it is the Governor's desire, it would be appropriate to limit testimony in terms of staff recommendation. Attorney General Lance asked Director Hamilton if the correspondence received changed the Department's recommendations. Director Hamilton stated that it does not. The only factor seen that might have any influence on recommendation might be the information from Mr. Thomas and Mr. Taylor will address that issue when addressing the Board.

Controller Williams asked which lease # the Shirley Cox application was. Director Hamilton stated that it is G-6008 in Action item II.

Mr. Bryce Taylor, Chief, Bureau of Range Management and Surface Leasing provided background information. The Department has reviewed all leases and believes that the majority of the applications are consistent with land classification and use. There are a couple that are inconsistent and are identified in Action Item V. The consideration of whether or not an applicant is qualified to be is generally based on Idaho Code 58-310(b) and other factors the board may deem as relevant.

Mr. Taylor informed the board that there were two volumes of information on the conflict applications. These volumes contain the conflict application analysis, individual maps of each lease, management plans for those that have them, correspondence, pictures and any material the applicant has provided.

Mr. Taylor stated that the applications have been grouped by similarities and will be dealt with in that sequence. The board can pull out individual leases and deal with them separately if they choose.

Many applicants were available at the meeting and asked for an opportunity to address the board. Also, Department field staff from the various, three southern areas, who have dealt with these packages of information were available for discussion.

ACTION ITEM 1

Applications for grazing leases of state lands that are managed together with adjacent federal, state or private lands - typically scattered state sections located in large federal grazing allotments.

The conflicted leases that fall into this category are:

<u>Lease #</u>	<u>Lessee Applicant</u>	<u>Conflict Applicant</u>
G-6025	TM Ranch	Idaho Watersheds Project
G-6092	Joseph Black	Idaho Watersheds Project
G-6142	Owyhee Calcium Products	Idaho Watersheds Project
G-6184	J.R. Simplot Co.	Idaho Watersheds Project
G-6359	Highland Livestock	Idaho Watersheds Project
G-6645	Jean Smith	Idaho Watersheds Project
G-7213	Diamond A Livestock	Idaho Watersheds Project
G-7222	Diamond A Livestock	Idaho Watersheds Project
G-7629	David Sliman	Idaho Watersheds Project
G-8234	Brown's Land & Cattle	Idaho Watersheds Project
G-8605	Etcheverry Sheep Co.	Idaho Watersheds Project
G-8906	Charles Isom	Idaho Watersheds Project
G-9108	McFarland Livestock	Idaho Watersheds Project
G-9226	LaVar Newman	Idaho Watersheds Project
G-9243	Whitworth/Hirshcy	Idaho Watersheds Project
G-9358	Kermit Purcell	Idaho Watersheds Project
G-9446	Walter Rogers	Idaho Watersheds Project
G-9460	Rudeen Ranches	Idaho Watersheds Project

The Department recommended that the Land Board accept for processing each of the applications filed for the leases listed above, and that the Land Board qualify all lessee applicants seeking to renew the leases listed above on grounds that these individuals are presently holders of the state grazing leases in good standing and as such have demonstrated they are qualified applicants. The Department recommended that the Land Board not qualify the conflict applicant Idaho Watersheds Project in each of the conflicts listed above.

Controller Williams commended the Department for the job they did of putting these together. He stated that he had no disagreement with the recommendation of the Department. Governor Batt stated that it might be well to accept the recommendation or bring it to the table for discussion. Secretary of State Cenarrusa said that these applications were reviewed one-by-one at a prior meeting and he agrees with the Controller. Attorney General Lance concurred that he was willing to support the recommendation.

Mr. Marvel registered an objection at this time. He requested time to speak to the board on each of these applications. His feeling was that the applications are significantly different. He requested that they be considered individually because of their differences.

Mr. Marvel requested an opportunity to cross examine, under oath, staff members who may have participated in the presentation of material for the record in the board memoranda and other documents. Secretary of State Cenarrusa stated that information presented by Mr. Marvel was from a previous law than the current board operates under. Superintendent Fox stated that the letter presented was from November 1, 1990, which is quite a while before the new legislation. She felt this would not be pertinent to these cases. Controller Williams said he felt the issue was totally different. Laird Lucas stated that the statement in Action Item 1 which states "the Department recommends eighteen grazing leases be rejected because of impacts on other lands, either state lands, federal lands or whatever." He stated that this aspect had never been considered important by the board before. A lease applicant has never been rejected because it happened to pick out a state parcel that lay within either a broader federal allotment or that was managed within some other kind of allotment. He offered lease option results over the last ten years that were gotten from the department under the open records request. He noted to the board that they were taking a new tact with respect to the IWP leases that has never been done with anyone else and he asked that the record reflect this.

Attorney General Lance stated that three of the board members had served on the board a little less than two years. He didn't feel that they were bound by the actions of the previous board. He said he felt this was irrelevant. Mr. Lucas said the point is, if an agency makes decisions and departs from what has been done in the past, there needs to be an explanation and a basis for why. In his perception, there was no basis for rejecting auctions over these eighteen items in Action Item 1 because of impacts on the management of endowment lands. There was speculation that this would reduce returns in the future or cause problems with administration in the future. There is no documentation to verify this. Controller Williams stated that in 1982 the Idaho Constitution was changed which made a requirement of maximum long-term return to the endowment. Each of these conflicts has been looked at and what the impact would be allowing auctions and possible changing of lessees. Where it makes a difference, it should not be allowed. Where it doesn't make a difference, it should be allowed.

Mr. Marvel discussed, at length, the issue of auctions, maximum return to the endowment fund, highest and best use, and review of conflict applications. He submitted documentation for the record in the form of Exhibits I through XVI. Attorney General Lance stated he had heard generalizations and entry of documents into the record that may or may not apply to the eighteen conflict applications from Action Item 1 and the recommendations of staff. He asked

Mr. Marvel to state his objections in terms of the staff recommendations and the board will listen and then make a decision.

Governor Batt referred back to the earlier request of Mr. Marvel, in which he asked to cross examine the staff members under oath. He reminded Mr. Marvel that this is not a court of law. Mr. Marvel stated that it was his belief that as an agency, there must be contested case hearings. He said that there was no opportunity, under procedure chosen by the board in the past and today, to cross-examine people presenting evidence and for the record of the hearing. He said he knew of unsubstantiated evidence that had been used in the decision making of the board and had he had opportunity to cross examine those presenting it there would have had a significantly different content in the record. Governor Batt stated that, in his limited experience on the board he never remembered putting anyone under oath and he did not anticipate doing so. That is what the courts are for. Mr. Lucas stated that if they go to court after this, the court does not allow them to make a new record. They have to take the record as to what happened at the agency level. Governor Batt stated that the request was denied.

Controller Williams said that the board had had opportunity, through the briefings to go through all the information. He asked Mr. Marvel if he had anything new to add. Mr. Marvel stated that the level of objection presented to the board is of differences within the individual leases as applied for. Mr. Marvel stated his objections to the individual leases as stated by the department.

Regarding Lease #'s G-6645, current lessee Jean Smith and G-7213 & G-7222, current lessee Diamond A Livestock, Mr. Marvel stated these leases are very large. They approach 4-6 thousand acres in size. The Lime Creek lease, for example, is a block land that was acquired in exchange from the Forest Service. It is quite easily managed as a unit because of its proximity. It is all contiguous. The Bennett Mountain lease (G-6645) has some scattered sections, but also has large block of land and is a large acreage over 6,000 acres in size. This represents an opportunity for management of large blocks of land and this appears to have been ignored by the staff report.

In addition, the Battle Creek lease application, G-6184, located in Owyhee County, is easily manageable separately from the existing management and would represent an opportunity to speed the recovery of the riparian areas on Battle Creek itself, which is due for revision in management through an AINE process. The riparian area on Battle Creek is already fenced to make a separate pasture.

One issue which has come up in G-6645, the Bennett Mountain lease, is that in the staff memorandum to the board on this lease, several parcels within this lease are not used by Jean Smith, the lessee, as determined by the staff.

This is in violation of an OM 1500.2 of the Department, where all cattle grazing a lease must be owned by the person holding the lease. Several other ranchers are apparently running livestock on this lease without paying the state for that use. Mr. Marvel stated that he felt this is

where his participation in the auction could help resolve. This has not been addressed by the staff.

Mr. Taylor stated that Jean Smith is permitted to operate within the entire BLM allotment. The fact is that she most often only uses a couple of the pastures. She has stated that in 1997, she will most likely have to graze in the entire allotment because much of her ground was burned over this past year. She is permitted there and is authorized to run in that allotment and this year will do so.

Mr. Marvel stated that this is an issue that brings up the aspect of discrimination by the board and the department against Idaho Watersheds Project. It is permitted for Jean Smith not to use her lease and to permit other people to graze on her lease without paying.

Secretary of State Cenarrusa asked Mr. Marvel if the rental was not being paid by Jean Smith. Mr. Marvel said the rental was being paid. Mr. Marvel stated that IWP has always offered to pay the full rental rate regardless of the level of grazing use on the lease.

Mr. Marvel stated that In lease G-9108, in Lemhi County, has been identified as a critical lease for the current leaseholder, McFarland Livestock. The board is missing an opportunity to raise money for the school endowment fund by avoiding an auction on this lease, where two of the sections are not critical or even used by the current lessee. The one section on Chamberlain Creek is fenced and grazed separately from the other two sections. The BLM, which is the adjacent manager of lands, expressed no concern or opinion about a separate entity holding that lease.

Mr. Marvel noted that IWP applied for every parcel of land within each individual lease because of past criticism that IWP only applied for parcels with water on them. Mr. Marvel stated to the board that IWP, with the staff or Department, would make an assessment of the condition and importance of the leases to the critical habitat designations of Chinook Salmon and to other potentially endangered species like Bull Trout and West Slope Cut Throat Trout which are present in these watersheds.

Mr. Marvel stated to the board that there are significant differences between Lemhi County and Owyhee County that the board is not fully considering in this blanket format, lumping the eighteen applications together.

Mr. Marvel noted that the Cottonwood Canyon/Tablerock lease G-6359 is located just north and east of Boise. Because of the proximity, and the desirability of open space for recreation close to the metropolitan area, it is the opinion of IWP that their participation in this lease, if they were successful at auction, could resolve in an improvement in recreational opportunities for Boise residents. He felt that this was an unaddressed issue in this lease. Secretary of State Cenarrusa stated that this would involve a reclassification of use for this parcel. Currently it is highest and best use for grazing on this parcel.

Mr. Marvel stated that he had a letter from the BLM dated August 23, 1996, to Mr. James Wood of the Eastern Idaho Area Department of Lands office. This letter was in many of the leases in the eastern part of the state. A partial list of leases involved - G-8906, G-9108, G-9226, G-9243 and couple of others, particularly Lemhi County. The impacts as shown in the Department submitted chart of impacts for applications where it shows a management effect shows an impact on each one of these leases and is in contradiction to the BLM statements.

Mr. Lucas stated that on at least five of these eighteen applications the federal agencies have stated their will not be an impact from leasing it to another lessee than the current one, yet the Department is saying there will be management effects. There is no documentation to show what these effects would be.

Attorney General Lance asked Mr. Lucas if felt the state should rely on the staff recommendation of a federal agency as to how the state lands should be managed over state staff employees hired to evaluate these parcels very carefully.

Mr. Marvel commented on lease G-9460 which is located in Power County, leased currently to Rudeen Ranches and is located in a critical winter habitat area for bald eagles. Rudeen has fenced over 200 acres of this lease into the private property of the ranch, thereby creating a situation which, under most circumstances, would make it difficult to bring it out of that relationship if a use providing more income for the schools was found or in this case providing auction income. He stated that he felt this was an issue not addressed adequately in the staff memorandum to the board. Mr. Rudeen stated that the way this was divided was critical to his movement of cattle.

Mr. Marvel stated that on lease G-9226, currently held by lessee, LaVar Newman, there are three sections the BLM has indicated would have minimal impact on them if another party were to obtain the lease. Some are not grazed whatsoever, and in regard to IWP's application, if the board deemed it suitable, they would consider revising their application for two of those sections and not the third one which has been deemed by Mr. Newman as important. Mr. Marvel again stressed that this was where they applied for all lands within a particular lease even tho some of those lands were, perhaps, not meeting IWP's criteria for interest.

Secretary of State Cenarrusa noted that the state is getting market rent for these lands. The state is not under leasing on the parcels. He emphasized again the long-term income as stated in the Idaho Constitution. He commended the Department on their recommendations.

Mr. Taylor responded to some of Mr. Marvels comments. Regarding lease G-6645, he stated that there is some contiguous land at the south end, however, much of the land is scattered over a very large BLM allotment.

On G-7213 and G-7222 there are some contiguous properties. This is in two leases. One risk would be that if IWP were successful in acquiring lease without having both, then the continuity is severely broken up. The management plan is to use one side, the Bremner pasture for a two year period then it would be rested for the successive two years and they would rotate over to

the other pasture for the next two years. The state lands could not easily be fenced separate due to terrain, snow problem and esthetically the forest service stated they would not like to see the boundary fenced.

On lease G-6359, IWP raised the issue regarding recreational opportunity. Highland Livestock indicated they are making this property available for trail and recreational opportunities. They further indicated that this is an important source of their trailing area. Without it they would be obligated to truck their sheep around this area to get to their other range. Attorney General Lance asked if the proper way to handle this might be a reclassification of use. Mr. Taylor stated that this will probably occur but is not ready at the current time for reclassification.

Regarding G-9460, Rudeen Ranches, this property was fenced because of topographic features of the terrain. This is an area of concern for bald eagles and Mr. Rudeen is working with the federal agencies to address those concerns. Mr. Rudeen has drilled wells and provided water to the state land at his own expense.

The motion was made by Attorney General Lance and seconded by Superintendent Anne Fox to accept the written recommendation of the Department. Motion passed on a vote of 5-0.

ACTION ITEM II

Applications for grazing leases of state lands that are fenced separately for the management needs of the current lessee.

The conflicted leases that fall into this category are:

<u>Lease #</u>	<u>Lessee Applicant</u>	<u>Conflict Applicant</u>
G-6008	Shirley Cox	Idaho Watersheds Project
G-8676	G&L Livestock	Idaho Watersheds Project
G-9242	McFarland Livestock	Idaho Watersheds Project
G-9360	James Whittaker	Idaho Watersheds Project

Bryce Taylor, Chief, Bureau of Range Management and Surface Leasing provided the background information on Action Item II. There are four leases which are fenced separately for the management needs of the current lessee. The Department relied heavily on actions taken last year in the Ice House Creek section in making recommendations to the board.

The Department recommended that the Land Board accept for processing all applications filed for the leases listed above. The Department recommended that the Land Board qualify all applicants in this category. These lands do not have a long-term management effect on other endowment lands. The financial return is not dependent on the management of these with other intermingled federal and private lands. The issuance of a lease to the conflictor, in this case, will be disruptive to the current lessee, however the Department does not deem that it

would be disruptive to ongoing state management of other endowment lands. The Department recommended the scheduling of a conflict lease auction to determine who will pay the highest premium bid. Any subleasing of the premises is expressly contingent upon the pre-approval of the Department of Lands in accordance with the lease terms and relevant state laws and rules.

New information was received from the BLM via fax yesterday afternoon. This affects the Shirley Cox lease #G-6008. The information received yesterday is that they intend to utilize this state section with the private lands in the allotment as part of their rotation system in grazing management.

Secretary of State Cenarrusa asked who owned the fence. Mr. Taylor stated that this fence is owned by the lessee. She was permitted to fence the section. This would be considered an accreditable improvement and if the conflictor is successful, would have to pay Shirley Cox for the fence.

Governor Batt asked if the new information received changes the status of the recommendation. Mr. Taylor stated that he did not believe would have an effect if it were placed at auction on other endowment plan management. It would not change the recommendation at this time. Mr. Taylor informed the board that Mr. Thomas, who purchased the ranch, is available to respond to any questions the board might have.

Attorney General Lance stated that he was concerned about this new information. He wants to be certain that staff is comfortable with whatever recommendations they make on this particular lease. Governor Batt suggested that testimony should be taken from both sides of this issue. Secretary of State Cenarrusa stated that he felt this should be deferred. Superintendent Fox said she felt Mr. Thomas should have an opportunity to respond at the meeting today.

Governor Batt asked if there was disagreement with the staff recommendation, with the understanding that G-6008 was excluded. Superintendent Fox stated that she had a problem with allowing IWP to be an applicant. She asked staff to state why IWP qualified. Mr. Taylor stated in this case, IWP has indicated they would, and have, applied for a grazing lease. This is consistent with the land classification and use. All of these lands are classified in general management zone range grazing. As they are fenced and independent of other management, the Department sees no reason why IWP's application would interfere with ongoing management of state lands.

Controller Williams asked about the corrals on G-9360, the Whittaker lease, and the impact upon the whole operation by taking those corrals out. Mr. Taylor stated that he could not fully speak to that. The information received from the lessee, Mr. Whittaker, states that he does use the corrals diligently both to come and go to his range. He uses them for pregnancy testing. Obviously they are critical to his operation.

Governor Batt asked Mr. Whittaker to answer some questions for the board. Mr. Whittaker provided background information on this lease. These 224 AUM's of state land are over 10% of this ranches range permit. He stated that with low cattle prices and drought over the last few

years and losing this range could cause them to default on their loan. There is no available pasture in their area. Mr. Whittaker explained the necessity of this land for their use. The Whittaker's have done a major restoration and addition to the corrals on this property. He stated these corrals are an integral part of their operation, using them to load cattle in the spring, mother up the cows and calves before going on to the BLM and other private property. They are used in spring and fall to sort cattle. This section controls their primary access to private grounds. The state section also has a water right decreed to it. They have used the irrigation system and plan a major restoration to it if allowed to continue the lease. They have added new fence as well as maintained the balance. Mr. Whittaker asked that the conflict applicant be denied as well as McFarland Livestock. He stated that the McFarland's were not able to attend the meeting.

Governor Batt asked Mr. Whittaker to discuss the McFarland lease in greater detail since they were unable to attend. Mr. Whittaker provided some information on this lease #G-9242. They have a common fence boundary and part of that common fence boundary is against that section. The stream runs through the property. The McFarland's also depend partially on the school district for income. Governor Batt asked what Mr. Whittaker meant about relying on the school district for income. Mr. Whittaker stated that the spouses work for the school district. These families are not dependent entirely upon livestock for their livelihood.

Attorney General Lance stated that the corrals discussed would be an improvement to the property, or they could be removed assuming that a conflict bidder prevailed in the bidding. Mr. Taylor stated that the corrals pose some questions. He felt that there would have to be more investigation, because the Department found out recently that Mr. Whittaker has done significant additions to the corral. There may be some split ownership in them. Attorney General Lance stated that he felt this needed to be determined before allowing this lease to go forward to auction. Mr. Taylor stated that there is no improvement permit issued for improvements.

Mr. Marvel addressed the board regarding Action Item 2 issues. IWP has applied for a 10-year lease on this parcel of land. He stated that he felt there was a question as to whether these ranching operations will continue to be in operation to provide income to the school endowment fund. IWP has gone from 3 members to 720 members in three years and doubled in the last year, whereas the number of livestock operators has gone down every year. He stated that free market is not a fair market. It creates turbulence and is one of the aspects of life in America. There is some great irony here that conservative Republicans are advocating blocking free market - competition for valuable resources. He stated that he hoped the people of Idaho pay close attention as the board contributes to the blockage of free enterprise in Idaho.

Attorney General Lance stated that we may be saving endowment monies by sorting this thing out over the next year rather than being in court fighting over it.

Lease # G-9360 - The motion was made by Controller Williams and seconded by Attorney General Lance that the board grant a temporary permit for one year for that operation to continue on the same terms and conditions as the prior lease. Motion passed on a vote of 5-0.

Governor Batt stated that Action Item 2 has been fractured due to the previous motion on G-9360. He also stated that G-6008 will also be acted upon separately and suggested this issue be recognized at this time.

Mr. Taylor stated that new information was received. Staff's earlier understanding of this particular lease was that it was fenced separately and used primarily for the management needs of the lessee. Apparently an agreement has been reached with Mr. Bob Thomas, Thomas Brothers Ranches, the new purchaser of the Shirley Cox property that this section would be used as part of the rest rotation program involving the BLM land. Mr. Taylor stated that he did not believe this would change the Department's recommendation.

Governor Batt stated that he would allow both sides to talk. Secretary of State Cenarrusa disagreed with the Department recommendation.

Mr. Thomas provided information on lease G-6008. Having recently purchased this ranch, they had to redo the BLM operating plan. He stressed to the board that this parcel of land is vital to their operation, because it will allow them to get off the BLM land for the two-week period required in the rest rotation plan.

Mr. Murdoch stated that they fenced the state parcel. He said that Mr. Thomas now owns the fence. He asked if the fence had been removed, would this piece of land have been considered in the previous eighteen lease applications? Secretary of State Cenarrusa stated this is a good point. This parcel was fenced in order to enhance the state land and do a better job with rotation. This evaluation creates a hardship on the part of the business that is in operation. Mr. Murdoch stated that he feels they are being penalized for doing what they thought was beneficial. Superintendent Fox agreed with the Secretary of State.

Mr. Marvel spoke regarding the BLM's recent submittal, he has not seen a copy of this and would appreciate receiving a copy. He again stated that it was ironic that the board was making a decision based on the federal agency's recommendations considering earlier discussion. IWP is an interested public, which is a legal status, on all allotments in Owyhee County on BLM. As an interested public, BLM is required to consult and cooperate with them on any changes in management of livestock permitted to graze on federal lands administered by the BLM. To this date, they have not been contacted by the Owyhee Resource Area in regard to this plan which was just described. Mr. Marvel commended the Cox's, Mr. Thomas and Mr. Murdoch for improvements implemented in management. He stated that IWP would appreciate being involved in an auction for this lease. Secretary of State Cenarrusa asked Mr. Marvel if IWP intended to put livestock on the parcel. Mr. Marvel said that IWP stated in its letters to the Department that they intended to graze livestock on these leases after development of a management plan.

Attorney General Lance stated that if IWP were successful, his recommendation to the Department is that no lease will be approved without a management plan in hand to look at. He said he felt this should be universal for all applicants. The Attorney General stated that a sub-

lease has to be to a qualified bidder. He felt this needs to be brought before the board and not done as a matter of course.

Mr. Marvel stated that having a management plan in front of the board for consideration is an admirable idea and would that the board would require it for all leaseholders. Mr. Marvel said this is a non-existent condition. At this time, there is only about 8% of the leases with management plans on them. Attorney General Lance stated that it seems to him, the policy of this board is to require management plans, vegetation management plans and if the lease states it is a grazing lease, the board is concerned legitimately about fire suppression and want the land grazed. He stated that in order to insure this, the board needs to take a look at this in advance of awarding the lease rather than relying on IWP or anyone else to come up with a plan two or three years into the lease. He stated that this is going to be his direction to the staff members.

Mr. Marvel stated that one thing he has brought up repeatedly is discrimination on the part of the staff, the Department and the Board in relation to IWP applications. He stated he felt Attorney General Lance's remarks reflect this discrimination. He stated, however, he was encouraged to hear this and said he would encourage this to be done before the start of the next grazing season.

Lease # G-6008 - The motion was made by Superintendent Fox and seconded by Secretary of State Cenarrusa to accept the application of Shirley Cox and reject Idaho Watersheds Project as a conflict applicant.

There was further discussion regarding Lease G-6008. Controller Williams stated that the board must be very careful in using its discretion to not appear arbitrary or capricious and that the board always have a reason for what is done. Even though each board member may have personal feelings, the board has to look at the total picture. He stated he did not think it wise in this case to differ with the Department's recommendation.

Attorney General stated that he agreed with Controller Williams. The board's obligation is to maximize the return to the endowed institution. Mr. Taylor stated that since he has not had time to have conference with the other range management staff, he felt it necessary to abide by the recommendation. Governor Batt stated that he felt this is a debatable question, whether or not the staff would have considered this differently had they had the BLM information earlier.

There was a substitute motion made by Attorney General Lance and seconded by Controller Williams to defer Lease G-6008 for one month to the January 1997, regular Land Board Meeting. This will allow time for the Department to discuss the new information with their staff, contact the BLM regarding this information and determine if the Department's recommendation remains the same.

Substitute motion passed on a vote of 3-2 with Mr. Cenarrusa and Dr. Fox voting Nay. The substitute motion prevailed, the main motion was tabled.

Mr. Taylor gave the background information on G-8676, G & L Livestock and G-9242, McFarland Livestock. Both of these parcels are fenced. There is water on both parcels. Field Manager Ken Crane stated that the fences are owned by the current lessees. There would be some improvement credits necessary in case they lost at auction.

Superintendent Fox stated the McFarland Livestock is meeting today with the BLM which is the reason they are not present. We do not know how these negotiations will affect this parcel. Mr. Taylor stated that there may be some confusion as to the other parcel leased by the McFarlands. A letter from the ranch manager regarding this particular lease stated that they use it as a small scale feed yard. They said this would not be disruptive to them on this parcel.

Secretary of State Cenarrusa stated that on lease G-8676, his understanding was that the Department had a tough time making a decision on recommendation. This parcel is involved in a seven pasture rotation.

Lease #'s G-8676 - G & L Livestock - A motion was made by Secretary of State Cenarrusa and seconded by Superintendent Fox to disallow Idaho Watersheds Project of being the conflictor - to disqualify him. Motion failed on a vote of 2-3, Governor Batt, Mr. Lance, and Mr. Williams voting Nay.

A motion was made by Attorney General Lance and seconded by Controller Williams to adopt the recommendations of the department concerning Lease #'s G-8676 and G-9242.

A substitute motion was made by Secretary of State Cenarrusa and seconded by Superintendent Fox to defer G-8676 and G-9242 for one month to get additional information. As the McFarland's (Lease G-9242) could not attend the meeting due to a meeting with the BLM, the Secretary of State would like to have the input from this meeting available. Also, the Secretary of State felt he needed additional information before making his decision on Lease G-8676. Controller Williams stated that he felt to defer these decisions for one month would not negatively impact on these leases. Decision on G-8676 and G-9242 will be deferred for one month by unanimous consent.

ACTION ITEM III

State land managed separately but not fenced.

The conflicted leases that fall into this category are:

<u>Lease #</u>	<u>Lessee Applicant</u>	<u>Conflict Applicant</u>
G-8160	James Katsilometes	Idaho Watersheds Project

Mr. Taylor gave the background information regarding lease G-8160. Mr. Katsilometes has stated succinctly that he does not operate this parcel of land with the BLM. He does not sub-

lease it and he was very clear about this. It is managed separately and for that reason the Department recommended that the Land Board accept for processing each application filed for the lease listed above. For the same reasons as set forth in Action Item 2, the Department recommended that both applicants be qualified to bid at auction. The Department recommended scheduling a conflict auction with respect to each of the leases; and that the special provision regarding subleasing set forth in Action Item Number 2 be included in the auction notice.

Secretary of State Cenarrusa stated if IWP were to get this lease, it would have to be fenced otherwise he will be in trespass if his animals stray onto BLM allotment. Animals in this BLM allotment would have free access to his land. It is too costly to fence this parcel. Mr. Marvel was given the opportunity to respond. He stated that he had no comment.

A motion was made by Attorney General Lance and seconded by Controller Williams to accept the recommendation of the Department to take this lease to auction and that both applicants be qualified to bid. The motion carried on a vote of 3-2 with Mr. Cenarrusa and Dr. Fox voting Nay.

ACTION ITEM IV

Applicants that own and/or lease lands adjacent to the state parcel which sits on the boundary between the applicant's current operations.

The conflicted leases that fall into this category are:

<u>Lease #</u>	<u>Lessee Applicant</u>	<u>Conflict Applicant</u>
G-6230	Double Anchor Ranch	Charters Mountain Ranch
G-7754	Fir Grove Limited	B.C. Holt

Mr. Taylor gave the background for Action Item 4. This includes two leases, G-6230, Double Anchor Ranch and G-7754, Fir Grove Limited. In both leases, conflict applicants own adjacent land to the parcels.

The Department recommended that the Land Board accept for processing each of the applications filed for the leases listed above. The Department recommended qualifying all applicants based on the Department's opinion that applicants who own adjacent private land and/or lease adjacent state land can incorporate the state land applied for without disrupting ongoing endowment land management and without adversely affecting the state's long-term management or return to the beneficiaries. The Department recommended scheduling a conflict auction with respect to each of the leases.

Secretary of State Cenarrusa stated that he would like to hear from the parties involved in lease G-6230.

Elsie Riggs spoke for Double Anchor Ranch. She stated that she would like to go on record asking that the board leave the lease the way it is due to the terrain. It works very well with their operation. Rest rotation has been used on this parcel the last few years. She stated that this parcel has been part of Double Anchor Ranch for as long as she can remember. The fence was put in by the Double Anchor Ranch. Secretary of State Cenarrusa asked the value of the fence. Director Hamilton stated that it has been appraised.

John McCallum spoke for Charters Mountain Ranch. They have several farms and ranches in the area. They run about 700 head of cattle. They would like to use this 2-3 weeks in the spring and if the grass recovers, would come in again in the fall. This would be beneficial to their rest rotation system.

Ms. Riggs stated that their July to August grazing would be impacted. They depend on the east side to go around the mountain into the September.

Lease # G-6230 - A motion was made by Attorney General Lance and seconded by Controller Williams to accept the recommendation of the Department to take this lease to auction and that both applicants be qualified to bid. Motion was passed on a vote of 3-2 with Mr. Cenarrusa and Dr. Fox voting Nay.

Secretary of State Cenarrusa stated he voted no because this operation has continued for the past 50 years and he felt it should remain that way. Superintendent Fox stated she voted no for the same reason. Governor Batt stated that he reluctantly voted yes. He felt we have to follow the law and the recommendations of the staff.

Mr. Presley, Fir Grove Limited spoke regarding lease G-7754. Mr. Presley stated that this will throw their system out of balance if they lose at auction. This land is currently implemented with the BLM allotment in a rest rotation system. They will have to find some place to go with their cattle at the time the lease land would have been used. He stated this is not an easily fenced area. This is in a critical big game winter range area for deer. Fencing will not help the big game as far as winter range. He would like to see it kept in their rest rotation system, without fencing.

Mr. Holt stated the only reason the big game are there is due to accessible water. The water is adjacent to the state property on his private land. He said the cattle are using his water. His contention is that if he is providing water for the cattle, he should be able to lease the land and use it in the fall in a similar rest rotation pattern as is now being used. They are short of fall feed and this would assist them. He would also like to use it in the spring for calving. It is a clean, healthy environment for calves.

Secretary of State Cenarrusa stated that this lease has been scheduled for Wendell Phase 2 exchange which was to have taken place about three years ago, but is still in the process. He felt this could conceivably adversely affect both management and exchange. Mr. Taylor stated that both parties would be required to sign a land exchange addendum so that could move

forward. If it were fenced, it could lessen the desire of BLM to own this land, but he did not feel it would have any significant effect.

Mr. Presley stated that Mr. Holt is not currently a permittee. If this land were exchanged, what will the BLM do with this. Max Hall, Area Manager, Gooding Office stated Mr. Holt does not currently hold a permit in the BLM allotment. He is the land owner on the east side. If he does get the lease, unless he could work some sort of exchange use with the BLM, he would have to fence the property otherwise he would be in trespass if any of his stock strayed. Mr. Holt stated that he was in a catch 22 situation. He can't go to the BLM and tell them he is interested in going into the Black Canyon allotment unless he has a state lease. If he had the state lease, he feels he would be in a different position to work out an agreement.

Governor Batt asked if there was a grazing management plan on this parcel. Mr. Taylor stated that it was his understanding that this parcel is part of a three pasture rest rotation system under the BLM's management. Governor Batt stressed that the Attorney General would like to have these management plans in place before the conflict auction.

Lease # G-7754 - A motion was made by Secretary of State Cenarrusa that B.C. Holt be not qualified as an applicant because this would cause disruption of a long time operation. This motion was seconded by Superintendent Fox. Motion failed on a vote of 2-3 with Mr. Cenarrusa and Dr. Fox voting Aye.

A motion was made by Attorney General Lance and seconded by Controller Williams to accept the recommendation of the Department to take this lease to auction and that both applicants be qualified to bid. Motion was passed on a vote of 3-2 with Mr. Cenarrusa and Dr. Fox voting Nay.

ACTION ITEM V

State land managed separately, but one of the conflict applications is for a use not authorized by the current land classification.

<u>Lease #</u>	<u>Lessee Applicant</u>	<u>Conflict Applicant</u>
G-7527	Alan Posey	Idaho Watersheds Project City of Hailey
G-7564	Robert Rosenthal	Donna Rose Carol Murphy

Mr. Taylor provided background information on leases G-7527, current lessee Alan Posey and G-7564, current lessee Robert Rosenthal. Both leases have two conflict applicants.

Lease G-7527 sits just outside the city limits of Hailey. The board gave approval to issue a communication site lease on top of Della Mountain. This is currently earning the endowment fund about \$8200 per year. The recommendation of the Department was that Alan Posey and Idaho Watersheds Project be qualified to go forward to bid at an auction because their proposed uses are consistent with the land use classification.

The City of Hailey has stated that they would use the property for wildlife and riparian habitat, potentially for a greenbelt and potentially for a waste water treatment facility. This lease is a standard lease limited not to exceed ten years. The Department proposed that the City of Hailey's application be rejected because the proposed use is not consistent with the current land classification. If the City of Hailey desires to go forward with their proposed use, the Department feels they should first come to the Department and Board and ask for a land reclassification for their proposed uses.

Mr. Posey stated that he and Charles Kimball have the BLM allotment that is to the south of the state land. There is no fence between the BLM allotment and state lands. East is the city of Hailey and north is private property. This needs to be used with the sheep allotment because of the access. He stated he needs water from Croy creek to utilize the state ground. He stated he couldn't understand why IWP wants this piece of land.

Secretary of State Cenarrusa asked Mr. Posey if he trailed through this property. Mr. Posey stated no. He said in 1992 there was a fire which burned the west Bellevue allotment. The BLM spent a lot of money and he was not allowed to use the land for two years. They are just now able to access the north side. The south side of the mountain is still unavailable. In order to get on the state land, you have to use the south side of the BLM land, private property or through the city of Hailey. Mr. Posey has been unable to graze the state land for the last two years due to fires. He stated that he paid the grazing fees even though he was unable to use it.

Mr. Marvel stated that this is an excellent lease for IWP because of the riparian situation on the north side where the lease includes the confluence of Croy Creek and the Big Wood River. He stated there is pretty good road access from Colorado Gulch on the south side and have had discussed the possibility with the owner of using his property to the north as access subject to IWP acquiring the lease. Secretary of State Cenarrusa asked Mr. Marvel if IWP contemplated fencing the property or grazing the property. He stated that the property was not fenced and IWP would be in trespass if animals strayed from the state land. Mr. Marvel stated that IWP does not contemplate fencing at this time. Attorney General Lance stated that if this property needs to be grazed for fire suppression, etc. Mr. Marvel will have to figure out how to comply with the requirements. It is not the board's problem.

Mr. Marvel asked if the board is going to require that every single grazing lease be grazed to a certain level every year. Governor Batt stated that this will be looked at in the new Vegetation Management Policy which is currently being developed. Those requirements do not exist today.

Superintendent Fox asked if this lease were to be acquired by IWP, would Mr. Posey have difficulty getting to all of his property. Mr. Posey stated no.

Attorney General Lance stated that the exclusion of the city of Hailey was appropriate. A land reclassification is required if usage is not consistent with current classification.

A motion was made by Attorney General Lance and seconded by Controller Williams to accept the recommendation of the Department. Motion passed on a vote of 3-2 with Mr. Cenarrusa and Dr. Fox voting nay.

Mr. Taylor gave the background information on lease #G-7564. There are three applicants for this lease. The current lessee is Robert Rosenthal and the conflict applicants are Donna Rose and Carol Murphy. Mr. Rosenthal's attorney, Evan Robertson was available to speak. The recommendation of the Department was that two of the applicants be qualified to go forward to bid at an auction because their proposed uses are consistent with the land use classification. Donna Rose's application stated that she would sub-lease to Mr. Posey. Currently, Mr. Rosenthal is sub-leasing his AUM's to Mr. Posey, a permitted operator.

The Department proposed that applicant Carol Murphy's application be rejected because the proposed use is not consistent with the current land classification. Ms. Murphy's primary proposed use is for riparian enhancement, followed by grazing.

Governor Batt asked why riparian enhancement is not a permitted use. Mr. Taylor stated that this should go through a reclassification and be done under a miscellaneous lease instead of a grazing lease.

Mr. Robertson, attorney for Mr. Rosenthal, addressed the board. Mr. Rosenthal's concerns are regarding the potential impact on his very high priced property that surrounds this particular lease should it be acquired by someone else. He stated that he felt this area is in transition as growth has moved out of the city of Sun Valley proper. He would like to have control of this area that he surrounds on three sides. If impact on private property is of legitimate concern of this board in granting leases, Mr. Rosenthal believes he should be the only qualified applicant.

Ms. Donna Rose and her husband David Von Schimpf responded as conflict applicants. They control all the water in that canyon. It is deeded to their ground. They have eight large ponds and are continuing to improve their property. They have spent over \$100,000 this past year in improvements. They would improve the state land if they had the lease.

Attorney General stated that it was his understanding that this leased grounds remained open to the public for hunting. Director Hamilton stated that this was true, but hunters have to have permission to cross private lands. Mr. Taylor stated that this parcel had been requested to be put up for sale a couple of times, but the board deemed not to do so due to high wildlife values.

Carol Murphy was not available to comment.

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

Director Hamilton asked for discussion on issues which came up today. On Action Item 2, all of the applications were sent back to the Department for additional information, etc. One issue that was discussed was whether there was some distinction between the Ice House Creek issue last year and Action Item 2 this year on the basis that they were fenced, part of a larger operation and integral to those operations. The second is the Attorney General, on a couple of occasions, discussed the need for management plans on all leases. Director Hamilton stated if there were any observations or further discussion, it would be very helpful to the Department staff.

Attorney General Lance stated that before the conflict applications are awarded by the Land Board, he felt a management plan should be in place that the Land Board is comfortable with. He stated that if a management plan is presented that is not acceptable, the Land Board is not obligated to award the lease. Governor Batt asked if this meant that, without a plan, they should not be designated bidders. Attorney General Lance said that eventually the Land Board can be in this position. Right now, the Land Board has the authority to look at the management plan in determining whether or not to award the lease. Director Hamilton asked if all state lessees will have a grazing management plan on the lands they are leasing and is this the direction the Land Board would have the Department staff move toward. Attorney General Lance said that he felt the Governor was moving in that direction with the vegetation management plan. Secretary of State Cenarrusa said that he realized this was going to create a lot of work on the part of the Department to get these plans ready. He said one thing to be looked at is to get these isolated parcels exchanged so the state can better manage the lands.

Director Hamilton asked about the other question regarding Action Item 2 - any observations the Land Board might have on the difference on this item and Ice House Creek. These are fenced but part of a larger operation. The Land Board expressed concern about this during the meeting. These are all being taken back to be looked at again in the next month or so and in once case, the next year.

Governor Batt adjourned the meeting.

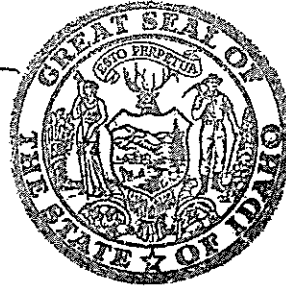
IDAHO STATE BOARD OF LAND COMMISSIONERS

Philip E. Batt

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

Pete T. Cenarrusa

Pete T. Cenarrusa
Secretary of State



Stanley F. Hamilton

Stanley F. Hamilton
Director, Idaho Department of Lands

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