

STATE BOARD OF LAND COMMISSIONERS

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

Stanley F. Hamilton, Secretary to the Board

MINUTES REGULAR LAND BOARD MEETING DECEMBER 9, 1997

The regular meeting of the Idaho State Board of Land Commissioners was held on September 9, 1997, in Boise, Idaho. The Honorable Philip E. Batt presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa
Honorable State Controller J.D. Williams
Honorable Superintendent of Public Instruction Anne C. Fox

Secretary Stanley F. Hamilton

Due to scheduling conflicts, Attorney General Alan G. Lance waived his attendance at the State Board of Land Commissioners meeting.

The meeting convened at 9:05 a.m. and adjourned at 12:00 noon.

CONSENT AGENDA

The following Consent Agenda was approved in its entirety upon a motion by Superintendent Fox and seconded by Secretary of State Cenarrusa. The motion carried on a vote of 4-0.

1. The following official transactions were approved:
 - A. Timber Sale Official Transactions for the period October 25, 1997 through November 21, 1997
2. The following applications for addition to the qualified bidders list, timber sales were approved
 - Panhandle Logging
12130 Pinetree Road
Hayden Lake, ID 83835

3. The request to add the following cottage site lessee names to exchange lists for Payette Lake was approved.

A. LAKEFRONT

- I. WELSH, Mary Leslie
- II. ONWEILER, Bill
- III. ZIMMERMAN, Suzanne

B. NON LAKEFRONT

- I. HIPP, William B. & Barbara
- II. PRIEST, Shad D.
- III. POOLE, Lyndell
- IV. DENNY, Philip E.
- V. SCHEFFER, Martin W. & Judy K.
- VI. SHARP, Donald J.
- VII. SWAN, Carolyn

Governor Batt asked the procedure for getting on the list. Director Hamilton said the only requirement he was aware of was that they have to ask and the Land Board has to approve.

Director Hamilton said the list has its own editing process. When the Department has a proposed exchange, the people on the list are contacted. They have an option to say no. The list is just an expression of interest.

REGULAR AGENDA

4. Potential Lease/Land Exchange, Request for Land Reclassification and Conceptual Approval of Lease and Land Exchange – J. R. Simplot Co.
Presented by Alvin Carr, Real Estate Specialist

Director Hamilton stated this was a proposed lease/land exchange proposal by J. R. Simplot. Mr. Alvin Carr provided the background information.

J. R. Simplot Company has proposed to acquire a parcel of state land by means of land exchange. The acreage is part of a state-owned block located northwest of Mountain Home and south of Interstate 84. There is a current grazing lease, Jean Smith, lessee and an adjacent mineral lease to Cloverdale Nursery. The parcel is zoned M-1 Light Industrial Use. The grazing lease rental is \$68.00 per year on the 180 acres.

Simplot desires to construct a grain handling and storage facility and an appurtenant railroad siding to ensure than an uninterrupted supply of grain is available for their livestock feeding operation near Grandview Idaho. They are also looking at the possibility of a road by-pass by Mountain Home. J. R. Simplot Company has agreed to acquire all the necessary permits and authorizations prior to any construction. The highway district has indicated that the proposed road right-of ways will facilitate an excellent and much needed truck by-pass route.

Simplot Company is interested in a land exchange that will allow them to acquire title to this property. They are willing to exchange company owned timberland in the Dry Buck area. The exchange will be based on appraised values at the time that a package has been identified and agreed to by both parties.

The department believes that a right-of way should be reserved to allow for rail access on to the remaining state ownership. Simplot Company's use and first right to the proposed rail facility would necessarily be preserved.

In the meantime Simplot Company has asked to enter into an interim lease because the time requirement for completing a land exchange is not compatible with their desired project construction schedule. They desire to have the project completed and in full operation early in calendar year 1998. Issuance of a lease for light industrial development also acts to reclassify these lands and deletes grazing use. The mineral leases will not be affected. Easements for the road right-of-ways would be contingent upon the issuance of a lease.

A public hearing was held for the purpose of receiving public comments on the company proposal. One person, an adjoining landowner, attended the hearing and expressed his approval for development of the area. No adverse comments have been received.

The recommendation of the Department is to:

1. Reclassify the lands in this proposal from grazing to light industrial consistent with local zoning and the proposed use.
2. Conceptually approve a (3) three-year special lease for the construction of a grain handling facility and a railroad siding on the 180± acres.
3. Conceptual approval to exchange this 180± acres for Simplot Company timbered land located in the Dry Buck area
4. The department will bring a lease proposal to the Board in January for approval

Controller Williams said he looked at the property and he feels this area is potentially very valuable for long term development for activities like this.

Mr. Chuck Jones from Simplot Corporation was available for questions. Mr. Jones stated that this is a priority issue and they would like to start construction immediately. They have some questions regarding the appraised value. As the property sits today it is \$50.00 per acre grazing land. They feel it will be the company's investment in the property that improves the value. This investment will also benefit the adjoining state land when the highway is put in. He stated that they would contribute to having a full-blown appraisal done.

Controller Williams moved to accept the recommendation of the department. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 4-0. The motion was withheld for further testimony.

Mr. Woody Wing said he has adjacent property that he will have no access to it if an arrangement is not made for an easement. He said he is all for the Simplot proposal. Governor Batt asked that staff work with Mr. Wing in establishing access to his property.

With no objections, the motion will stand as previously made.

5. Briefing of Hagadone Corporation Floating Golf Green Lease
Presented by Bryce Taylor, Bureau Chief - Range Management & Surface Leasing

Director Hamilton stated that agenda item 5 is a briefing on the floating green lease renewal involving Hagadone Hospitality Company. Mr. Bryce Taylor provided the background information.

The lease between the board and Hagadone Hospitality Company was first effective January 1, 1988 and expires December 31, 1997. This particular lease was one of the frontrunners in submerged lands and does contain a clause that authorizes or makes the lease renewable. It is subject to the terms as determined by the lessor.

The lease requires a \$50,000 bond or, alternately, adequate insurance to cover any damages sustained by the state as a result of the project. The Lessee maintains a one million dollar liability limit for pollution damage insurance policy with the State named as co-insured to satisfy this term of the lease.

Hagadone Hospitality Company has transformed the golf course area from a hazardous eye sore to a world class golf course. They have received an award for their work from the Urban Lands Institute. Their efforts extend beyond commendable.

Mr. Taylor presented the Land Board with a revised proposal received by FAX from Hagadone Hospitality Company on December 8. The current proposal is to renew the lease under similar terms and conditions as the prior 10-year lease. They would support retaining the public use of the 500 feet of Sanders Beach with the 20% rebate to the lessee. They support that the 20% rebate to the company to be paid to Kootenai County. They would again like a right to renew this lease for a third term of 10 years. They would like the rent to remain the same - \$15,000 annually or 2% times gross receipts. They would like to add a cap to that amount. They would like the rent to never exceed \$32,000 in any given year – inclusive of the payment made to Kootenai County.

Hagadone Hospitality Company asked that Mr. Taylor make it clear that the 2% rent that was negotiated in 1987-88 was on their total green receipts. This is costing Hagadone Hospitality Company about \$31,000 annually. Even though this is the lowest rate of return, it is the highest dollar amount due to a large amount of receipts.

Mr. Taylor stated that with the change in proposal from Hagadone Hospitality Company, the public issues appear to be primarily resolved. The primary issue was Sanders Beach and the

company is willing to allow that to remain a public beach which resolves that issue. He feels the company's request to put a cap on the rent deserves additional discussion. In this scenario, this is a non-navigational commercial use and under the Board's policy of rental for these, they are determined on a case by case basis. Mr. Taylor said if the Board chooses not to take an action on this today for approval, the department can issue either a temporary permit or an extension on the lease to allow the Board more opportunity to consider this proposal. He said the only new term relevant to the existing lease would be a new clause that reserves the rights for golf ball salvage to the company.

Mr. Taylor said that he would recommend that this lease be renewed under similar terms and conditions with no cap on rent, that it be issued for a ten-year term with a clause in the lease reserving golf ball salvage. Governor Batt reinforced that this was a very valuable piece of property to the state and he stated that the Board should not get involved in what is paid to Kootenai County. Director Hamilton stated that there were considerable negotiations at the time this lease was entered into. The Board did negotiate with the County Commissioners and with Hagadone Hospitality Company that 20% of the total rental would go back to the county. This was an agreement. Controller Williams stated that this is not endowment land, it is trust land that we administer so that the public has access.

Mr. Taylor said that at the time Sutter Mill operated, they had 37 acres for their log storage. Out of approximately 37 acres, nearly 31 have come back to public use. Hagadone Hospitality Company only retained 6.6 acres. Hagadone made the point that they did not take from the public, they actually gave back to the public.

Motion was made by Superintendent Fox and seconded by Secretary of State Cenarrusa to accept the proposal from Hagadone Hospitality Company. Director Hamilton suggested that Mr. Lance indicated that he had no concerns about proceeding with the meeting today, but he was under the impression that this was a briefing only. Director Hamilton suggested holding this agenda item over to the January meeting and have the Land Board extend the lease for a month.

Controllers Williams stated that all the controversial parts have been eliminated by the new proposal. Governor Batt suggested discussing the cap on the rent – perhaps using an escalator. Director Hamilton suggested consideration of using the CPI. This would probably guarantee 2-3% per year.

Controller Williams moved to amend the previous motion to provide a \$32,000 cap plus the CPI increase each year and accept all other terms as stated with original motion. Superintendent Fox seconded the motion. Mr. Westerburg from Hagadone Hospitality Company stated that he felt the motion as stated, while not as satisfactory as the original request, would be acceptable. The motion carried 4-0.

6. Sand Ridge Timber Sale: J.D. Lumber Request for Contract Modification
Presented by Winston Wiggins, Asst. Director - Forestry and Fire and
Nick Krema, Deputy Attorney General

Director Hamilton stated that agenda item #6 involves a problem encountered on a timber sale north of Sandpoint that was purchased by J.D. Lumber. Mr. Winston Wiggins provided the background information on this item. Mr. Nick Krema, Deputy Attorney General, Mr. Larry Fryberg, Area Supervisor at Sandpoint and Dave Slaughter with J.D. Lumber were available for questions.

The Department, through rumor, heard that two (2) loads of white pine had been hauled from the sale without load tickets. The Boundary County Sheriff's Office report clearly shows that two loads of white pine sawlogs from the Sand Ridge Timber Sale were hauled to Neumeyer's mill. The loads were not ticketed, nor did the State see these loads or scale them. As per the timber sale contract, these loads are unaccounted for, and their value is to be set at the highest value load of sawlogs removed from the sale. The highest value load removed from the sale is load #175 valued at \$22,673.44. Since there were two loads involved, the total bill is \$45,346.88. The Department currently holds a bond in amount adequate to cover this amount.

Nick Krema, Deputy Attorney General stated that he felt it was important to hold J.D. Lumber to this standard. He stressed it was an important precedent to set to discourage this type of conduct in the future. This gentleman took logs off of state property and represented to the mill owner that they were his logs. He said he felt the Department has shown some discretion in exercising the contract remedy instead of the trespass remedy. He said he felt J.D. Lumber's agent, the independent logger that took these logs off of state property should be responsible to J.D. Lumber for the loss that they will incur.

Dave Slaughter, J.D. Lumber, stated that he agreed with the Deputy Attorney General that the contract provisions are there for a specific reason because the state does not have the opportunity to examine missing loads – if there are indeed missing loads. Because this sale was bid at such a high price, they instructed their logger to log at about 30-35% maximum white pine per load realizing what the penalties are if a load is missing. He stated that the state, because of the value of the white pine, wanted to scale 100% of the white pine and sample the rest of the sale. J. D. Lumber said if you want to scale 100% of the white pine do a 100% scale of the whole sale.

Mr. Slaughter said that the President of J.D. Lumber went "head to head" with Mr. Bob Burke of the Department who insisted that J.D. Lumber bring in 100% pine loads. This put J.D. Lumber at substantial risk. If any loads were missing, J.D. Lumber had a huge liability. The contract really doesn't allow the state to dictate exactly how you sort in the woods, but J.D. Lumber did it because Mr. Burke was so insistent.

Mr. Slaughter said that Neumeyer's is a designated landing for dead white pine – pulp logs. He said there has not been any indication to J.D. Lumber that two loads of live white pine came into that yard. If there are two missing loads, J. D. Lumber is asking an adjustment to the

contract because they were forced by the state and the Department of Lands into bringing in extremely expensive loads of logs rather than the way they chose to log.

Mr. Wiggins stated that Neumeyer's is a landing where state logs are delivered. The Department does not, under its contract, make a distinction between dead or green white pine. If white pine, regardless of its being green or dead is delivered, meets the scaling specifications that are defined in the contract to saw into boards, it is considered saw log material and is at that price. If it does not meet those standards, it is charged at the pulp rate. Mr. Neumeyer stated that these were sawlogs that he did saw boards out of. Mr. Wiggins stated that the Department did not see them and could not state the quality of the boards.

Governor Batt asked Mr. Slaughter if it was apparent to him that this individual did divert these timber loads. Mr. Slaughter said that it was not apparent to him. Mr. Dawe was recovering from a motorcycle accident and cancer operation and he was taking some medication at the time. He said he had talked with Mr. Dawe about this to find out whether he neglected to tag some loads. Mr. Slaughter stated that he did not believe Mr. Dawe did anything intentionally. He said Mr. Dawe said he does not remember taking anything to Neumeyer's other than pulp logs.

Controller Williams said in the facts, as the state understands them, Mr. Dawe's driver, as to the two missing loads, was told by Mr. Dawe to take these two loads to Neumeyers. They did not have the tickets, which the driver said was unusual. Mr. Dawe said he would take care of the tickets later. There are two missing loads. Controller Williams asked Mr. Slaughter if he heard him right when Mr. Neumeyer said there were no green white pine logs brought in with those logs. Mr. Slaughter said he talked with Mr. Neumeyer who indicated to him that loads have come in and he does not recall anything from J. D. Lumber other than dead white pine or (cull) logs coming in.

Mr. Wiggins said that he did not have much confidence that the Department has seen the lumber that came out of those logs. Mr. Fryberg, Idaho Department of Lands, said the Department had a letter from Neumeyer's mill that said he cut from white pine, dead and green.

Mr. Crema, Deputy Attorney General said this discussion highlights the reason that we have the remedy we have in the contract. When you have a situation where loads go missing, it is going to be difficult to ascertain exactly what was on there. What we do know is that there was a report that came into the Department that there were loads of white pine that were going down the road unticketed. We have the statement of the driver who said, "this gentleman told me that he would take care of the logs, and I took two loads of logs to Neumeyer's." We also have a statement from Mr. Neumeyer that said Mr. Dawe came in with loads of lumber and said they were his. Given the facts and the contractual remedy, the result would support the Department's position.

Mr. Crema, Deputy Attorney General said the Department has proved that there are loads that have gone missing. Mr. Wiggins said there is a statement from the driver who said he hauled the logs. He said Mr. Dawe was with him in the truck and Mr. Dawe told him not to worry about the tickets. There is a statement from Mr. Neumeyer that he received white pine logs.

Mr. Slaughter stated that J. D. Lumber is not positive enough that there aren't two missing loads that they can say there aren't two missing loads. He said J. D. Lumber is willing to stipulate to it, however, they feel it is unfair when the state forced them to bring in 100% white pine for the state's convenience.

Controller Williams stated there is an obvious dispute as to the value of the logs. There is no dispute as to the missing two loads. He said there is contract and a remedy provided for it and a duty to conform to it. There has been a lot of research and he stated that he could see no reason not to follow the Department's recommendation. Governor Batt said he didn't know how the Board could deviate from the contract.

The recommendation of the Department is for the Land Board to direct the Department to seek payment from J.D. Lumber in the amount of \$45,346.88 for two unaccounted for loads of white pine in accordance with the terms of the timber sale contract. Continue to evaluate the possibility of criminal prosecution against Gene Dawe.

Controller Williams made the motion to approve the Department's recommendation.

Secretary of State Cenarrusa asked, "Whatever decision is made by this Board, is there still an opportunity for an appeal to the Land Board?" Director Hamilton stated that if this Board takes an action, then a member who votes in the prevailing manner, just like under any set of rules, can ask for reconsideration at some future time. But this has to be declared. You are making the decision on an appeal from the Department's decision. The Department has made a determination here, and we came down with a solid position on this. Now, Mr. Slaughter's company is appealing that to the Board. Therefore, the Board is making a decision. You can reconsider that decision under the circumstances that are set out under the rules of order that you operate under, or Mr. Slaughter can theoretically appeal it to the courts if he feels that there is some basis that the Board erred on. Basically the Land Board is making the final decision, subject only to reconsideration under the Board's own rules.

Controller Williams restated his motion to accept the Department's recommendation. Governor Batt seconded the motion. The motion carried on a vote of 4-0.

Governor Batt requested that the Land Board go into Executive Session regarding agenda item #7 at 11:10 a.m. The Land Board reconvened back into Regular Session at 11:20 a.m.

7. Appeal by Mr. Michael Dahmer of Rental Rate for Flat Top Butte Communication Site
Presented by Alvin Carr, Real Estate Specialist

Director Hamilton stated that agenda item #7 is an appeal by Mr. Michael Dahmer of the rental rate for his facility on Flat Top Butte Communication Site. Mr. Alvin Carr presented background information. Mr. Dahmer was present for comments.

The Department acquired, through lieu land selection, 240 acres of property located four miles east of Jerome, Idaho and about 15 miles north of Twin Falls, Idaho on Flat Top Butte within Jerome County.

Mr. Dahmer (right-of-way Permit #25388, Lease #M-7052) has voiced a strong concern regarding any fee increase. Mr. Dahmer's appeal to the BLM regarding a proposed rental increase was denied and he is objecting to any fee increase the state might consider. Mr. Dahmer's lease is current with the 1997 rental paid under protest.

Legal counsel has concluded that the state must adhere to the federal regulations governing rental rates at Flat Top Butte since title to the land is subject to existing right-of-ways. The 1998 rental for the Flat Top Butte communication right-of-way grant/permit is based on the federal fee schedule and billed in accordance with the Department of the Interior, Bureau of Land Management 43 CFR Parts 8200, 2810, 2880 Rights-of-Way, Rental Schedule for Communication Users.

Mr. Dahmer's 1998 rental, given the type of use and consistent with the existing right-of-way grant/permit located at Flat Top Butte would be \$1,053.70.

The Department's recommendation is for the Land Board to approve adjustment of Mr. Dahmer's 1998 rental for Right-of-Way Grant/Permit #25388 to a rental rate of \$1,053.70, consistent with the federal fee schedule and other existing right-of-way permits.

Governor Batt stated that Mr. Dahmer had a 30-year lease. He asked Mr. Dahmer if this was a fixed rate. Mr. Dahmer said there are two complete 43 CFR 2800's, one of which was in effect when he contracted and the one that they proposed that's been replaced. There is a multi-year lapse in the communications fees. He stated that the problem he has is not just arguing his lease rates, but the schedule is supposed to reflect something toward the accurate market value of the land. This is not prime ground.

Controller Williams asked Mr. Dahmer what his rate would be if the BLM still had the ground. Mr. Dahmer said the rate would be in the schedule, but when the state took title to that land, those rates were still under contest. Superintendent Fox said the state got the land from the BLM. She asked, "if the state collects money from the renter, do we pay the federal government. Controller Williams said, "No, that the state owns it." She then asked why the state has to charge their rental rate. Director Hamilton said that the state accepted the ground subject to the existing easements that were there for these facilities. That is not unusual. The state's fee structure is probably higher than the BLM's is now.

Mr. Dahmer said he hoped this would be delayed for consideration. The rentals have been paid.

Mr. Lance Hankins, Director of Engineering for Channel 7, stated that they operate a communications site at Flat Top Butte – KTFT, Channel 38, the low power NBC affiliate for Twin Falls. They have concerns on the same issue. The basis of the fee schedule has absolutely nothing to do with land values or appraisals. It was based entirely on the class of

usage and the population size of the areas that it's in. He stated that at this point, from his company's standpoint, they would prefer to just go ahead and stay with the existing permit structure. He said they would like to have some input into the actual leasing agreement once it converts to a state lease.

Director Hamilton stated that the Department would look into any unauthorized users.

Superintendent Fox suggested a sub-committee to meet with these people and look at some of the problems. The Governor appointed Superintendent Fox, Controller Williams and Secretary of State Pete Cenarrusa to the sub-committee.

8. Request Approval to Appraise Adams County Landfill for Sale
Presented by Perry Whittaker, Real Estate Bureau Chief

Director Hamilton said that agenda item #8 is a request by Adams County Commissioners to dispose of state endowment land encompassing the Adams County landfill. Mr. Perry Whittaker presented the background information.

Adams County has operated a sanitary landfill on State Public School endowment land from 1967 to 1993 when the landfill was closed out and rehabilitated. From a liability standpoint, the Department believes it would be prudent to sell the landfill site to Adams County since they need to maintain control of the landfill site. State environmental liability should be reduced although not eliminated. This is part of a 200-acre parcel of state endowment land, which has been identified for disposal. It lies in an area where the surrounding lands are used for livestock grazing purposes.

Board conceptual approval to sell the property will allow the department to appraise the property for sale. Once the appraisal is complete, the Department will return to the Land Board with a final request for approval to sell the property at public auction.

The motion was made by Superintendent Fox and seconded by Secretary of State Cenarrusa to approve the recommendation of the Department. Motion carried on a vote of 4-0.

Secretary of State Cenarrusa asked about landfills on state land. Mr. Whittaker said there are no active landfills on state land at this time.

INFORMATION AGENDA

The information agenda is informational items only and requires no action.

9. Timber sale activity report
10. Interest rate update
11. Triumph Mine update
12. 1997 Fire Season update

13. Report on Flat Top Butte Communications Site
14. Sweetwater Property Status

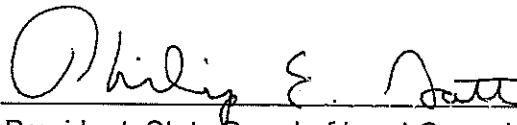
Controller Williams asked if the first item in the agenda, each month, could contain a summary of how much money the Department transfers to the Endowment Fund or the Public School fund for the past month. Director Hamilton stated that this could be done.

Governor Batt asked how the preparation of legislation for the Dorn Committee is progressing. Director Hamilton stated that Stephanie Balzarini, Deputy Attorney General and Clive Strong, Division Chief, Natural Resources Division have been working with Mike McConnell of Legislative Services on this issue.

Director Hamilton brought the Land Board up-to-date on the Sweetwater Junction property. This property did not sell at the original sale and the Department of Health and Welfare has decided that they want to re-offer if for sale. The Department will be working with them on the appraisal process.

There being no other matters to be brought before the Board, the regular meeting of December 9, 1997 was adjourned.

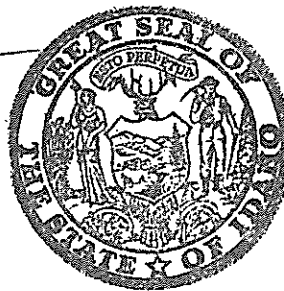
IDAHO STATE BOARD OF LAND COMMISSIONERS



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



Pete T. Cenarrusa
Secretary of State



Stanley F. Hamilton
Director, Idaho Department of Lands