



STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board
Pete T. Cenarrusa, Secretary of State
Alan G. Lance, Attorney General
J. D. Williams, State Controller
Marilyn Howard, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

Final Minutes
Regular Land Board Meeting
November 9, 1999 9:00 AM

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, November 9, 1999 in Boise, Idaho. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa
Honorable State Controller J. D. Williams
Honorable Superintendent of Public Instruction Marilyn Howard
Honorable Attorney General Alan Lance

Secretary to the Board Stanley F. Hamilton

CONSENT AGENDA

Director Hamilton provided background information on Consent Agenda items.

A motion was made by Attorney General Lance and seconded by Secretary of State Cenarrusa to approve the Consent Agenda with item #4 being withdrawn. The motion carried on a vote of 5-0.

- 1. The following official transactions were approved:**
 - A. Bureau of Range Management and Surface Leasing for Cropland, Grazing, Cottage Site, Miscellaneous and Submerged Land Leases – September 1999
 - B. Bureau of Forest Management, September 30, 1999 through October 22, 1999
 - C. Bureau of Real Estate, Easement Section – September 1999
 - D. Bureau of Real Estate, Land Sale Section – September 1999
 - E. Bureau of Minerals – October 1999

- 2. The following timber sale, staffed by Ron Litz, Chief, Bureau of Forest Management, was approved:**
 - A. CR-6-0152 Hidden Howell 11,235 MBF

- 3. The following Land Board meeting minutes were approved:**
 - A. Regular Land Board Meeting – September 14, 1999
 - B. Regular Land Board Meeting – October 12, 1999

- 4. Idaho Department of Fish and Game grazing lease G-6381 reclassification to miscellaneous lease, staffed by Tracy Behrens, Range Management Specialist, was withdrawn from the agenda to be heard at a later date.**

DEPARTMENT OF LANDS RECOMMENDATION: The department recommends that the lands in expiring grazing lease G-6381 be reclassified from General Management Zone – Range Grazing to Special Management Zone – Wildlife. Upon reclassification, the department will issue a ten-year Miscellaneous Lease for 640 acres to IDFG. Rental for the miscellaneous lease will be set at \$360.00 for calendar year 2000 and will be subject to an annual adjustment based on the Consumer Price Index. The lease will include a management agreement based on the management proposal submitted by the applicant and agreed to by the department.

DISCUSSION: Attorney General Lance asked Director Hamilton for the total acreage. Director Hamilton responded that this grazing lease is for one section. Fish and Game property surrounds the section on two sides. The section has been managed for several years by Fish and Game in conjunction with the Boise River Wildlife Management Area. The land has been grazed in the past and the understanding is the land will be grazed in the future by an adjacent landowner in cooperation with IDL and Fish and Game.

Attorney General Lance asked how much rent Fish and Game would pay on an annual basis. Director Hamilton responded \$360.00 per year. Attorney General Lance said he, as trustee, has a problem with the dollar figure. He stated it seems we should either trade the property to Fish and Game for some other property or we should sell the property to Fish and Game. He feels fifty cents per acre per year in terms of management costs, etc., does not make sense in issuing this lease.

Attorney General Lance asked that item #4 be removed from the Consent Agenda. He suggested that the item be placed back on the agenda after the appropriate parties get together to discuss the item in detail. No objections were voiced.

BOARD ACTION: Item #4 was withdrawn from the Consent Agenda.

5. Boise River Disclaimer – Request approval for disclaimer of interest to Don Davis on 7.65 acres of accretion land adjacent to the Boise River in Ada County, staffed by Perry A. Whittaker, Chief, Bureau of Real Estate, was approved.

DEPARTMENT OF LANDS RECOMMENDATION: It is recommended that a disclaimer of interest be issued for this parcel of accretion land totaling 7.65 acres of the former bed of the Boise River. This disclaimer of interest will be issued contingent upon the applicant granting to the State of Idaho a disclaimer of interest for 7.65 acres of the former riverbed (accretion land) as the public school endowment is the owner of the land lying north of the former river channel. The recommended fee is \$600.00.

BOARD ACTION: Board approved.

REGULAR AGENDA

6. Director's Report, presented by Stanley F. Hamilton, Director, Department of Lands

- *Standard Report* – Current Permanent Endowment Funds balance as of October 31, 1999 is \$779,706.481. Of this balance, \$536,303,005 is held in the Public School Fund and \$243,403.476 is held in the other eight-pooled funds.

- *President Clinton's Roadless Initiative – Impacts on Idaho* – Department of Lands is currently working on a detailed analysis of the impacts from the President's roadless initiative. Staff are specifically looking at how the initiative affects state endowment lands and also at the more general problem of access to state endowment lands across federal lands of any type.

DISCUSSION: Controller Williams expressed concern for the mills in the state and for timber supply. Secretary of State Cenarrusa asked if the roadless initiative has become a reality through presidential

proclamation or congressional action. Director Hamilton responded the initiative is not a congressional action. Whether the initiative will become a reality is a good question at this point. Clearly the President has indicated his desire and he has set the Forest Service in motion to develop the proposal along with the subsequent Environmental Impact Statement. A formal proposal will probably be presented sometime a year from now. Whether the President can accomplish this action through Executive Order is the current debate.

Superintendent Howard asked if there is any way to get more definitive information about this initiative. Director Hamilton responded the President said anywhere there is a roadless area of 1000 acres that appeared to be adjacent to or surrounded by existing roadless that they would then have the opportunity to append that out. We do not know where those areas are and neither does the Forest Service. This will be the result of a fairly intensive study and it will take time to complete.

No action taken on this agenda item.

7. Endowment Investment Reform Committee Progress

A. Update Report by Charlie Saums, Bill Carter and Stan Hamilton

Charlie Saums provided background and update information on the Endowment Investment Reform Committee for the board. Mr. Saums introduced Bill Carter, co-founder of QInsight, a quantitative firm hired to assist the Endowment Investment Board in developing a variable spending policy.

The spending policy model developed for the Idaho Endowment Fund Investment Board has four objectives:

- Maintenance of permanent endowment purchasing power.
- Maintaining fair and equitable inter-generational funding.
- Achieving smooth and predictable spending.
- Maintaining a constant ratio between the permanent endowment and the earnings reserve fund.

Mr. Carter provided a project overview along with preliminary design results.

No action taken on this agenda item. A copy of QInsight's preliminary report entitled *A Variable Spending Policy for the State of Idaho Endowment Fund Investment Board* is included with the meeting minutes.

B. Constitutional Amendment – Draft Legislation for Land Bank Proposal

Director Hamilton provided background information. In 1998, the Legislature enacted a Joint Resolution, HJR 6, that proposed amendments to Section 4, Article IX and Section 8, Article IX, of the Constitution of the State of Idaho.

The proposed amendment provided that the Public School Permanent Endowment Fund would include proceeds from the sale of school lands and amounts allocated from the public school earnings reserve fund; that proceeds from the sale of school lands could be deposited into a land bank fund to be used to acquire other lands within the state; and that if proceeds were not used to acquire other lands within a time provided by the legislature the proceeds would be deposited into the Public School Endowment Fund along with earnings.

The proposed amendment would also have changed the word disposal to the word sale in the context of the disposition of endowment lands.

DEPARTMENT OF LANDS RECOMMENDATION: The department recommends the Board consider reintroduction of draft legislation that would accomplish the goals of HJR 6, 1998 Legislative Session.

DISCUSSION: Governor Kempthorne asked Director Hamilton for his observation on how important it would be for the Land Board to ultimately have this legislation implemented. Director Hamilton responded

the land bank would probably be the most important tool the land board has ever had for the management of some of the peripheral lands, lower value lands and scattered lands. The land bank would allow disposal of those lands and would allow the cash to be used to acquire other more suitable assets. Director Hamilton does not see the legislation as putting the board in the land sale business. He views it as a tool available to the board similar to land exchange. He feels the legislation is important.

Controller Williams concurred and commented this is an excellent tool to change the portfolio mix of land investments. As an example, some exchanges and property acquisitions near the capitol mall have been very convoluted, time consuming and labor intensive to process. He feels the land bank is a necessary tool needed to make millions of dollars for the school children of Idaho. He is very supportive of reintroducing the draft legislation to the Legislature so it can go to the voters in the fall of 2000. Secretary of State Cenarrusa agreed.

Attorney General Lance recommended Director Hamilton confer with Representative Deal. Representative Deal carried the legislation initially on the House side and may have some thoughts or ideas on reintroduction of the legislation.

BOARD ACTION: A motion was made by Attorney General Lance and seconded by Secretary of State Cenarrusa that the Land Board resubmit HJR 6 as necessarily amended by the action of the Supreme Court through the Legislature for their positive consideration. The motion carried on a vote of 5-0.

8. Request for approval of final recommendations of the Forest Practices Act Advisory Committee (FPAAC) for amendments to Forest Practices Act Administrative Rules IDAPA 20.02.01, presented by Winston Wiggins, Assistant Director, Forestry and Fire

DEPARTMENT OF LANDS RECOMMENDATION: The Forest Practices Act Advisory Committee recommends the proposed rules be adopted as final rules.

BOARD ACTION: A motion was made by Attorney General Lance and seconded by Secretary of State Cenarrusa to approve the adoption of the proposed rules as final rules. The motion carried on a vote of 5-0.

9. Hagen/State of Idaho Land Exchange – Request for final approval to complete a state/private land exchange in Northern Idaho, presented by Perry A. Whittaker, Chief, Bureau of Real Estate

DEPARTMENT OF LANDS RECOMMENDATION: Department staff recommends land board approval to complete this exchange.

DISCUSSION: Attorney General Lance asked Mr. Whittaker what the differential in dollars would be between the appraised value of the property if legal access was attained versus the value of the property without legal access. Mr. Whittaker stated all properties were appraised “as is” so the dollar figure reflecting legal access is not currently available.

Attorney General Lance stated this is an example where HJR 6 would be beneficial because the parcels could be sold without having to go through the very expensive and time consuming mechanics of exchange. Secretary of State Cenarrusa concurred stating there are a lot of small parcels that could be sold.

BOARD ACTION: A motion was made by Attorney General Lance and seconded by Secretary of State Cenarrusa to approve the department’s recommendation relative to agenda item #9. The motion carried on a vote of 5-0.

10. Application for mineral lease 9258 on the Salmon River, LaMar Burnett, presented by Scott Nichols, Chief, Bureau of Minerals

DEPARTMENT OF LANDS RECOMMENDATION: The Bureau of Minerals recommends approval of Mineral Lease Application No. 9258 for gold only, with stipulations.

DISCUSSION: Scott Nichols, Chief, Bureau of Minerals, provided background information. Mr. Nichols advised the board his presentation does not come down to a technical discussion of whether mining should be completed or whether the operator can maintain water quality standards. He feels the item is a policy decision for the board concerning leases in that area.

BLM has commented that they do not feel mining is consistent with uses along that corridor. Mr. Nichols takes exception to the comment. There have been two active state mining leases in that corridor for at least the last ten years. Those leases are involved in the same type of deposits, i.e., extraction of sand and gravel within the high watermark of the Salmon River. Further, the Department of Transportation and BLM have recently both opened gravel sources and rock pits within approximately 200 yards of Highway 95. Those operations are fully visible to the public in their north-south transportation. Additionally, the Department of Transportation in their stabilization of the Riggins slide has conducted a small mining-filling operation. From an aesthetic standpoint, Mr. Nichols does not believe this lease is any different from any other uses occurring in the area.

Another concern raised by BLM is protection of habitat and threatened endangered species. Fish, the peregrine falcon and the bald eagle are the primary issues. Regarding threatened endangered species, Mr. Nichols stated this lease is not an approval to mine on the river. The operator must still complete a Placer Mining Permit Application and a Water Resources application. Then he must go through the Corps of Engineers 404 permit process, which includes a National Marine Fisheries Consultation. This will ensure as would the placer mining permit that there is no discharge to the Salmon River and that there would be no impact to threatened endangered species.

The lease proposal before the board is simply to lease the land. Department of Lands operating memorandums require Mr. Burnett to complete test operations. Without the lease, no testing or exploration can be completed. Mr. Burnett still has regulatory hoops to jump through.

Mr. Nichols next discussed royalties. There has been some discussion about recovering adequate royalties. Involved in this lease is approximately one acre of ground between the waterline and high watermark of the Salmon River. We have approved this type of operation in the past. The last operation generated approximately \$13,000 in royalties. With Mr. Burnett's operation we came up with a maximum/minimum pre-pay royalty of \$50,000. After running numbers on that, if we look at recovery based on information developed by BLM, the recovery would be about \$900,000 if the operator is issued the lease and issued the permits to operate. That would be approximately a five-percent gross royalty of \$50,000.

Mr. Nichols feels a balance has been reached in the need to guarantee a royalty or income that is realistic for the mining area. He has discussed this issue with Minerals Leasing Specialist Sharon Murray. Mr. Nichols feels that the issue comes down to whether we, as a department and as a board, want to continue this type of operation on the river or do we want to issue the lease potentially as an exploration project and then decide through the Corps of Engineers and Placer Mining Permit Application whether to proceed.

Attorney General Lance asked Mr. Nichols about BLM's objection to the lease. Mr. Nichols said he had the opportunity to speak with BLM's geologist and recreation manager and was told by both people that BLM has a philosophical objection and that there is really nothing that can be done to alleviate their concerns or objections regarding the proposal. BLM does not propose mining within that corridor. They have withdrawn their adjacent BLM-administered lands from mineral entry.

Controller Williams commented he has a real problem with this lease. This is not endowment land. This is trust land that is supposed to be used for all the people of Idaho. He said he is impressed that the

developers would put up the \$50,000. Five percent is a good royalty. The developers putting up that amount of money indicates they feel this is very viable.

Philosophically Controller Williams is really in favor of multiple use. It is a great concept of balancing uses. But this river is such a unique river. This same conversation could have been held in the 1920s when a developer of a mine at Triumph came and said he wanted to develop the mine but needed a place to put tailings. There is space down at the bottom of the mineshaft – can the tailings go there? And we received \$500. We have spent over a million dollars fixing that problem.

Controller Williams said all of us get the opportunity of driving down the Salmon River from White Bird to Riggins. Every time he sees old relics sitting there, equipment and piles of gravel, etc., he wonders if we are doing the right thing. We have the endangered species act and we do not know how that will play out. Controller Williams said he does not think the chance is worth \$50,000 to find out. He feels this is something the board needs to be very careful about and he is not in favor of the lease.

Mr. Nichols stressed IDL is not proposing a mine. The lease being proposed is no guarantee to mine. If the board decides to issue this lease, IDL will be back before the board with a Placer Mining Permit Application. At that time the board will have another opportunity for review. The board will also be advised whether favorable or unfavorable reviews by the National Marine Fisheries Service, Corps of Engineers and Department of Water Resources have been received.

Superintendent Howard commented she does not feel comfortable with the lease. She grew up in Custer County and is familiar with the area. She does not feel the mining operation is an attractive alternative for our rivers. She realizes leases have been issued in the past but she does not know if that is a good model to use for the future.

Secretary of State Cenarrusa observed this is just the first step. The other steps that seem to cause concern will be considered later.

Attorney General Lance commented all parties present are concerned about the Endangered Species Act and some of the environmental consequences. He respects Superintendent Howard's philosophical opposition to the lease being granted. However, at this point he is willing to vote in favor of the motion to let it go forward so these discussions can be held in terms of whether or not there is going to be any permanent negative environmental impact or problems with endangered species. The BLM may not like mining but at this point it is the Land Board's decision.

Governor Kempthorne thanked Mr. Nichols for a thorough report. Governor Kempthorne then addressed Mr. Burnett. The Governor commented that when the application comes back, if in fact it does come back, the board may be at the same split vote. The Governor said he will follow this issue closely because points have been raised that he is sensitive to. The approval at this time is to allow the process to go forward. There are a number of hurdles that will have to be undertaken and he wished Mr. Burnett well and asked that the work be done with quality. This lease is in an area that a lot of people will see. The Governor said he will be reviewing how the work is being done.

BOARD ACTION: A motion was made by Secretary of State Cenarrusa and seconded by Attorney General Lance to go forward with the lease approval. The motion carried on a vote of 3-2, in favor. Those voting aye were Governor Kempthorne, Secretary of State Cenarrusa and Attorney General Lance. Those voting nay were State Controller Williams and Superintendent Howard.

11. Result of auction for lease G-6359 – Highland Land & Livestock, staffed by Tracy Behrens, Range Management Specialist

This agenda item was withdrawn.

12. Results of auctions for lease G-6639 – Simplot Livestock Company, staffed by Tracy Behrens, Range Management Specialist

This agenda item was withdrawn.

13. Results of auctions for lease G-7576 – Sawtooth Grazing Association, staffed by Tracy Behrens, Range Management Specialist

This agenda item was withdrawn.

A motion was made by Attorney General Lance and seconded by Secretary of State Cenarrusa to resolve into Executive Session at 11:00 a.m. The motion carried on a vote of 5-0.

EXECUTIVE SESSION

14. To consider and advise its legal representatives on Treasure Valley Concrete, Inc. v. State of Idaho, Docket No. 23955, Idaho Code §§ 47-701 and 47-701(a), presented by Clive Strong, Deputy Attorney General

15. To consider acquiring an interest in real property which is not owned by a public agency, Idaho Code § 67-2345(1)(c), presented by Perry A. Whittaker, Chief, Bureau of Real Estate

16. To consider and advise its legal representatives on IWP v. State Board of Land Commissioners (Ingram), Ada County Case No. 9702571D, presented by Stephanie Balzarini, Deputy Attorney General

A motion was made by Attorney General Lance and seconded by Secretary of State Cenarrusa to resolve back into Regular Session at 12:25 p.m. The motion carried on a vote of 5-0.

Upon return to Regular Session, Attorney General Lance moved with respect to agenda item # 16 that the board take the actions necessary and appropriate to comply with the judge's previous order. Secretary of State Cenarrusa seconded the motion. The motion was carried on a vote of 5-0.

Governor Kempthorne left the meeting at 12:30 p.m.

INFORMATION AGENDA

Director Hamilton briefed the Land Board on the Information Agenda Items. No Land Board action is required on the Information Agenda.

17. Marsing Job Corps Site Surplus Property – Status Report

DISCUSSION: Mr. Perry Whittaker, Chief, Bureau of Real Estate, provided background information.

Director Hamilton does not feel the state should make repairs before trying to sell this property. If the board chooses to dispose of the land, the Director suggests disposing of it as is for the best offer and then move on.

Attorney General Lance asked for the site acreage. He was advised 52 acres. Attorney General Lance asked how many ways the property could be divided in terms of a sale. Mr. Whittaker responded the site

could easily be divided two ways. Fish and Game had the site at 43 acres and then added nine acres. The added acreage is by the water to make the property a little more attractive for disposal.

Attorney General Lance suggested the property be sold as two parcels, a nine-acre parcel and the larger parcel, in two different auctions. Then he suggests that both properties be sold together. Whatever brings the highest dollar is the one he feels the board probably ought to take. The nine acres will probably raise the value and the board might be able to get a little more money if somebody does not like the buildings but wants nine acres next to the water.

Director Hamilton commented there are probably more than nine acres next to the water. There is probably a third or almost half a parcel that could be included in the waterfront. Something along that line would work.

Controller Williams asked if there is anything being done to protect the property now. Director Hamilton said not at this point. Director Hamilton recommended that Fish and Game put a night watch at the site. Controller Williams feels the property has more value than what it is being sold for. He does see there are problems with it. He would like to see the buildings boarded to protect the interiors from further damage to save what is there.

Director Hamilton stated Fish and Game will be advised that they need to put a night watch on the property and that the buildings need to be boarded up and closed.

Attorney General Lance agreed with Controller Williams. He also feels someone is going to make a lot of money on this site but he does not believe the board is set up to do it. He suggested that the property be divided into as many sub-parcels as possible, higher a professional real estate auctioneer and conduct an auction in public subject to board approval of the final bid to get the best deal possible to dispose of the property.

Controller Williams suggested the first thing to do is ask Fish and Game to take some reasonable efforts to protect the property – at least put plywood on the broken windows so that the interiors of the buildings can be protected. Then have Fish and Game investigate the possibility of an exchange. After that, have the department come back with a recommendation next month based upon negotiations with Fish and Game.

Secretary of State Cenarrusa, acting as chair, asked if there was any objection to Controller Williams' proposal. Hearing none, the proposal was so ordered.

Director Hamilton asked for clarification. Attorney General Lance said the proposal is to tell Fish and Game to put boards on the windows and protect the property. Then Fish and Game has to figure out if they want to have an exchange or not. Then we will talk about a sale if they do not want to exchange the property. Secretary of State Cenarrusa said the first thing is to secure the property. Superintendent Howard added that then Fish and Game can pursue their options.

18. Timber Sale Activity Report

19. Fire Report

20. Interest Rate Update

21. Cancelled Lease Auctions

- G-6184 – J. R. Simplot, Co., reopened by action of Idaho Supreme Court
- G-6436 – Lequerica Brothor
- G-6437 – Lequerica Brothers
- G-6465 – L. U. Ranching
- G-6548 – William Panzeri

22. Triumph Mine

Secretary of State Cenarrusa asked if there was any further business before the board. Attorney General Lance stated yes. A couple of months ago the board discussed a lease on Ohio Gulch in Blaine County. He asked that this item be placed back on the agenda for the next board meeting. In the meantime, he and Controller Williams have questions and would like to review the lease. Secretary of State Cenarrusa so ordered.

There being no further business before the Board, the meeting adjourned at 12:55 p.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne
President, State Board of Land Commissioners and
Governor of the State of Idaho

/s/ Pete T. Cenarrusa
Pete T. Cenarrusa
Secretary of State

/s/ Stanley F. Hamilton
Stanley F. Hamilton
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the December 14, 1999 regular Land Board meeting.