



STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board
Ben Yursa, Secretary of State
Lawrence G. Wasden, Attorney General
Keith L. Johnson, State Controller
Marilyn Howard, Superintendent of Public Instruction

Winston A Wiggins, Secretary to the Board

Final Minutes Regular Land Board Meeting February 10, 2004

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, February 10, 2004 in Boise, Idaho. The meeting began at 9:07 a.m. The Honorable Lieutenant Governor Jim Risch presided. The following members were present:

Honorable Secretary of State Ben Yursa
Honorable Attorney General Lawrence G. Wasden
Honorable State Controller Keith L. Johnson
Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Winston A Wiggins

Governor Kempthorne was absent from this meeting.

Director Wiggins informed the Board of a failure in the recording equipment for the February 10, 2004 regular Land Board meeting. Due to the equipment failure, no tape recording of the meeting exists. Attorney General Wasden directed that language reflecting this equipment failure be added to the final minutes stating that the minutes for this meeting were reconstructed from notes. With the additional language inserted (refer to the March 9, 2004 Land Board meeting minutes), the February 10, 2004 Land Board meeting minutes were approved at the March 9, 2004 regular Land Board meeting as a part of the Consent Agenda.

• **CONSENT**

Director Wiggins provided background information on the Consent Agenda items.

A motion was made by Superintendent Howard to approve the Consent Agenda with the exception of agenda item 5 being moved to the Regular Agenda for discussion and agenda items 9 and 10 being withdrawn at the request of Attorney General Wasden. Secretary of State Yursa seconded the motion. The motion carried on a vote of 5-0.

1. Director's Report – approved

- A. Interest Rate on Department Transactions – December 2003; January 2004
- B. Bureau of Surface and Resource Management, Minerals Section, Official Transactions – November, December 2003
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – November, December 2003
- D. Bureau of Real Estate, Easement Section, Official Transactions – November, December 2003
- E. Bureau of Surface and Resource Management, Range Management and Surface Leasing Section, Official Transactions – November, December 2003
- F. Timber Sale Official Transactions – November 26, 2003 through January 27, 2004

- G. Timber Sale Activity Report
- H. Legal Matter Summary

2. Endowment Fund Investment Board’s Manager’s Report – Staffed by Matthew Haertzen, CFA, Manager of Investments, EFIB – **no action taken**

3. Qualified Bidders List – Timber Sales – Staffed by Bob Helmer, Chief, Bureau of Forest Management – **approved**

- A. McFarland Cascade Pole & Lumber Company, 1640 East Marc Avenue, Tacoma, WA 98421

4. Timber Sales - Staffed by Bob Helmer, Chief, Bureau of Forest Management – **approved**

A. Lake Fly	CR-10-0314	2,000	MBF
B. Horton Cross OSR	CR-10-0334	1,400	MBF
C. South Hoodoo	CR-20-0242	1,785	MBF
D. Spirit Lake Iditarod	CR-22-5001	2,760	MBF
E. Miller Follow-up	CR-22-5002	1,270	MBF
F. Sportsman Thin	CR-30-0496	4,790	MBF
G. Bartlett Pole	CR-40-0549	370	MBF
		79,725	LF
H. Olson OSR	CR-40-0756	1,660	MBF
I. Lindley-Bonami Pole	CR-41-0004	435	MBF
		151,000	LF
J. Purdue OSR	CR-41-0005	1,255	MBF
K. Hill	CR-60-0162	2,300	MBF

5. Minimum Harvest Schedule – Three Rivers Timber, Inc. – Staffed by Ron Litz, Assistant Director, Forestry and Fire

DEPARTMENT RECOMMENDATION: That the State Board of Land Commissioners approve the agreement.

DISCUSSION: Dr. Howard asked how many sales were on the list of “last chances.” Director Wiggins stated Marsh Cemetery and West Benton Butte. Dr. Howard asked if the minimum harvest schedule included deadlines for completion. Director Wiggins stated some dates needed to be adjusted. Dr. Howard noted three sales are shown with extensions through 2007. She asked if these sales have interim harvest schedules. Director Wiggins stated IDL grants extensions providing the purchaser is continuing to harvest. A good faith effort must be made by the purchaser.

Lt. Governor Risch asked if the intent of the Board is for no further contract extensions to be issued. Attorney General Wasden stated he is not interested in granting any additional extensions on these sales. He feels it is not fair to the other members of the industry. He is hesitant to allow Three Rivers Timber to contract again at all.

Superintendent Howard questioned Three Rivers Timber’s commitment to harvest its sales within the specified timeframe and expressed concern that the company might turn back the sales. She asked what would happen to the contracts should another entity purchase Three Rivers Timber. Director Wiggins stated there are two possible options. One option is that the new company would take over the contracts and contract assignments would be executed. The second option is the purchasing company

would not take over the contracts and IDL would hold Three Rivers Timber accountable for the completion of its remaining contracts.

Controller Johnson asked if Three Rivers Timber has seen this agreement and was it agreed to under duress. Director Wiggins stated the agreement was negotiated between Mr. Mulligan and members of the Land Board staff along with IDL staff. Director Wiggins described Mr. Mulligan's acceptance as "grudging acceptance." Mr. Mulligan had the agreement in hand when he left the meeting. Minor changes were made after Mr. Mulligan left the meeting and the modified agreement was faxed to Three Rivers Timber, but no response was received. Director Wiggins stated it is his understanding that Mr. Mulligan accepted the agreement.

Attorney General Wasden asked how important the last two items are to this agreement. He asked if they are critical to the agreement or operation. Assistant Director Litz stated the cash flow is not available to do any sooner. Hardship contract termination is an option.

Attorney General Wasden asked what happens if Three Rivers Timber does not meet the requirements of the schedule. Director Wiggins stated that language is not formally in the agreement, but if Three Rivers Timber does not meet the deadline on any one of the sales, the Company is in breach of contract. Any breach of contract is a breach of the agreement. Secretary of State Ysursa stated the penalties are the interest. We also have the bond.

Lt. Governor Risch commented no one wants to put Three Rivers Timber out of business. However, he believes there should be a more aggressive policy if requirements are not met during the contract period. He stated he can see what Three Rivers Timber does to mix down the costs. Secretary of State Ysursa stated Three Rivers Timber is trying to show the lender that he has the capacity to get a loan to build a small diameter facility. Assistant Director Litz stated Three Rivers Timber has indicated they have ordered machinery and that they will be operational this summer.

Dr. Howard asked if it is clear enough that Three Rivers Timber understands this is the last extension. She asked what is held over Mr. Mulligan's head. Lt. Governor Risch stated it is not fair to the entire industry. He asked if a motion is needed to enter into the agreement. Director Wiggins stated it is certainly within the purview of the Board to strengthen the contract language. Lt. Governor Risch stated he is not as concerned with the agreement. He feels a message needs to be communicated.

Attorney General Wasden suggested adding language that all extensions in the agreement depend upon the completion of sales on schedule or all other sales will be cancelled.

Lt. Governor Risch commented this agenda item could be postponed until the March meeting to allow communication with Mr. Mulligan. Secretary of State Ysursa suggested a delay of one month to allow staff to work with the Attorney General to add tougher language to the agreement. The agreement can then be brought back to the March meeting.

Attorney General Wasden stated he is not interested in any further extensions from Three Rivers Timber coming before the Board. He suggested that the following additional wording be added to the agreement:

"All extensions set forth in paragraph 4 are contingent upon completion of each sale in accordance with the schedule. In the event purchaser fails to complete any sale in accordance with the schedule set forth in paragraph 4, the Board shall be entitled to cancel all remaining sales and to recover on the bonds."

Lieutenant Governor Risch suggested adding wording to the agreement that would preclude Three Rivers Timber from bidding on additional timber sales until all of the current sales are completed. Controller Johnson expressed concern that the addition of such wording would bind a future Land Board to contract terms set by the current Board. Director Wiggins suggested the wording could be such that the Board would have discretion to approve or disapprove bidding on future sales.

Lieutenant Governor Risch suggested that this agenda item be held until the next Land Board meeting to allow the Department and Land Board staff to incorporate proposed wording changes and to notify Mr. Mulligan of those proposed changes.

BOARD ACTION: By unanimous consent the Board chose to delay this agenda item for one month. No objections were voiced.

6. Contract Extension, TS-4-3042, Marsh Cemetery, Three Rivers Timber, Inc. – Staffed by Ron Litz, Assistant Director, Forestry and Fire

DEPARTMENT RECOMMENDATION: That the State Board of Land Commissioners approve the extension.

BOARD ACTION: Approved.

7. Request for Contract Extension, TS-4-2992, Wildcat Meadows, Konkolville Lumber Company, Inc. – Staffed by Ron Litz, Assistant Director, Forestry and Fire

DEPARTMENT RECOMMENDATION: That the Board grant a fifth extension with the understanding that this will be the final extension for this sale.

BOARD ACTION: Approved.

8. Cancellation and Bond Forfeiture of Joe Lynde's Reclamation Plan No. 1324 – Staffed by Scott Nichols, Chief, Bureau of Surface and Mineral Resources

DEPARTMENT RECOMMENDATION: That the Board cancel Reclamation Plan No. 1324 and forfeit Contractors Bonding and Insurance Company Bond No. FA3920.

BOARD ACTION: Approved.

9. Application for Amendment of Dredge and Placer Permit No. 314, Starr Minerals, LLC. – Staffed by Scott Nichols, Chief, Bureau of Surface and Mineral Resources – WITHDRAWN

10. Application for Approval of Dredge and Placer Permit No. 325, Kim Dandurand, dba Ananda, LLC. – Staffed by Scott Nichols, Chief, Bureau of Surface and Mineral Resources – WITHDRAWN

11. Minutes – approved

- A. Regular Land Board Meeting – December 8, 2003
- B. Regular Land Board Meeting – January 13, 2004

• **REGULAR**

12. Contract Extensions – Timber, Salvage and Direct Sales – Presented by Ron Litz, Assistant Director, Forestry and Fire

DEPARTMENT RECOMMENDATION: That the State Board of Land Commissioners approve the agreement.

That the Board adopt the following timber sale extension policy:

Existing Sales – Follow the current extension policy.

New Sales –

1. The State expects purchasers to timber sales within the original contract period. Purchasers must recognize that extensions will be granted at the sole discretion of the State and are not automatic. In cases where the State elected to grant an extension request, the State may impose specific schedules or other requirements as a condition for granting any extension.
2. If a purchaser has made reasonable efforts to complete the sale within the original contract period, and still needs an extension of time to complete the sale, the Department may grant the purchaser an extension (1st extension) for up to one year provided the purchaser has made a written request for that extension at least thirty days prior to the expiration date of the contract. The request must include justification why the sale could not be completed within the original contract period, and must include a detailed logging plan with specific time lines for completing the sale within the 1st extension period.
3. In the event that a purchaser is unable to complete the sale within the 1st extension period due to unforeseen “extreme” circumstances beyond the purchaser’s control, the Department may grant a 2nd extension for up to one year. The purchaser must make a written request for the 2nd extension at least thirty days prior to the expiration date of the 1st extension, describing what unforeseen “extreme” circumstances precluded sale completion. The purchaser must also include a detailed logging plan with specific time lines for completing the sale within the 2nd extension period. “Extreme” circumstances include, but are not limited to, catastrophic acts of nature (fire, blowdown, floods, earthquakes, etc.) that physically restrict the purchaser’s access to the sale area, or destruction of a purchaser’s milling facilities or equipment by fire or catastrophic acts of nature. Depressed market conditions will not be considered “extreme” circumstances.
4. Extension fees will be as follows:
 - a. Prepaid or lump sum sales:

Extension	Extension Fee
1 st	\$2.00 per acre or \$80, which ever is greater
2 nd	\$4.00 per acre or \$160, which ever is greater
All other extensions	Established by the Board

- b. Scaled Sales:

Timber harvested during the 1st extension period will increase from 6% to the current average monthly rate for conventional mortgages as quoted in the Federal Reserve statistical release; rounded downward to the nearest ¼ percent. Timber harvested during the 2nd extension period will increase to the current average monthly rate for conventional mortgages as quoted in the Federal Reserve statistical release; rounded downward to the nearest ¼ percent, or the rate set during the prior extension, whichever is higher.
5. Any extension of a state timber sale shall include a provision requiring full compliance with the Timber Supply Stabilization Act.

DISCUSSION: The Board suggested adding wording to the final terms and conditions that would allow it to impose limitations on future bidding on state sales as a condition of granting an extension. (Also refer to discussion under Agenda Item 5, above.)

BOARD ACTION: By unanimous consent the Board chose to delay this agenda item for one month. No objections were voiced.

- **EXECUTIVE SESSION – WITHDRAWN**

There being no further business to come before the Board, the meeting adjourned at 9:56 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

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

/s/ Ben Ysursa
Ben Ysursa
Secretary of State

/s/ Winston A Wiggins
Winston A Wiggins
Director

The final minutes above were approved by the State Board of Land Commissioners at the March 9, 2004 regular Land Board meeting.