



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
March 9, 2004**

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, March 9, 2004 in Boise, Idaho. The meeting began at 9:00 a.m. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Ben Yursa
Honorable Attorney General Lawrence G. Wasden
Honorable State Controller Keith L. Johnson

Secretary to the Board Winston A Wiggins

Superintendent of Public Instruction Marilyn Howard joined the meeting by conference phone at 9:05 a.m.

Governor Kempthorne noted that Superintendent Howard's absence was due to a broken foot. He stated the Board wishes Dr. Howard a full and speedy recovery as we look at a good season ahead of us. A motion was made by Attorney General Wasden that the Board give Dr. Howard their condolences for her injury and wish her a speedy recovery. Secretary of State Yursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Howard abstaining for this vote.

• **CONSENT**

Director Wiggins provided background information on the Consent Agenda items.

A motion was made by Controller Johnson to approve the Consent Agenda with items 6 and 7 being withdrawn. In addition, Attorney General Wasden directed that additional language be added under item 10 to reflect the failure of the recording equipment at the February 10, 2004 regular meeting. 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 – February 2004
- B. Bureau of Surface and Resource Management, Minerals Section, Official Transactions – January 2004
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – January 2004
- D. Bureau of Real Estate, Easement Section, Official Transactions – January 2004
- E. Bureau of Surface and Resource Management, Range Management and Surface Leasing Section, Official Transactions – January 2004
- F. Timber Sale Official Transactions – January 28, 2003 through February 24, 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 – approved

DISCUSSION: Mr. Haertzen stated the portfolio has continued to hold up well. He pointed out a couple of new items. Under the fixed income section the EFIB has started funding a TIPS (Treasury Inflation Protected Securities) portfolio as an inflation hedge and diversifier on the bond side. The EFIB has also taken an index approach so Northern Trust is actually running an index fund tied to that particular index. For the first month and a half the fund is off to a very solid start from a fixed income perspective. The other new addition to the portfolio is Barrow Hanley as a replacement for Strong. A nationwide search was conducted to look for the best small cap value manager. Barrow Hanley was selected. Mr. Haertzen stated he would ask Barrow Hanley to attend the May joint Land Board-Endowment Fund Investment Board meeting to give the Land Board an opportunity to meet them.

Governor Kempthorne asked Mr. Haertzen if he now has the managers he wants and if any other changes were anticipated. Mr. Haertzen stated the one manager being monitored closely is Lazard. Lazard has continued to struggle in the international space. Currently some due diligence is being done on other managers in the competitive universe in an effort to understand if it is a problem just with the market place for the international value managers or if it is a broader problem affecting Lazard. Lazard has also experienced senior management organizational changes, and Mr. Haertzen stated his office is looking at the impact of that, as well. At this point, Mr. Haertzen stated he is very comfortable with the management.

Governor Kempthorne asked what our high water mark was before we began to see a loss in the market and how far away are we from attaining that again. Mr. Haertzen responded that the high water mark was just over \$800 million. We are roughly \$20-\$25 million from that amount. As a percentage of \$780 million, it is a fairly small percentage. Governor Kempthorne asked Mr. Haertzen if he believes the fund will reach that level this year. Mr. Haertzen stated he is reasonably optimistic that it will. Governor Kempthorne commented he believes the fund has done quite well with the adjustments as recommended by the Endowment Fund Investment Board. He believes it is the right management decision.

On another topic, Mr. Haertzen stated on the afternoon of May 11, after the joint EFIB-Land Board meeting, a Managers' Summit will be held. The EFIB has invited all of its managers. Mr. Haertzen extended an invitation to the Land Board members to attend.

BOARD ACTION: No action taken on this agenda item.

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

A. Bearmouth Logging, Inc., 542 Frontage Road West, Drummond, Montana 59832

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

A. Hunt Fire Salvage	CR-10-0348	4,000	MBF
B. Brown Molar	CR-21-3005	7,000	MBF
C. Omega	CR-30-0495	4,310	MBF
D. Rooney Creek	CR-30-0498	5,050	MBF
E. Snake Ridge Road	CR-40-0769	8,680	MBF
F. Off Center	CR-43-4002	3,120	MBF
G. Pearsol	CR-50-0094	4,843	MBF
H. Blackfoot Reservoir	CR-80-0086	1,440	MBF

5. Request for Approval of Real Estate Acquisition by Purchase and Gift – St. Anthony Work Camp and Adjacent Building – Staffed by Paul L. Martin, Deputy Administrator-Evaluation and Compliance, Department of Correction and Christopher “Kit” Clark, Deputy Attorney General – approved

DEPARTMENT RECOMMENDATION: That the State Board of Land Commissioners direct the following action in the name of the State of Idaho on behalf of the Board of Correction: (1) complete the purchase of the Annex Building (purchase price \$450,000), and (ii) accept the gift of the land upon which the Annex Building is situated, as well as the land and improvements, including the buildings thereon which constitute the present facilities of the St. Anthony Work Camp (appraised value \$485,000).

DISCUSSION: Governor Kempthorne asked if this is the facility that adjoins the correctional facility. Director Wiggins stated it is. Governor Kempthorne asked if approval of this recommendation would allow law enforcement to move to a different location and give Corrections an opportunity for expansion. Deputy Attorney General Clark stated it would.

Deputy Attorney General Clark explained that the Board of Correction lacks the specific authority to acquire real estate. This transaction is a combined gift and purchase transaction of real estate in St. Anthony. It comprises the St. Anthony Work Camp, which actually is a leased facility. The State leases the St. Anthony Work Camp from the City of St. Anthony along with the adjacent property, including a building. The building has been used by the City as a police department office with some office space being leased by the City for a doctor's office. The building in question is called the annex building. It is adjacent to the existing work camp and is actually attached by a covered walkway.

The purchase price has been negotiated at \$450,000. The appraised value for that particular building, and the land upon which it sits, is \$560,000. As a part of this transaction, the Board of Correction is using funds that have come through the federal government, Department of Justice grant fund program. One of the attributes of that funding is that it can not be used to acquire real estate ground. It can not be used to buy land, but it can be used to buy improvements on land. Conceptual approval was requested and granted through the Department of Justice. The Board of Correction was advised that it could acquire the annex building itself, but not the land under it, through the use of the grant funds.

The City of St. Anthony has agreed to gift the land underneath the annex building, which is worth approximately \$110,000. The City will also gift the St. Anthony Work Camp itself and the land upon which it sits, which has an appraised value of \$375,000. The total gift value is approximately \$485,000 and the purchase is \$450,000. Grant funds presently held in the general fund will be used. The Legislature has given the appropriation authority to use the funds. At this juncture, the Department of Correction would like to proceed, however, the Board of Correction has no specific authority to acquire real estate so Land Board approval for the acquisition is being sought.

Governor Kempthorne asked if the \$450,000 will allow St. Anthony to construct the law enforcement office that they need. Mr. Clark stated it will only allow for the purchase of the annex building. Other funds have been appropriated. Significant renovation to the interior of the facility will be completed after acquisition.

Mr. Paul Martin, Deputy Administrator, Evaluation and Compliance, Department of Correction, provided additional details. Mr. Martin stated that the City of St. Anthony purchased a building in St. Anthony from the U.S. Forest Service. Their entire police force has moved to that location so they are already out of the building being purchased. The new police department location is fully constructed and the police department is operational. In fact, inmate crews assisted in putting up interior walls.

Governor Kempthorne asked for confirmation that the State will acquire the land under the facility. Deputy Attorney General Clark stated that is correct. He added with the expansion, the camp will gain 74 additional beds. Controller Johnson asked who will actually hold title to the real estate. Deputy Attorney General Clark stated title will be in the State of Idaho through the State Board of Land Commissioners. Controller Johnson asked who will have management responsibility. Deputy Attorney General Clark stated he believes the Board of Correction will handle the actual day-to-day management. Overall authority will stay with the Board of Land Commissioners.

Governor Kempthorne acknowledged the good partnership between St. Anthony and the inmate work crew. He commented that inmate fire fighter “hot shots” are deployed from the facility. The work of these highly skilled fire fighters is greatly appreciated.

BOARD ACTION: Approved.

6. 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

DEPARTMENT RECOMMENDATION: Approve issuance of the permit subject to adherence to the plan submitted in the application, submission of the required financial assurance prior to issuance of the permit, and compliance with the Rules and Regulations Governing Dredge and Placer Mining Operations in Idaho.

BOARD ACTION: This agenda item was withdrawn.

7. 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

DEPARTMENT RECOMMENDATION: Approve issuance of the permit subject to adherence to the plan submitted in the application, submission of the required financial assurance, prior to issuance of the permit, and compliance with the Rules and Regulations Governing Dredge and Placer Mining Operations in Idaho.

BOARD ACTION: This agenda item was withdrawn.

8. Settlement of Lawsuit, State v. Bates, et al., Table Rock Boundary Dispute – Staffed by Steve Schuster, Deputy Attorney General and Perry Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT RECOMMENDATION: The Department recommends approval of the Settlement Agreements and Judgments as proposed.

DISCUSSION: Governor Kempthorne asked where the funds from this transaction will go. Director Wiggins stated the funds will go to the Land Bank for the appropriate endowment, which in this case is Charitable Institutions. Secretary of State Yursa expressed his appreciation to the Attorney General’s office, with special thanks to Deputy Attorney General Steve Schuster, for their work on this matter.

BOARD ACTION: Approved.

9. Request for Conceptual Approval of Sally Ann Creek Land Exchange in Idaho County – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT RECOMMENDATION: Direct the Department to initiate the exchange process with Mr. Burrell so timber cruises, surveys and appraisals can be completed to finalize the exchange. The final exchange proposal will be brought back to the Land Board for final approval.

BOARD ACTION: Approved.

10. Minutes – approved

A. Regular Land Board Meeting – February 10, 2004

DISCUSSION: Director Wiggins informed the Board of a failure in the recording equipment for the February 10, 2004 regular Land Board meeting. Due to an equipment failure, no tape recording of the

meeting exists. Attorney General Wasden directed that a statement reflecting this recording equipment failure be added to the final minutes with a notation that the minutes for this meeting were reconstructed from notes.

BOARD ACTION: Approved with equipment failure notification added per Attorney General Wasden's direction.

- **REGULAR**

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

DEPARTMENT RECOMMENDATION: Approve the revised agreement and select Option 2 as Term 3 of that agreement and execute the agreement with the Purchaser.

DISCUSSION: Governor Kempthorne asked Assistant Director Litz to address the differences between Option 1 and Option 2. Assistant Director Litz responded that Option 2 reflects what the Board asked the Department to incorporate at the February meeting. That is, should one of the sales not meet the schedule, the Department would breach all of the sales in the agreement. Option 1, on the other hand, states if one of the sales does not meet the schedule, that one sale would be breached, but the other sales would stand alone and would not be breached. The other sales would still have existing extensions and would still be valid according to the agreement.

Governor Kempthorne recalled a previous discussion wherein the points made were if we could proceed and get these harvests conducted, we could do it much more expeditiously by pursuing the schedule with Three Rivers than if we were to take it back and re-bid. He asked if that is correct. Assistant Director Litz stated that is correct. To take the sales back and then go through the reparation phase, re-offer for bid and auction, et cetera, would take months. Governor Kempthorne observed that Option 2 would state if Three Rivers Timber fails on one schedule, then the Board has the right to cancel all of the sales, which puts it back to where it would take months to go through the process again. He asked if the language says "may" or "will." Assistant Director Litz stated the agreement states "may," which leaves the decision to the Board's discretion.

Controller Johnson asked how strong a language is "may" or "will"? He commented that as he read Option 2, he is bothered because he does not believe the same action has been taken for other purchasers. He feels this singles out Three Rivers. He also feels it does not define the degree of a breach. He wondered if a fairly minor breach could throw the potential to Three Rivers of being out of compliance in all of its contracts. He is a little nervous about Option 2 knowing that the reason, or one of the primary reasons, that Mr. Mulligan and Three Rivers has been before this Board is to make sure he can keep his bonding and financing going for his business. His bonding company is paying attention to what the Board decides today. Controller Johnson stated he is a little nervous about putting out a message to Mr. Mulligan's suppliers or financiers that we are ready to pull the trigger for all of his contracts over what may be a fairly insignificant problem on one contract.

Superintendent Howard asked Assistant Director Litz if the schedule is fairly generous in terms of harvest dates. She is curious if the schedule reflects any leeway that would make sure Mr. Mulligan could reach those dates. She stated she is not asking for a lot of leeway. She is simply asking if this is a reasonable schedule. Assistant Director Litz responded that the schedule is a reasonable schedule. It deviates from the original plan proposed in June 2003. But in discussions with Mr. Mulligan, the Department reviewed expiration dates of some of the sales. As an example, Ladd's Creek expires on April 2004. The original plan was to have the sale completed by the end of December 2003. But in reality, because of its location, the sale can not be harvested in winter so Mr. Mulligan would have to complete the work in the summer or fall of the previous year before the sale expired. In this case, the Department used the expiration date. Assistant Director Litz believes it is a reasonable schedule and would allow Mr. Mulligan to accomplish his objectives and the Department's objectives.

Secretary of State Ysursa commented that in speaking to the Controller's concerns on whether a trivial problem would cause a breach of everything, he believes the Board, with the term "may," certainly has the discretion to take that into consideration if it came back to the Board for some sort of a breach problem to see if the Board thought it was a substantial situation which would allow it to use the "velvet hammer" that has been put into place. He stated he does not have a problem because the Board is serious. But he also feels the term "may" does give the Board some discretion.

Governor Kempthorne suggested supposing an outright breach occurred. It is a failure. No question. If in fact Mr. Mulligan's bonding agency is watching, can he get financing? Or are they saying one failure – a very blatant failure – means that this Land Commission has put Mr. Mulligan on notice that it has had enough and, therefore, is taking this step that may well cancel all contracts. Can Mr. Mulligan get financing to continue the work that the Board would like to have done to the benefit of the endowment or is he going to be without financing and he might as well fold. Then the Board would go back and reorganize and take the months necessary to re-bid. Assistant Director Litz suggested Mr. Mulligan would be the best one to address that question. Director Wiggins stated his guess is if the Board breached a contract and took the bond on one sale, the bonding company would look seriously at all of the other bonding for that particular entity. He is unsure whether this agreement, or breach, itself would cause that scrutiny.

Director Wiggins stated he appreciates Controller Johnson's concern regarding a trivial breach of the contract leading to this. He trusts, however, that if the Department were deemed to be acting in a trivial manner in its recommendation to the Board, the "velvet hammer" would not fall on Mr. Mulligan as much as it would fall on the Department. That is the oversight that the Board provides to the Department. There might be another way to look at this as the Board thinks about options. That would be an option whereby if Mr. Mulligan failed to perform on a single sale, this agreement would go away. Basically, that would not be a forfeiture of his other sales. But it would put Mr. Mulligan on notice that the extensions promised in the agreement also go away because he has failed to perform his part.

Mr. Mulligan commented that the schedule was negotiated based on the assumption of the terms in Option 1 – that each contract stands on its own. He did not sit down and negotiate based on the risk that if he had a default on one sale he would be in default of all of the sales. Mr. Mulligan stated he does not know whether his bonding company would bond him on the existing sales under those terms; that is, if there was a default on one sale that all sales failed and all bonds were forfeited and all down payments would also be forfeited.

Mr. Mulligan stated he believes the terms within Option 1 put him in the same situation as the terms of Option 2. If Three Rivers was in a default position, it would have to come before this Land Board and explain that default. If it was not curable, then Three Rivers would lose its eligibility to bid on sales in the future. Mr. Mulligan stated he is unsure whether his bonding company would do that under Option 2. He suspects that they would not because of the risk involved. Their view is that each contract stands on its own. He is not sure if he had to bond under Option 2, even if the bonding company was willing to do it, that they would bond any other timber sales. He stated there are not a lot of bonding companies and bonding relationships are tenuous. He does not believe Option 2 accomplishes what needs to be done nor does it provide any additional certainty to the State or to the Land Board.

Governor Kempthorne commented he was unable to attend the last Land Board meeting, but he has read the minutes from that meeting. It is very clear to him that there is an intent to send Three Rivers a very clear signal that the Land Board is serious and wants performance. Speaking for himself, Governor Kempthorne states he does want performance because it is time that the endowments get their intended benefits. If Three Rivers fails on one contract, but is successful on the others, Governor Kempthorne stated he does not know why the Board would cancel. He asked if Three Rivers' bond agency is going to find problems with Option 2 because the Board is better off if Three Rivers performs than if the Board just cancels and goes to a re-bid. The Board is after performance. His concern is not to jeopardize Three Rivers' ability to get the necessary bonding. But if Three Rivers is in breach, the company has received a very clear message from this Board that sale after sale will be cancelled, but it would be specific to that sale. Option 2 suggests that the Board retain the possibility it could cancel everything. Governor Kempthorne stated he needs to know if Three Rivers' bonding agency will find an obstacle. Mr. Mulligan believes his bonding agency will find a major obstacle with Option 2, and he does, as well, because all

down payments are tied to the same agreement. Three Rivers would lose all of its down payments on every sale even though the company did not create any defaults on subsequent sales. In reality, Mr. Mulligan stated Three Rivers is working on the sales now. The company has another sale scheduled. Three Rivers has never defaulted on a sale in the past. Mr. Mulligan stated he has been involved in the State timber sale business for 30 years. Bonding companies are concerned about language like "may." "May" also means "may not." He believes Option 2 puts an undue risk on the bonding company, and he does not believe they would bond it.

Governor Kempthorne noted that Mr. Mulligan and Three Rivers has never defaulted. However, in looking at the sales in extension, the Board is not seeing the execution of the sales. The Board is seeing extensions. Director Wiggins stated that is technically correct. Three Rivers has not forfeited a contract. But, at the same time, their performance has essentially delayed anticipated revenue to the endowment.

Controller Johnson commented that the Board does have the penalty of additional interest payments in place for delayed revenue. It costs Three Rivers money to sit on that timber. If the Board needs to discuss raising that interest rate, or some other additional financial penalty for the cost of awarding an extension, maybe that is a different policy question that the Board needs to address. Controller Johnson stated he does not want the suggestion to be made that Three Rivers is getting a free ride.

Attorney General Wasden agreed that on this issue, there is a penalty. However, the penalty is effective only if Three Rivers harvests the timber. If they do not harvest the timber, then the endowment loses the benefit of that penalty. If Three Rivers defaults under this contract, there is no payment coming from Three Rivers. The Department still has to go into the market place to bid these contracts to get this timber harvested. The Board is at a point where there is significant risk. Attorney General Wasden stated to Mr. Mulligan that the best thing that can happen is for Three Rivers to perform. The Board has a fiduciary responsibility to the endowment, and it has to perform that fiduciary responsibility. A number of things have been discussed, such as the number of employees working for Three Rivers. That is not really part of the function that the Board has as a fiduciary board, but it is something the Board is concerned about. The Board also has concern about the fairness in the marketplace of competitors as well. So it is not just to Three Rivers that the Board sends this message. It is to the entire universe of folks in the same position. Every Board member wants Three Rivers to succeed. But the Board is also very concerned. Seven extensions on some of these contracts is really pushing the limits of the Board's fiduciary responsibility.

Governor Kempthorne asked if the Department determines that Three Rivers is in breach of the agreement on a specific sale, what actions would the Department take? What does this agreement provide? Would the Department need to come back to the Board? Director Wiggins responded it depends entirely on the option that is in the agreement. If Option 1 is selected, the Department would immediately move to exercise its rights under the contract, but the rest of the agreement would stay in effect. Mr. Mulligan would be entitled to the extensions that are listed in the agreement. The agreement itself would not be breached. Under Option 2, the Department would still move on the one sale and then would go to the Board with a recommendation regarding the remainder of the sales. That would open that opportunity. But at that point, the Department would not feel compelled to follow the extension schedule and grant all of the extensions. If the agreement itself went away, if the breach of a single sale violated the agreement and rendered it null, then the Department would be back to addressing each sale when the current contract period expired.

Governor Kempthorne noted with Option 1, the Department is in a position to declare Three Rivers in breach of that single contract. We then go through the procedure and Three Rivers is out of that picture. The Department then could go forward and determine how to place another sale. Director Wiggins added that anytime the Department declares a contract in breach there are opportunities for the purchaser to offer an alternative viewpoint. But with that caveat, he believes the contract gives the Department authority to exercise the remedies on a breach.

Governor Kempthorne asked if the Department could move more expeditiously with Option 1 than with Option 2. Director Wiggins responded that on the sale that was breached, the Department would move the same. It would not change how the Department addresses that particular sale. What would change

would be the Department's response and recommendation to the Board on the remainder of the sales. Director Wiggins stated that is his interpretation of the agreement as written.

Superintendent Howard asked Mr. Mulligan if he believes that the new schedule is a schedule he can meet. Mr. Mulligan stated yes, it is. Superintendent Howard feels the big issue is the timing of how Three Rivers conducts its harvests. In the past Three Rivers has made choices about which harvest to take forward and which to ask for extensions on. Superintendent Howard sees this agreement as a way to try to formalize the harvesting schedule. She feels if this is a reasonable schedule, and Three Rivers agrees that it is a reasonable schedule, then she is wondering why the Board would be – and Three Rivers would be – quite so concerned about the wording of the “velvet hammer” associated with this agreement. Mr. Mulligan responded it is because he has to maintain the bonding on the timber sales, and that Option 2 ties all of the sales and all of the bonds to one act. Mr. Mulligan stated that is the problem as he sees it.

Secretary of State Ysursa asked if there is any definitive statement that the Board can get, or inquire about, from a bonding company. He would like to hear their opinion – is Option 2 something that is not reasonable business? Is Option 1 a problem? If Marsh Cemetery fails, and the Department goes after the bond, will the bonding company pull the bonds on the rest? Do we, as a Department or as an industry, know how these bonding companies are operating? Mr. Mulligan stated if Three Rivers was to default, and that is not his intent, then the Department could deal with the bonding company on curing that one default. For example, Three Rivers could pay the cash that the bonding company would lose on the timber sale and keep its eligibility with the bonding company in order to bid future sales. If Three Rivers had a default, they would lose the bonds on all of the sales at one time, and at the same time would lose all of its payment bonds on all of the sales at the same time. That is not something Three Rivers could cure. They would lose bonding power for future timber sales. In effect, it would take Three Rivers down.

Secretary of State Ysursa asked if the Board has anything to back up the statement that Option 2 is not a reasonable business practice and the bonding companies would object to it. Assistant Director Litz stated he has talked with bonding companies in the past and, as outlined by Mr. Mulligan, a lot depends on the arrangement between the bonding company and the actual company. If they can go ahead and secure the interest that the purchaser has put up as collateral and make themselves whole, then they may go ahead and retain the other sales. But if they do not, then they may go ahead and pull the pin. Assistant Director Litz stated he has heard from several bonding companies that after 9/11, the whole bonding market changed. He stated he has not had conversations with the bonding companies within the last two years so he can not say definitively but that is his information at this point.

Superintendent Howard stated it would seem bonding companies would be making decisions based on their trust in Mr. Mulligan because it is really a direct relationship between that company and Mr. Mulligan. She asked if Mr. Mulligan is confident enough in this schedule that he would be able to assure bonding companies that this schedule will not be breached. Mr. Mulligan stated he has always had a good relationship with his bonding companies, and he would assure them that he is going to complete the schedule. The bonding companies are aware of the schedule and of what Three Rivers is doing. But in terms of their viewpoint, and, as Assistant Director Litz stated, after 9/11 especially, bonding companies today not only make their assessment and their judgment on the personnel or the people they are dealing with and the trust factor, but they also make it on the risk factor. And there is a definite difference in risk in Option 1 versus Option 2. In Option 1, they also know we have other timber sales under contract with other agencies, and we have and will continue to have sales under contract with the State that we are currently executing and going to finish on or ahead of schedule. So that figures into it. It becomes the risk factor on this portfolio. Superintendent Howard stated then it would seem that a bond company would feel more security with Option 2 than with Option 1 because they would have more assurance that Three Rivers is following through in a manner in which they would be less likely to have to save the timber company. Mr. Mulligan stated in terms of the assurance of the schedule, in the bonding company's view it would be the same in Option 1 versus Option 2. If Three Rivers was to default under any option on any sale the bonding company could then make the evaluation whether they were going to continue to bond in the future. However, Option 2 has like a cumulative risk. It is a much higher risk in terms of extended sales in the portfolio.

Governor Kempthorne commented what the Board is after in fulfilling its fiduciary responsibility to the endowment is to make a good business decision. If the Board was to receive a letter from Mr. Mulligan's bond counsel, what bearing does that have? Would that sort of an instrument in writing be of benefit in making a decision? What is the timing of when Three Rivers is going to be in the field? When do we need to execute this agreement? Do we have one month so that if we set this aside we can get a signed instrument from the bond counsel with their opinion? Attorney General Wasden stated he just spoke with Clive Strong of his staff. Deputy Attorney General Strong indicated that the Board does have access to people in the bonding field, and it could get an answer to this question to help the Board determine whether it is making a proper business decision. Attorney General Wasden believes it would be appropriate to do so. As to the time when Three Rivers needs to be in the field harvesting timber, from his perspective, Attorney General Wasden stated he can not see a problem with extending the discussion to the next Land Board meeting. Assistant Director Litz stated the one thing that he would like to point out is if the Board looks at the expiration dates on the sales quoted, Silver Butte expired February 28. The Department has not extended that sale and several others at this point. These other sales are sitting and have not been attended to. Governor Kempthorne asked if this means we are preventing Mr. Mulligan from getting out in the field. Assistant Director Litz stated it just means that the Department has a contract that is past the expiration date and has not been extended. It puts those sales in a legal limbo as to what the Department can allow Mr. Mulligan to do. Theoretically without an extension, even if Mr. Mulligan wants to go in and harvest, the Department can not let him proceed.

Governor Kempthorne asked Assistant Director Litz if it poses a problem if the Board sets this aside for one month to request a letter from bond counsel. Assistant Director Litz stated he would like to get clarification next month. Even though he was hoping to have the issue resolved today, he understands the need for the Board to make an informed decision.

Governor Kempthorne asked for a motion. A motion was made by Secretary of State Ysursa that the Board for one month certain delay this agenda item with the intent of getting some information from the bonding industry and others. Governor Kempthorne asked for a second. Attorney General Wasden seconded the motion.

Governor Kempthorne asked who the Board would go to for the necessary information. Attorney General Wasden deferred to Deputy Attorney General Clive Strong. Deputy Attorney General Strong stated he is aware of an individual in Lewiston who coordinates bonding for timber sales. Controller Johnson stated he would be especially curious to hear from Three Rivers' bonding company. However, he believes both would be appropriate. Governor Kempthorne stated it may also be of benefit if Mr. Mulligan did receive his written conclusion or recommendation from his bond counsel and then to have a second party review it so the Board can have the benefit of both opinions. He stated he would like to know the rationale between the two.

In closing, Governor Kempthorne stated, "Bill, I hope you take away with you from all of this one statement made by the Attorney General, and that is we all want you to be successful. And your success benefits the endowment, which is our responsibility. But we want Three Rivers to go forward and be successful with all of these."

BOARD ACTION: A motion was made by Secretary of State Ysursa that the Board delay this agenda item for one month certain with the intent of obtaining additional information from the bonding industry and others. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

- **INFORMATION**

Director Wiggins briefed the Board on the Information Agenda item. No Land Board action is required on the Information Agenda.

12. Grazing Fee for Calendar Year 2005

Based on indices from 2003, the grazing fee for 2005 will be \$5.53 per AUM. This figure represents an increase of approximately 7.5% from the 2004 AUM rate of \$5.15.

- *At 10:06 a.m. a motion was made by Secretary of State Ysursa to resolve into Executive Session. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.*

- **EXECUTIVE SESSION**

- A. **To Consider Records that are Exempt from Disclosure [\[Idaho Code § 67-2345\(1\)\(d\)\]](#)**
- B. **To Consider and Advise Its Legal Representatives in Pending Litigation or Where There is a General Public Awareness of Probable Litigation [\[Idaho Code § 67-2345\(1\)\(f\)\]](#)**
- C. **To Consider Personnel Matters [\[Idaho Code § 67-2345\(1\)\(b\)\]](#)**

- *At 10:19 a.m. a motion was made by Attorney General Wasden to resolve into Regular Session. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.*

Upon return to Regular Session, Director Wiggins informed the Board of the status of pending legislation of interest to the Department.

- [H0504](#) Fire Deficiency Warrant Budget
- [H0509](#) Investment of Permanent Endowment Funds
- [H0510](#) Authority to sell Certain Mineral Rights
- [H0511](#) Giving the Land Board Contracting Authority
- [H0515](#) 49-Year Leasing Authority
- [H0669](#) Contested Case Exemption
- [H0766](#) Department Budget
- [HJR004](#) Increasing Land Sale Limit to 640 Acres

- [H0755](#) Authority to Sell Mineral Rights where State has already sold surface rights. Sale would be without bid or auction.

There being no further business to come before the Board, the meeting adjourned at 10:20 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne
 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 above-listed final minutes were approved by the State Board of Land Commissioners at the April 13, 2004 regular Land Board meeting.