



STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board
Ben Ysursa, 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
April 13, 2004**

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, April 13, 2004 in Boise, Idaho. The meeting began at 9:10 a.m. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Ben Ysursa
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

• **CONSENT**

Director Wiggins provided background information on the Consent Agenda items.

Attorney General Wasden asked that Agenda Items #5 and #9 be moved to the Regular Agenda. With that stipulation, a motion was made by Controller Johnson to approve the Consent Agenda. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

1. Director's Report – approved

- A. Interest Rate on Department Transactions – March 2004
- B. Bureau of Surface and Mineral Resources, Minerals Section, Official Transactions – February 2004
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – February 2004
- D. Bureau of Real Estate, Easement Section, Official Transactions – February 2004
- E. Bureau of Surface and Mineral Resources, Range Management and Surface Leasing Section, Official Transactions – February 2004
- F. Timber Sale Official Transactions – February 25, 2004 through March 30, 2004
- G. Legal Matter Summary

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

DISCUSSION: Mr. Haertzen indicated April is off to a good start. Alcoa and Yahoo had excellent earnings last month. This month has seen a slight recovery on the fixed income side, although the bond portfolio is down somewhat because people are becoming concerned by the risk of inflation. The endowment is up over 1% in total. The new managers continue to perform well and three of them will appear before the Land Board next month.

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

A. Rock Creek Logging, Post Office Box 246, 89 North Cave Bay Road, Worley, ID 83876

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

A. Bonner Poles	CR-20-0241	400	MBF
		98,125	LF
B. Cone Creek OSR II	CR-21-3001	1,950	MBF
C. South Carpenter	CR-30-0516	3,360	MBF
D. Hunt Ridge	CR-31-0001	6,590	MBF
E. Mill Pond	CR-40-0589	2,045	MBF
F. Whiskey Slopes	CR-40-0767	3,500	MBF
G. Upper Rainy	CR-40-0768	4,075	MBF
H. Winter Creek Pulp	CR-42-5001	4,470	MBF
I. Big Cat	CR-42-5002	3,595	MBF
J. Fort Harkness	CR-80-0085	1,095	MBF

DISCUSSION: Governor Kempthorne stressed the importance of maintaining the esthetics of Idaho's forests. He wants to ensure that our forests are logged along meander lines as opposed to the postage stamp look. Director Wiggins assured him that this is IDL's policy, where possible.

5. **Three Rivers Minimum Harvest Schedule Agreement** – Staffed by Ron Litz, Assistant Director, Forestry and Fire – **moved to regular agenda**

DEPARTMENT RECOMMENDATION: That the Board approve Three Rivers Minimum Harvest Schedule Agreement as written.

DISCUSSION: Attorney General Wasden noted language changes in the Agreement. He indicated a desire to ensure that the Board had an opportunity to discuss the changes and that any questions had been answered regarding the language. Director Wiggins stated the Agreement has been distributed to the Board. The changes on the second page of the Agreement, and the words inserted in term 2 that "the Department will be authorized to extend each sale on an annual basis not to exceed the expiration date set forth above," is a clarification of the authority granted to the Department. Director Wiggins stated Assistant Director Litz has discussed the changes with Mr. Mulligan and that Mr. Mulligan has agreed to the changes.

BOARD ACTION: A motion was made by Attorney General Wasden to execute the agreement. Superintendent Howard seconded the motion. The motion carried on a vote of 5-0.

6. **Fiscal Year 2005 Deferred Road Maintenance** – Staffed by Ron Litz, Assistant Director, Forestry and Fire – **approved**

DEPARTMENT RECOMMENDATION: Direct the Department to proceed with the proposed road maintenance.

BOARD ACTION: Approved.

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

DEPARTMENT RECOMMENDATION: Approve issuance of the permit 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: Approved.

8. **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 – **approved**

DEPARTMENT RECOMMENDATION: Approve issuance of the permit 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: Approved.

9. **Continuous Conservation Reserve Program** – Staffed by Scott Nichols Chief, Bureau of Surface and Mineral Resources – **moved to regular agenda**

DEPARTMENT RECOMMENDATION: That the Land Board authorize enrollment of endowment lands into the Farm Service Agency Continuous Conservation Reserve Program.

DISCUSSION: Director Wiggins explained that this is a recommendation allowing lessees of state lands to enter into the Continuous Conservation Reserve Program, which is a federal program designed to work primarily with the grazing industry to ensure the recovery of riparian areas. The Program involves payments to assist in the construction of fences, seeding, etcetera, and aims to improve water quality, such as reducing the impact of cattle on riparian areas.

The Program is similar to the Conservation Reserve Program (CRP), which is the resting and planting of croplands. IDL currently allows the participation of cropland lessees in the CRP program, with the provision that certain percentages of the payment going to the lessee then comes back to the State.

Attorney General Wasden asked that more time be allowed to learn about this item since there are many policy choices that must be made. He does not feel comfortable voting on this item at this time. He wants to meet with the Department to work through several scenarios before making a decision.

BOARD ACTION: A motion was made by Attorney General Wasden to delay discussion on this item for two months. Superintendent Howard seconded the motion. The motion carried on a vote of 5-0.

10. **Timber License Plate Fee Recommendations** – Staffed by Betty Munis, Director, Idaho Forest Products Commission – **approved**

DEPARTMENT RECOMMENDATION: That the Board direct the Department, in conjunction with the Idaho Forest Products Commission, to proceed with the recommended educational projects.

BOARD ACTION: Superintendent Howard offered a special thanks to Director Munis for the work she has done. Governor Kempthorne echoed those sentiments.

11. State/Battaglia Property Boundary Agreement at Coolin, Priest Lake – Staffed by Steve Schuster, Deputy Attorney General – approved

DEPARTMENT RECOMMENDATION: The Department recommends approval of the boundary line agreement with Mr. Battaglia along the line established through the process of appointment.

BOARD ACTION: Approved.

12. Request for Approval – Disclaimer of Interest to City of Middleton for Accretion Land Adjacent to the Boise River in Canyon County – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT RECOMMENDATION: That a disclaimer of interest be issued for this parcel of land (totaling 0.58 acres, more or less) of the former bed of the Boise River, and the recreation easement (totaling 3.14 acres, more or less). The recommended fee for the disclaimer is \$600.00; and for the easement is \$300.00.

BOARD ACTION: Approved.

13. Minutes – approved

A. Regular Land Board Meeting – March 9, 2004

• **REGULAR**

14. Fiscal Year 2005 Timber Sales Plan – Presented by Ron Litz, Assistant Director, Forestry and Fire – approved

DEPARTMENT RECOMMENDATION: Direct the Department to proceed with publication of the FY-2005 Timber Sales Plan.

DISCUSSION: Assistant Director Litz provided background information on the timber sale and road development plan for FY-2005. The outlined road construction and road reconstruction is necessary for access in areas the Department plans to harvest. Assistant Director Litz emphasized that the Department is seeking conceptual approval only. Each individual sale will be brought back before the Board for approval prior to advertisement and sales.

Superintendent Howard commented that the impact on streams and fish seems to be a consistent concern. She asked if there are still unresolved issues. Assistant Director Litz stated that environmental groups continue to express concern that IDL's timber harvests adversely affect water quality and threaten endangered species. However, the Department differs with their opinion. The Department is complying with all state and federal statutes. The Forest Practices Act protects fish, water quality and threatened and endangered species.

BOARD ACTION: A motion was made by Attorney General Wasden to conceptually approve the FY-2005 Timber Sales Plan. Secretary of State Yursa seconded the motion. The motion carried on a vote of 5-0.

15. Grazing Lease G-4597, Lacey Meadows Allotment – Presented by Winston Wiggins, Director – approved with modifications

Attorney General Wasden and Secretary of State Yursa abstained from discussion and voting on this item.

DEPARTMENT RECOMMENDATION: That the Department grant Lacey Meadows a five-year lease. Included in the lease would be the stipulation of yearly onsite inspections, with the understanding that one failing grade would result in termination of the lease.

DISCUSSION: Director Wiggins informed the Board that a letter has been received from Mr. Laird Lucas, attorney representing Western Watersheds Project, notifying the Board that no one from his organization would attend this meeting. A second letter, jointly signed by Attorney General Wasden and Secretary of State Ysursa regarding their participation and deliberations in this matter, was also received.

Governor Kempthorne asked Attorney General Wasden if he wished to speak for the record. Attorney General Wasden commented that this matter concerns a ten-year lease. The lease was subject to a contested case proceeding and, coincidentally, a one-year temporary permit. While the hearing process regarding the ten-year lease was in progress, the Board, with some reservation, approved issuance of a temporary one-year permit to Lacey Meadows. Attorney General Wasden stated that he and Secretary Ysursa met with Lacey Meadows on the leased ground to discuss issues related to the temporary permit. Those two matters took a parallel track until December 2003 when the Board asked the Department whether the reports regarding the temporary permit should be included in the ten-year lease record. Those reports were subsequently included. These matters were all explained in a series of letters dated July 1, 2003 and April 2, 2004. Attorney General Wasden stated that "out of an abundance of caution, just to make sure there is fairness in this process, the Secretary and I have chosen to abstain from the deliberations and decisions in this matter. We do feel, however, that we are fully capable of making a decision, that we have not violated any standards by any means but simply out of an abundance of caution and for fairness we believe that we should abstain from both the deliberations and the decision in this matter."

Governor Kempthorne then asked Secretary of State Ysursa if he wished to comment for the record. Secretary Ysursa agreed with Attorney General Wasden with the caveat that he sees this as a unique situation. As a matter of due diligence, as a Land Board and as trustees, he believes the Board should visit the tenants on the ground and that the Board should not make all of its decisions from the "great halls of the Statehouse." Secretary Ysursa commented about avoiding the appearance of impropriety and an Idaho Supreme Court ruling about ex parte communications, but he agreed with Attorney General Wasden and that is why he co-signed the letter. For the record, Secretary Ysursa stated he does not consider this precedent setting. It is an issue wherein the Board has a contested case before it with two private parties. He believes the Board members could still go on the trip. He believes the Department should do it and invite both sides. However, he does believe this is a matter the Board will need to discuss to set some parameters. He believes the Board owes it to the beneficiaries of the trust and to the people of the State of Idaho to do due diligence on these matters. Secretary Ysursa stated again he concurred that, for the abundance of caution and the appearance of impropriety, the Honorable Attorney General and he would abstain from this decision.

For the record, Governor Kempthorne noted that Attorney General Wasden and Secretary of State Ysursa recused themselves. He thanked them for their comments and concurred that this should not be precedent setting because he believes that due diligence means that the members of the Board are able to see the land and assets they are charged with the fiduciary responsibility to care for and that the Board shall not be limited in going to see those assets.

Director Wiggins continued by reminding the Board that following its December 2003 meeting a Hearing Officer was asked to follow the appropriate process to add the Lacey Meadows grazing record from the 2003 grazing season into the record with the provision that due process be followed. That process was followed. The Hearing Officer requested essentially a summary memo from the Department. That memo is now a part of the record. There were no objections to the summary or to the attachments, which included all of the inspection reports from the past year as well as supplementary information from people who had been advising and assisting Lacey Meadows. There were no objections raised by the parties to the information that was submitted and, therefore,

there was no additional hearing schedule. The Hearing Officer delivered his post findings about the middle of March. Those Findings are also a part of the record.

Director Wiggins stated that in December the key issue was trespass by cattle from adjacent allotments. In addition, Lacey Meadows cattle were trespassing and then were not being removed in a timely manner. The result was damage to plantations, riparian areas and stream courses. One of the findings in the original hearing was that seventy-five percent of the trespass was by Lacey Meadows cattle. Director Wiggins stated his recommendation at the time tended toward Western Watersheds because of the record that Lacey Meadows had accumulated.

Inspections and information from the 2003 grazing season were generally positive and demonstrated that the range condition improved over the last year, even with drought conditions. Additionally the Association took some necessary steps to improve their operation. Better communication between Lacey Meadows and the State will also improve the condition of the allotment. However, some problems did occur. Cattle were found in the plantations and there were incidents with cattle in riparian areas. But in those cases, the cattle were removed in a prompt manner and riparian areas recovered through the season. If those trespasses continue into the future, Department Resource Managers believe the trees will be damaged either through top browsing, trampling or by the cattle laying on the seedlings.

Director Wiggins stated there is nothing in the new findings that changes any of his observations about improvement maintenance or weed management. He stated this time he is focusing strictly on trespass and the performance of Lacey Meadows was significantly improved this year. Lacey Meadows had a rider who was serious about herd management and who was responsive to the Department's calls. Director Wiggins stated had this been occurring in the 2000 through 2002 grazing season, the Department and the Board would not be in the situation it is in now and would probably have not made the recommendation that the lease be awarded to Western Watersheds.

Director Wiggins indicated there was a legitimate question about whether this one-year performance is a trend, a change in attitude and a change in the way Lacey Meadows does business, or is it a one-time response because they knew people were watching. Director Wiggins stated that is not a very easy question to answer. This lease has been under scrutiny for the last three years. It was challenged by Western Watersheds. It was clear through hearings and court cases that it was going to continue to be an object of scrutiny not only by the parties, but by the Department, the Land Board and by the public. Yet in spite of scrutiny, during the 2000 through 2002 grazing season Lacey's performance continued to deteriorate.

Director Wiggins stated in looking at the record for this year he focused on trespass. One record stated an active rider would be more effective in controlling the activities and impacts of cattle on the allotment than Western Watersheds' approach outlined in their Management Plan. Likewise, the Hearing Officer concluded that the efforts of Lacey Meadows to actively monitor and maintain improvements, primarily fences, would be more effective than Western Watersheds' approach of utilizing local citizens. Director Wiggins stated giving any weight at all to the 2003 grazing season tips the balance toward Lacey Meadows. That is, however, on the assumption that this is a serious change in Lacey's approach to management and not a one-time occurrence. Director Wiggins stated he told the Board last time this was a very close ruling. He considered it a selection of two equally unsatisfactory options. He noted Western Watersheds did not object to any of the 2003 information and chose not to address the information in any manner, although Mr. Lucas subsequently addressed that information in a letter. However, Western Watersheds chose not to do that when the time was right during the hearing process.

Director Wiggins stated his recommendation is that the lease be awarded to Lacey Meadows based on a written Management Plan acceptable to the Department to be in place prior to turnout, but no later than May 15. Secondly, that the duration of the lease be five years. Director Wiggins noted that a single year of satisfactory performance balanced against the weight of many years of less than satisfactory performance does not justify the awarding of a ten-year lease. He also pointed out that

Lacey Meadows has already enjoyed the benefits of three years of grazing under permits while this matter was being reviewed. Therefore, granting a five-year lease is the equivalent of eight years worth of grazing. Lacey Meadows would also be required to fence the plantation areas. That was one of the items noted in the Department memo. It was the feeling those areas should be fenced to protect the plantations. Additionally, the Department would be required to annually certify in December of each year that the performance of Lacey Meadows is satisfactory and is meeting the objectives of the Management Plan. If at any point the performance of Lacey Meadows does not justify that certification, the Department will recommend cancellation of the lease.

Superintendent Howard commented that Lacey Meadows brought this high level of scrutiny on themselves through repeated irresponsible behavior and a lack of respect for their contract with the State. Superintendent Howard referred to Director Wiggins' recommendation for planned fencing. She stated fencing is an issue for her. She feels that as soon as fencing goes in, the Department has hindered itself for the future, because future leases then seem to be tied to the value of the fencing.

Superintendent Howard noted that another factor was a range rider. She asked if the range rider was on contract and hired for a specific amount of time. She asked if the Board could have access to the contract and what assurance the Board would have that Lacey is committed to providing that level of scrutiny through hiring someone to monitor at a satisfactory level. While recognizing fencing is a way to keep animals from trespassing, she feels it appears having a rider monitoring, along with the Department's observation, might have more power. She does not see any reason to go longer than five years until someone has proved themselves over a longer period of time than just one year of direct scrutiny. She also asked how the investment in the fencing could be recouped in a short period of time. She asked what the cost of fencing is and how that cost would fit in a five-year plan. She asked if the Department can specify, as a requirement of the Management Plan, a contract for a range rider. Director Wiggins stated there is no reason the Department can not specify a range rider as part of the Management Plan. In fact, he believes that may be a part of the Management Plan that Lacey Meadows operated under during this year. The range rider was someone employed by Lacey Meadows, but Director Wiggins stated he did not know whether the rider was under contract or some other arrangement. Director Wiggins stated plantation fencing in areas that are grazed is fenced for a relatively short period of time. Typically once trees reach certain heights it is not much of a problem anymore. Cattle will nip the top bud out of shorter trees, which creates long-term deformity in the tree, but probably a greater problem occurs when cows, without realizing it, lay on trees that size. The Department has found that fencing is the best approach. The fences come down after a period of time so it is a matter of putting up and taking down the fences. Director Wiggins stated he is not sure whether the fencing cost could be recouped in a five-year period. However, fence materials are salvageable for some value. Also the materials would be treated as improvements if they were still there at the conclusion of the lease if the lease went to someone else. Director Wiggins does not believe it is a situation where Lacey Meadows would necessarily lose money.

Superintendent Howard asked if the composition of exterior fencing was steel poles and wire or some other material. Director Wiggins responded typically it has been steel posts and barbed wire. Assistant Director Litz added that the Department has also used electric fences very successfully.

Director Wiggins stated a range rider, despite the rider's aggressive committed approach, is not a perfect solution. Fences are also not a perfect solution. But cattle can get into a plantation and do a significant amount of damage in a fairly short period of time despite the fact that the range rider might have been there three hours before and will be back the day after tomorrow. What the Department is trying to do is protect a quite expensive investment in the land. It is not cheap to plant and grow trees. Superintendent Howard thanked Director Wiggins for his explanation. She stated she now has a different picture of the fencing than she had before.

Controller Johnson stated he had questions and concerns about fencing, primarily from the capital expenditure of Lacey Meadows, or whomever would be awarded the lease, in the context of a five-

year lease with an annual review. If, during any of the annual reviews, Lacey Meadows fails to live up to the Department's expectations, the lease could be taken. He feels that the effort has been duplicated. The Board is, in essence, granting Lacey Meadows an annual year-to-year lease under the recommendation, subject to a five-year cap. If there is a significant investment of labor and materials in building fencing, or Lacey Meadows should have the expectation of a longer period of time to recoup those costs, it seems we should be able to continue the lease review on an annual basis and, if Lacey Meadows does not meet those expectations, the lease would be pulled at that time rather than limiting the lease to five years. The Board could grant Lacey Meadows the ten-year lease but continue the annual reviews thereby meeting the objective of making sure we are not presuming that one year of good performance demonstrates a record for the upcoming ten years.

After a review of the record and documents, Controller Johnson agreed that trespass is the critical issue. He believes that through this year Lacey Meadows has demonstrated a willingness to step up to their responsibilities and to manage the trespass issues the best they can, whereas Western Watersheds demonstrated an inadequate trespass management plan. Controller Johnson stated he would like to give Lacey Meadows the opportunity to continue the performance they have demonstrated during the past year, but he believes the Board should be able to do that on a long-term basis while continuing to monitor the lease in a way that is meaningful to other objectives.

Governor Kempthorne asked Director Wiggins to respond. Director Wiggins stated essentially the Department is formalizing something that he believes exists in every case. The Department should be monitoring grazing leases. If lessees do not perform, the Department should be recommending that changes be made. In a sense, every lease needs to be approached in that manner. By going with a five-year lease versus a ten-year lease, Director Wiggins stated he saw the five-year lease as an extra incentive for more than an annual review on the lease five years from now, not in a decade. There will be a formal review. There will be an opportunity to more formally address the disposition of this lease in a shorter time period. That five-year period should be adequate time for Lacey Meadows to either demonstrate that they are serious and can, and will, do the job or else they may fall back into their old ways and be faced with the same problem that the Board is currently facing. Director Wiggins stated he saw the five years as a recognition that essentially one year of performance does not provide insurance that the Department will see that effort continued into the future.

Superintendent Howard stated she believes a bad tenant on state lands blackens the eye of the entire cattle industry. She feels it is important for the cattle industry to recognize that there needs to be some effort made to take care of the outliers. The Board can not excuse this behavior because it causes problems for the truly responsible tenants on the land. While she understands Controller Johnson's concern about the length of the lease, she also believes there may be a middle ground. She suggested an option whereby the Board would grant a five-year lease with the option to renew the lease if at the end of the five years Lacey Meadows has shown five consistent years of good management. In other words, the Board and the Department would have a check-off list of what it would take in order to meet the requirements on an ongoing basis.

Superintendent Howard believes that one year of effort does not necessarily prove to the Board that there will be a continued change in behavior. She suggested one way to get a change of behavior is to keep the pressure on the lessee for a longer period of time. If it is a reasonable expectation, and if the lessee knows the importance of meeting those reasonable expectations, the lessee would have the option for another five years after demonstrating over a longer period of time a commitment and a change in stewardship behavior. Then the Board could erase the past and go forward with the lessee as a member that the Cattlemen's Association could be proud to claim as an example of how they work with state land in a responsible way.

Governor Kempthorne asked if a spokesman for Lacey Meadows and Western Watersheds was in the audience. A spokesman for Lacey Meadows Grazing Association was in attendance. As indicated in correspondence received from Western Watersheds, a spokesman for that organization was not present.

Superintendent Howard asked Director Wiggins if it is possible to have a five-year split lease. Director Wiggins stated he would have to check the code. He stated his concern is that the code says when a lease expires, it will be offered for auction for different applicants. His suspicion is that if the lease terminates in five years, the Department would not be able to renew the lease without going through the auction process. Deputy Attorney General Clive Strong stated he concurred with Director Wiggins' conclusion that a five-year or ten-year lease would require the auction process.

Governor Kempthorne asked Attorney General Wasden if, since Lacey Meadows is represented at the meeting and Western Watersheds is not, it would be permissible to receive comments from Lacey Meadows. To be consistent with his abstention, Attorney General Wasden deferred the question to Deputy Attorney General Strong. Deputy Attorney General Strong stated this is a record review case made by the Director and the Board's decisions will be made on the record so it would be inappropriate to go forward with the discussion. To clarify, Governor Kempthorne stated he understood that the Board should not take comments from Lacey Meadows. Deputy Attorney General Strong stated that is correct.

Governor Kempthorne apologized to the Lacey Meadows spokesman and stated the Board will adhere to the strictness of not taking comments from Lacey Meadows. Governor Kempthorne stated that hearing Director Wiggins ask the question of whether the performance by Lacey Meadows is a trend or a one-time response got his attention. Whether this will be a serious change to management underscores there was a need for serious change. The record has not been exemplary and Governor Kempthorne stated he does not understand that. He stated he has the utmost respect for the cattle industry and the good hard-working people who understand what it is to be stewards of the land. He finds it interesting and troubling that in this instance it is not a stellar performance. However, Governor Kempthorne stated during the last year, standards have been met. Now there is a question of process, timeline, five year, ten year and whether there should be included in the recommendation a provision that there will be a range rider who will actively participate in this stewardship. On the question of five years or ten years, Governor Kempthorne noted Director Wiggins comment that Lacey Meadows, in essence, has had to date three years of management. Therefore one option is to count that time and go with a seven-year plan, which then provides the Association a total of ten years. It may not be the full number of years that Lacey Meadows would like because of the financial commitment needed, but it also sends a signal. It counts good time but it also says that the Board will come back for a full review shorter than the normal ten-year period simply because of the track record that unfortunately was not meeting standards.

Governor Kempthorne noted that two Board members have recused themselves and that no testimony is presently being allowed because both parties are not in attendance. Therefore, the three remaining members of the Board will have to craft the recommended path forward. Governor Kempthorne stated it has been a good discussion. He commented there is no magic in five or ten. In counting the three years that the Association has been managing and adding seven more years still makes this lease a ten-year rotation. However, the Association knows it is not the full duration because this one has been flagged and they will come back a little sooner than normal because this has not been a normal situation.

Controller Johnson asked a question as it relates to lease payments. The bid for the lease when it was initially auctioned was for \$7,500. He asked if that is accurate over a ten-year period. Director Wiggins stated that is correct. Controller Johnson asked if the Department's recommendation for the five-year lease would be an expectation that the Department would cut that amount in half in terms of the lease payment. He also asked what the lease payment arrangements for the prior three years where the Association has been operating under a temporary permit have been. Director Wiggins stated his recommendation would be to not cut the premium. He stated there are a couple of reasons for that. One, Director Wiggins does not believe it would be appropriate. Two, he believes if you cut this premium in half, you open up issues because an \$8,000 bid is still on the table from Western Watersheds. If the bid is cut down, it would only create additional problems. Director

Wiggins stated his recommendation does not include any change in the premium. Regarding payments for the past three years under the permit, Director Wiggins stated those have been the same payments that would have been made under the lease. The fee was based on an AUM rate in place at the time and would have been the rate charged on the lease had the lease been awarded.

Superintendent Howard stated she does not support dropping the rate. She is interested, however, in knowing what components might be acceptable to the Department. She wondered if the Board could provide some input into that in terms of the Management Plan because she sees that one of the issues would be fencing and she sees a time factor in terms of commitment needing to be in place. The other part that she wished to address is the presence of a rider. She recognizes that the rider is not going to be herding cows all of the time, but that rider would be a person on the spot to recognize when overgrazing is occurring in some areas, which continued to be a factor even during the past year. In response, Director Wiggins pointed to the February 2, 2004 memo by IDL staff member Jim Elbin. The Management Plan does state that Lacey Meadows Grazing Association will hire a full-time rider prior to June 1. Also, in the minutes of the annual meeting, which occurs in the spring prior to turnout, a range rider is item five and it indicates that the Association will be using a husband-wife team to do the range riding. You will also note that the document was signed by Paul Schroder of the Association and by Jim Clapperton, Area Supervisor, Maggie Creek Supervisory Area Office, IDL. A range rider was listed in the Management Plan for this year. Lacey Meadows complied with that. There is no reason why that could not or should not be part of future management. To clarify, Superintendent Howard asked if there would be an additional item, which would be fencing of the reforestation area. Director Wiggins stated yes.

Controller Johnson asked if there is active development or a new plantation on this allotment or if discussions are centering around plantations that have been in place now for beyond three years. He asked if new trees are being planted now. Director Wiggins responded plantations that the Department is dealing with this year are very recent and it is an active timber management area. The Department will continue to develop plantations at different locations throughout the area. There is a point at which the fencing would be removed and the trees would be able to stand on their own. For clarification, Governor Kempthorne asked if we were to then take the temporary permit as it was written, add in the fencing, would that then satisfy the elements discussed this morning. Director Wiggins stated the Management Plan needs to be something that is determined on the ground by the people there. Having said that, Director Wiggins stated the Department agreed to this Management Plan and felt it was adequate to meet objectives.

Superintendent Howard asked if the issue of fencing was addressed in the Plan. Director Wiggins stated fencing is covered in the Plan. Superintendent Howard stated she can support Governor Kempthorne's idea of a seven-year plan. She believes the Department would have to provide continuous monitoring. She is unsure, however, about the issue of how to deal with a lack of adherence to the Plan in the interim. She asked if the Department has a way to call people in to discuss those kinds of issues or what would happen if Lacey Meadows considers the seven years as seven free years without having to adhere to the requirements. Director Wiggins stated it would be a mistake on the part of Lacey Meadows to look at the lease in that way. One of the items listed in the record that has improved over this past year is communication between the parties. Lacey Meadows deserves credit for that improved communication along with IDL staff on the ground. That was one of the things that contributed to better performance. Lacey Meadows was accessible and they responded when the Department had matters of concern. Director Wiggins explained that typically IDL staff are on the ground on a regular basis. With current timber activity in the area, staff is in the allotment nearly every day of the week dealing with timber or fire matters. As staff move through the area, they note conditions and cattle locations. It is important that communication be prompt and clear. Also, it is important to also commend the lessee for things that are going well. If those contacts are not effective, then the expectation would be that IDL staff in Kamiah would have a meeting with the principals of Lacey Meadows to discuss the issues. If there happened to be a misunderstanding, it would be corrected. If there was lax attention to detail, then expectations would be clearly stated.

Superintendent Howard stated she has used harsh words in the discussions today because she believes this is, in a sense, a moral issue. However, another interesting point is making sure that Department staff talk with each other. It is important that they feel themselves to be part of a team so they have opportunities to talk to each other about the very issues being discussed before the Board today. In that way they individually will feel some responsibility even though it is outside of their area of focus to be a partner in the monitoring. Otherwise the Department could have staff who say it is not their job to communicate with others. Director Wiggins stated he would not be happy if employees approached their job from that angle. It is the Department's job to achieve objectives and that is best achieved by regular cordial communications between the parties. We have enjoyed a great deal of success approaching life from that angle and that is the expectation in this as in other cases.

Controller Johnson noted that the fifth point in the recommendation is if, for lack of certification, the lease were to be cancelled, the language includes the Department canceling the lease. He asked if that is an indication that the decision would be made by the Department without bringing the matter back before the Board. Director Wiggins stated that the Department would recommend to the Board that the lease be cancelled.

Superintendent Howard moved that the Board award a seven-year lease to Lacey Meadows for this grazing lease with the requirement that an amended written Management Plan be put in place and that the Plan, and adherence to the Plan, be evaluated by the Department on an ongoing basis for the duration of the lease. She further suggested that the Board receive occasional updates on the lease with the purpose of pointing out diligence and commitment to working with the people to use the lands in a responsible manner. For clarification, Governor Kempthorne referenced the Management Plan addendum that is in existence and that has been operated under most recently, which has an active range rider provision, and that it also then would include the fencing. Superintendent Howard amended her motion to include Governor Kempthorne's clarification.

Controller Johnson stated he still has concerns about fencing, but in light of procedural safeguards, he will support the motion. He does feel, however, that an obligation is being imposed on Lacey Meadows that may be financially unworkable in terms of their operations and additional labor costs.

Superintendent Howard stated this is a circumstance that has created a need for additional scrutiny. The Board's responsibility is to make sure that it worries as much about its duties and responsibilities as it does about the continued stewardship of the land by others. While she accepts Controller Johnson's concerns, she also feels this is a circumstance that was caused and this is a logical outcome.

Governor Kempthorne thanked Lacey Meadows for attending the meeting. He wished them well as they continue their efforts and he is confident that what the Board has seen in the past year is indicative of what will be seen in the future.

BOARD ACTION: A motion was made by Superintendent Howard to award a seven-year lease to Lacey Meadows with the requirement that an amended written Management Plan be put in place. The Plan, and adherence to the Plan, would be evaluated by the Department on an ongoing basis for the duration of the lease. Additionally, the Department will provide occasional updates to the Land Board on the lease with the purpose of pointing out the Board's, and the Department's, diligence in monitoring the lease while also showing the lessees' commitment to responsible use of the land. For clarification, Governor Kempthorne added that the Management Plan used most recently included an active range rider provision and also included fencing. Superintendent Howard agreed stating, "Exactly. Amended as is to include fencing." Controller Johnson seconded the motion. The motion carried on a vote of 3-0 with Attorney General Wasden and Secretary of State Ysursa abstaining.

16. Request for Approval to Enter into Incidental Take Coverage – Presented by Winston Wiggins, Director – **approved**

DEPARTMENT RECOMMENDATION: That the Board authorize the Department to enter into formal negotiations with the US Fish and Wildlife Service and NOAA Fisheries with the objective of acquiring incidental take coverage for listed species on state endowment trust lands.

BOARD ACTION: A motion was made by Secretary of State Ysursa to accept the Department's recommendation. 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.

17. Legislative Update – Presented by Winston Wiggins, Director

H0504	Fire Deficiency Warrant Budget	LAW
H0509	Investment of Permanent Endowment Funds	LAW
H0510	Authority to Sell Certain Mineral Rights	LAW
H0511	Giving the Land Board Contracting Authority	LAW
H0515	49-Year Leasing Authority	LAW
H0669	Contested Case Exemption	LAW
H0766	Department Budget	LAW
HJR004	Increasing Land Sale Limit to 640 Acres	Senate State Affairs
H0755	Authority to sell mineral rights where State has already sold surface rights. Sale would be without bid or auction.*	LAW

*Constitutional concerns regarding this bill were resolved through discussions with the sponsor. The bill was amended to address those concerns.

At 11:15 a.m., a motion was made by Controller Johnson to resolve into Executive Session. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

- **EXECUTIVE SESSION**

- To Consider Records that are Exempt from Disclosure [[Idaho Code § 67-2345\(1\)\(d\)](#)]**
- 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\(1\)\(f\)](#)]**
- To Consider Personnel Matters [[Idaho Code § 67-2345\(1\)\(b\)](#)]**

At 11:32 a.m. the Board resolved into regular session.

There being no further business to come before the Board, the meeting adjourned at 11:33 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 June 14, 2004 regular Land Board meeting.