



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 12, 2005

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, April 12, 2005 in Boise, Idaho. The meeting began at 9:05 a.m. in the second floor courtroom of the Borah Post Office Building. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Ben Ysursa
Honorable Attorney General Lawrence G. Wasden

Secretary to the Board Winston A Wiggins

State Controller Keith Johnson participated in the meeting by conference phone beginning at 9:05 a.m. Superintendent Marilyn Howard joined the meeting by conference phone beginning 9:56 a.m.

• CONSENT

Director Wiggins provided background information on the Consent Agenda items.

A motion was made by Attorney General Wasden to approve the Consent Agenda in its entirety. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Howard being absent for this vote.

1. Director's Report – approved

- A. Interest Rate on Department Transactions – February 2005
- B. Bureau of Real Estate, Land Sale Section, Official Transactions – February 2005
- C. Bureau of Real Estate, Easement Section, Official Transactions – February 2005
- D. Timber Sale Official Transactions – February 23, 2005 through March 29, 2005
- E. Timber Sale Activity Report
- F. Legal Matter Summary

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

A. North Soldier	CR-10-0339	1,820	MBF	Bonner
B. Chilco OSR	CR-22-5004	1,300	MBF	Kootenai
C. Dennis Saddle	CR-30-0497	4,000	MBF	Clearwater

D. Big Brush	CR-30-0515	4,050	MBF	Benewah
E. Cedar Ridge	CR-40-0591	3,345	MBF	Clearwater
F. Upper Slocum	CR-40-0777	4,100	MBF	Clearwater
G. Swingin' Eddy	CR-60-0166	3,860	MBF	Boise
H. Mud Creek	CR-80-0095	2,385	MBF	Clark

DISCUSSION: Attorney General Wasden expressed interest in sales C, D and E.

With regard to sale C, Attorney General Wasden asked if there is any additional information as to the recommendation about clearcuts. While he appreciates the fact that the sales are silviculturally justified, he would also like to know more about the circumstances on the ground that indicate clearcutting is appropriate. Assistant Director Ron Litz responded sale C, Dennis Saddle, is an over mature stand containing primarily tolerant trees, grand fir and cedar, that are not producing seed. The Douglas fir that occurred on the site has been killed by bark beetles thus eliminating that seed source. Dwarf mistletoe has occupied the large trees in the area. When dwarf mistletoe is in the overstory, seedlings coming up underneath become infected. That is the reason this proposal is to remove it all, plant it and then regenerate it.

Governor Kempthorne asked what species would be replanted. Assistant Director Litz stated white pine and larch would be planted once the dwarf mistletoe infected overstory is removed. The grand fir will automatically come in to some degree and some Douglas fir would most likely be added. However, the two primary species would be white pine and larch. Both species are well suited for those sites.

Assistant Director Litz stated sale D is Big Brush. That sale has three units that are clearcut proposed. The area has root rot. The problem with root rot is that seedlings are susceptible and become infected. The trees grow to about fifteen to twenty-five years old and then die. Those trees never get any older than that because they continue to be re-infected with the root rot. The root rot lives on the brush, wild strawberries and various other vegetation in the area. The Department needs to get totally away from that species and replant it with a root rot resistant species. The area will be replanted with white pine and larch.

Governor Kempthorne commented when there is a clearcut, the Department gets away from the squared clearcut and instead uses a clearcut that meanders and follows the contours to give the look perhaps like a meadow for a period of time as opposed to a stamp. Assistant Director Litz stated one of the Department's requirements is that the natural contours be followed to avoid having blocks cut.

Sale E, Cedar Ridge, also has two clearcuts. This sale has inadequate seed trees. It has a very high level of root disease, and it also needs to be converted to a more tolerant root rot resistant species. This sale is in an extensively logged area in the Clearwater drainage. It is visible to a state-graveled road, but it is in the industrial forest and is not on a public highway. Visibility is not an issue on this sale.

Attorney General Wasden noted that sale H appears to have a pine beetle infestation. Assistant Director Litz stated that is correct.

Governor Kempthorne commented if the federal government were allowed to get in where beetle infestation and other problems occur, dilemmas like Red Fish Lake could possibly be avoided. It is a tragic situation that has even the federal forest managers frustrated.

3. Fiscal Year 2006 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.

4. **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: Approved.

5. **Request for Formal Approval to Begin Negotiated Rulemaking Required by SB 1169 (Surface Mining Act Amendments)** – Staffed by Denise Mills, Assistant Director, Lands, Minerals, Range – **approved**

DEPARTMENT RECOMMENDATION: Authorize IDL to proceed with negotiated rulemaking to promulgate temporary rules by August 1, 2005 and to commence negotiated rulemaking for adoption of permanent rules for the purpose of implementing the anticipated amendments to the Surface Mining Act.

DISCUSSION: Transcript available upon written request.

BOARD ACTION: Approved.

6. **Application for State of Idaho Mineral Lease Nos. 9360 and 9361** – Staffed by Denise Mills, Assistant Director, Lands, Minerals, Range – **approved**

DEPARTMENT RECOMMENDATION: Deny the applications.

DISCUSSION: Controller Johnson asked if the Board moves forward with the Department's recommendation to deny the application, is the applicant able to come back later and request these leases if they provide the information that seems to be lacking at this point. In addition, he asked if the Department has had any further conversations to determine their intent going forward. Director Wiggins responded his only conversations were along the lines that the company believed they could remove the sediments and simultaneously make a profit from the minerals that were in the sediments while cleaning up the bed of the river. The Department's denial of the lease application now does not preclude them from coming in and making another application and providing information that would indicate that, for instance, the EPA has signed off on this process. It would be a great win-win situation, but the Department has not seen anything in a technical sense that would support that happening.

BOARD ACTION: Approved.

7. **Minutes – approved**

A. Regular Land Board Meeting – March 8, 2005

• **REGULAR**

8. **Endowment Fund Investment Board Manager's Report** – Presented by Connie Eshelman, Investment Officer, EFIB

DEPARTMENT RECOMMENDATION: The Endowment Fund Investment Board recommends that the Land Board authorize the increase in distribution payments from the Normal School, Penitentiary, State Hospital South and University endowments.

BOARD ACTION: Attorney General Wasden moved adoption of the recommendation by the Endowment Fund Investment Board. Secretary of State Yursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Howard being absent for this vote.

9. Fiscal Year 2006 Timber Sales Plan – Presented by Ron Litz, Assistant Director, Forestry and Fire

DEPARTMENT RECOMMENDATION: Direct the Department to proceed with publication of the FY-2006 Timber Sales Plan.

DISCUSSION: Attorney General Wasden asked for confirmation that this is simply an outline or plan of proposed sales. The Board is not today approving any sales and that at a later date each sale will be presented individually to the Board for approval. Assistant Director Litz responded that is correct. Director Wiggins stated the Department is simply outlining what it proposes to do. The specifics of the plan may change in the coming months as more specific information is available.

In reviewing comments received on the FY06 Timber Sale Plan, Governor Kempthorne remarked that the Department response letter to Margo and Dennis Proksa by IDL employee Tom Fleer was very well written. Director Wiggins stated that the Idaho Conservation League submitted comments for their organization and for the Selkirk Conservation Alliance. Mr. John Robison, representing ICL, is in the audience. The Intermountain Forest Association also submitted comments and Ms. Jane Gorsuch, representing IFA, is in the audience.

• **AUDIENCE WITH THE BOARD – JOHN ROBISON, IDAHO CONSERVATION LEAGUE**

Mr. Robison stated he represents the Idaho Conservation League and the Selkirk Conservation Alliance. ICL has had a long history with forest management in Idaho. ICL issued a Notice of Intent to Sue regarding concerns over endangered species living in the area (caribou, bull trout, grizzly bear), and a lawsuit on ESA takings was filed in August 2004. In the fall of 2004, ICL met with Director Wiggins, and through productive conversations, ICL later withdrew its lawsuit.

ICL was hoping for an opportunity to continue productive dialogue but was discouraged after reviewing the FY06 Plan. From their perspective, many of the same issues have gotten worse. ICL's goal is not to stop logging in the Priest Lake State Forest or to interfere with IDL's fiduciary responsibilities for the schools. ICL believes it is possible to have sustainable forest management while also protecting endangered species.

Mr. Robison stated the main issue is roads. Roads are one of the major, both ecological and economic, problems with large timber sales that are harvested through ground-based systems. Mr. Robison stated what ICL is trying to avoid is not so much clearcuts but road densities. Right now the road density in the Priest Lake State Forest exceeds the best available science for accommodating both grizzly bears and timber sales. Mr. Robison stated what ICL is asking is not so much a focus on timber sales or on clearcuts but a focus on road management in the area.

Mr. Robison credits the 2006 Timber Sale Plan for mentioning gating and barricading roads, which deals with access. He stated you can have a road system, and if there is adequate closures on either side, that can constitute secure habitat for grizzly bears. Logging and grizzly bears are not mutually exclusive. Mr. Robison stated it is the road system that is at the core of the problem.

While the Timber Sale Plan mentions road closures, there have been long-term problems with effective barriers. The Selkirk Conservation Alliance completed a survey of 37 gates in 2003 and found that a third of those gates were ineffective. Mr. Robison suggested that the 2006 Timber Sales Plan should adopt more aggressive road closures, such as using slash, berms and barricades. Regulations on motorized use beyond these barriers are being updated so those regulations can be enforced for closures. ICL also encourages the Department to obliterate roads for systems with historic high risk and low use to protect and restore soils. ICL encourages IDL to continue using helicopter and cable yarding systems as opposed to traditional tractor-jammer systems, which need more roads. Mr.

Robison stated roads also harm fish. Fish are impacted by road-related landslides. It is not necessary for a landslide or catastrophic failure to occur for sediment to enter streams. Systems that provide a chronic long-term source of sediment also bleed into the streams. Mr. Robison stated that the measures he has mentioned to protect grizzly bears would also help fish. He credited IDL for some very positive work, and in the 2006 Timber Sales Plan, ICL would like to see more of that and would encourage that.

The Fish and Game report on bull trout states every effort should be made to increase canopy cover over the river and major tributaries as it appears small changes in temperature may play a larger role in bull trout and brook trout distribution. Another issue is riparian buffers being scheduled for logging. ICL did have an excellent presentation from Dale McGreer on how SRBA buffers are adequate to protect fish. In the 2006 Timber Sale Plan, however, ICL noted that there is a large amount of harvesting planned next to the riparian areas in steep areas. Some type of buffer is needed to filter the sediment coming out of the other clearcuts. ICL believes the best way to allow this to proceed is to use the SRBA standards in conjunction with a Habitat Conservation Plan. ICL would like to see additional measures used with the HCP. Until this plan is developed, ICL would like to see these sales basically put on the shelf until the HCP is developed. Regarding caribou, ICL's comments on the 2006 Timber Sale Plan are focused on ten timber sales out of a total of 68. ICL proposes that IDL find a way to either modify those ten sales or put them on hold while HCP plans are being developed.

In closing, Mr. Robison discussed an aerial photo of the Pole Trap and Trapper Point OSR timber sales. The Trapper Point OSR timber sale is included in the 2006 Timber Sale Plan. Mr. Robison stated when he looked at an aerial view, he was surprised to see that it had already been harvested. He is not sure if the point of the FY06 sale is to go back and remove the remaining trees or if there was a miscommunication in the data ICL received. Mr. Robison stated the big point he wanted to show is that ICL was assuming that Trapper Point OSR was still in tact for caribou and grizzly bear. However, obviously it has been impacted by roads and logging.

Mr. Robison stated the species in the area are running out of time. The decisions made here and in the coming weeks will make a large difference. ICL encourages the Department to continue a good faith dialogue.

- **AUDIENCE WITH THE BOARD – JANE GORSUCH, INTERMOUNTAIN FOREST ASSOCIATION**

Ms. Gorsuch commented that IFA foresters have reviewed the harvest methodologies and harvest plans and, as submitted by IFA in the past, the proposal for the Department of Lands has a very conservative estimate of what could be harvested on state land in a sustainable fashion. IFA also views the Forest Practices Act and the Stream Channel Protection Act, and other protections that have been provided under the SRBA, as very adequate to address any of the issues. IFA applauds IDL and the Land Board for having continued discussions with all interested parties. IFA feels comfortable and confident that the protections provided under the state laws are more than adequate to protect all the species and provide for sustainable harvest well into the future.

FURTHER DISCUSSION: Attorney General Wasden asked for clarification. It is his understanding that in the ICL discussion ten sales are mentioned. The Board is not approving those ten sales today. This is the FY06 Timber Sale Plan. The process that would be employed. Those sales would have to be individually approved at future Land Board meetings. Director Wiggins stated the ten sales, which are all in Priest Lake, will be brought to the Board individually at a future date for approval. At that point, the Department will provide as detailed information as the Board cares to see regarding all of the treatments that are going to take place, along with the protection measures in place.

Governor Kempthorne remarked it is clear from Mr. Robison's comments that the dialogue between the Department and ICL has been beneficial. He encouraged continued discussions. Director Wiggins stated the Department will continue the discussions.

Secretary of State Ysursa asked if Trapper Point had already been logged. Director Wiggins stated it is an overstory removal sale and, by definition, it has been previously logged. Typically the progression is that once a stand is entered, because our goal is natural regeneration wherever we can, we try to avoid the clearcut-and-plant scenario, and so overstory removal means that seed trees, or trees that are the seed source for that site, have successfully regenerated the site, and the younger stand is now of an age where it can stand on its own. We will go back and cut the trees that were left to provide the seed. Assistant Director Litz stated this sale was harvested and completed in 1989. The sale that harvested it was called Trapper Point Timber Sale. As Director Wiggins indicated, it now has a very good mix of advanced regeneration under it. In 1992 we were involved with the Lower Green Bonnet Timber Sale lawsuit. At that time we committed to not doing any harvesting in that drainage for ten years. That time period was up in 2002. Now we are going back to remove the remaining overstory off that area because it has a fully regenerated understory under it right now. But it was harvested, and it was last completed in 1989.

Director Wiggins stated aerial views are nice, but they can be very misleading in that you can not see the smaller trees. It would be interesting for us all to go there and walk through that stand today and see it on the ground. Governor Kempthorne commented the trees in the aerial photo could be six to eight feet. Director Wiggins added some trees could be at twenty feet. It varies quite a bit. It would not be surprising if six to eight feet was the average.

Secretary of State Ysursa asked if the buffers discussed in the SRBA are in effect in the Priest Lake area. Director Wiggins stated last summer, following the announcement of the SRBA measures, he directed that they be implemented at Priest Lake and any other place where the Department is actively seeking incidental take coverage. Sales that have already been harvested will not necessarily have those measures. Some of them have measures that are equivalent, but not those measures specifically. The direction is any sales, including the FY06 Plan, have those measures added.

Controller Johnson noted upward adjustments to the Craig Mountain and Eastern Idaho areas recommended harvest to accommodate insect infestations. He noted to offset that the Department has decreased the harvest at Maggie Creek. He stated it appears the Department has made that adjustment in order to stay at 202 million board feet as a target number. He remarked it seems that the 202 number is an arbitrary number. Looking at Maggie Creek, two sales have already been moved from the 05 plan to the 06 plan. He wonders if that makes sense or should the Department stay with the original plan number of 15 million instead of moving to 10. He asked why the Department is dropping that down to the 10 other than to stay at the 202. Director Wiggins stated the Department does not consider the 202 million an arbitrary number. It is a number that is supported by our inventory process and our growth and yield model and so we consider that a commitment at 202. It is not uncommon to make some adjustments as appropriate to deal with unusual situations. In a specific year, one area may be a little higher, one area may be a little lower, but over that time period the goal is to get the 202.

Assistant Director Litz stated when making adjustments, especially when the harvest is increased due to insect, fire, blowdown, etc., the Department makes sure that the volume commitments for the various working areas and regions stay the same. Small amounts of volume could be reduced across all of the supervisory areas, and that is an acceptable way to do it. But the Department chose to look at the core Clearwater area. We wanted to make sure that we maintained our commitment fairly closely because we have a obligation to make sure that we provide adequate volume for our customers in that region. The sales for the Ponderosa, Clearwater, Maggie Creek and Craig Mountain areas were reviewed and prioritized. It was determined that Maggie Creek had the least high priority sales and that they could go ahead and delay and maintain that volume and make sure it was adequate to meet commitments while allowing us to increase those on Craig Mountain. Eastern Idaho is more difficult because there is nothing down there to help in that region. They supply it so we took the entire increase down there, and we did have the offset set above. Director Wiggins added that some reduction may be seen in Eastern in the future so that over a ten-year period what we will look for out of Eastern is 40 million board feet with seven of it coming in this particular year. The inventories and the growth and yield

models are run on an area-by-area basis so there is a separate inventory and separate analysis of the data on each of these supervisory areas.

Governor Kempthorne commented about the drought situation. He stated it is estimated this is the worst drought in 500 years for this area on a continual basis. We are in the sixth year and the conditions continue to stress the trees.

BOARD ACTION: A motion was made by Secretary of State Ysursa to accept the Department's recommendation with the Board being fully cognizant of the fact that these sales do come back before the Board for final approval. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0, with Superintendent Howard joining the meeting at the beginning of this agenda item.

10. Fiscal Year 2006 Land Sale Plan – Presented by Denise Mills, Assistant Director, Lands, Minerals, Range

DEPARTMENT RECOMMENDATION: Direct the Department to proceed with development and appraisal of sale packages for each of these parcels.

DISCUSSION: Governor Kempthorne asked if the money generated goes into the Land Bank. Assistant Director Mills stated any monies earned from the sale of these lands would go into the Land Bank. A buyer is required to pay the advertising price. We did receive a legislative appropriation this year for \$90,000 for the purpose of paying real estate fees, etc. We are hoping the funds will help us market the properties and move them. But the total revenue we receive from the sale will go into the Land Bank.

Secretary of State Ysursa asked about the Clear Creek parcel. He assumes the Department is planning to sell the parcel during the next fiscal year. He understands there are some appraisal questions. Assistant Director Mills stated we are proposing to advertise the parcel from late spring through the summer to try to attract potential buyers over the summertime. A sale of the property would be either in August or September. An assessment of the land value needs to be completed to come up with the base bid price for auction. Based on experience for the FY05 plan, we anticipate bringing back these individual sales to the Board probably starting in the fall. That would allow us to focus on the Clear Creek parcel and wrap up the other sales that were on the 05 plan, most of which should go forward before the end of the fiscal year.

Attorney General Wasden commented he appreciates the valuation process used to propose this plan. He also expressed appreciation for the detailed valuation process used on the last couple of sales. He stated the detailed information helps in his decision making.

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.

At 10:12 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session. Secretary of State Ysursa 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\(1\)\(b\)\]](#)**

D. To Consider Acquiring an Interest in Real Property Which is Not Owned by a Public Agency [[Idaho Code § 67-2345\(1\)\(c\)](#)]

Governor Kempthorne left the meeting at 10:40 a.m.

Upon unanimous consent, the Board resolved into Regular Session at 11:12 a.m. No actions were taken by the Board during the Executive Session. There being no further business to come before the Board, the meeting adjourned at 11:12 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 May 10, 2005 regular Land Board meeting.