



STATE BOARD OF LAND COMMISSIONERS

C. L. "Butch" Otter, Governor and President of the Board

Ben Ysursa, Secretary of State

Lawrence G. Wasden, Attorney General

Donna M. Jones, State Controller

Tom Luna, Superintendent of Public Instruction

George B. Bacon, Secretary to the Board

Final Minutes
Regular Land Board Meeting
May 8, 2007

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, May 8, 2007 in Boise, Idaho. The meeting began at 9:05 a.m. in the second floor courtroom of the Borah Post Office building. The Honorable Lieutenant Governor James Risch presided. The following members were present:

Honorable Secretary of State Ben Ysursa
Honorable Attorney General Lawrence G. Wasden
Honorable State Controller Donna M. Jones
Honorable Superintendent of Public Instruction Tom Luna

Secretary to the Board Director George Bacon

Governor C. L. "Butch" Otter was absent for this meeting.

• **CONSENT**

A motion was made by Controller Jones to approve the Consent Agenda in its entirety. 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 – April 2007
- B. Timber Sale Official Transactions – March 24, 2007 through April 23, 2007
- C. Timber Sale Activity Report
- D. Legal Matter Summary
- E. Bureau of Surface and Mineral Resources, Official Transactions – March 2007
- F. Bureau of Real Estate, Official Transactions – Easement – March 2007
- G. Bureau of Real Estate, Official Transactions – Land Sale – March 2007

2. **Timber Sales – Staffed by Roger Jansson, Operations Chief-North, and Steve Douglas, Operations Chief-South – approved**

A. Roothaan	CR-10-0343	2,200 MBF	Boundary
B. Keokee Up	CR-10-0364	1,660 MBF	Bonner
C. Trout Creek Helo	CR-20-0249	2,000 MBF	Bonner
D. First Guide	CR-20-0262	2,400 MBF	Bonner
E. Old Santa	CR-30-0531	4,285 MBF	Benewah

F. Hazendorf	CR-31-0009	4,880 MBF	Shoshone
G. Casey Facey	CR-40-0787	3,155 MBF	Clearwater
H. Mill Road Commercial	CR-40-0793	2,145 MBF	Clearwater
I. Atwater Lake	CR-41-0013	1,580 MBF	Latah
J. Aldermard Return	CR-41-0029	4,530 MBF	Clearwater
K. East Fork Commercial	CR-42-5020	1,595 MBF	Clearwater
L. West Johnson	CR-50-0135	4,464 MBF	Washington
M. Miner 2	CR-80-0099	1,270 MBF	Bingham

DISCUSSION: Attorney General Wasden noted that a number of the proposed sales indicate clearcuts. He asked for verification that the clearcuts meet silvicultural requirements and standards. In addition, he asked if any Endangered Species Act issues are associated with the sales. Director Bacon stated in all cases the clearcuts are deemed silviculturally necessary due to insects and disease and a lack of adequate seed trees to accomplish any other type of silvicultural prescription. Regarding ESA issues, those considerations are taken into account as the sales are designed. The Department works closely with the Department of Fish and Game and, when appropriate, the federal services, to ensure that needs of the endangered species are met.

Attorney General Wasden asked for an explanation of the Department's process for item H, Mill Road Commercial sale. Director Bacon stated Mill Road Commercial, Item H, is a ton wood sale. It is a small material fiber-type sale that it is not economically feasible to scale in a conventional manner. The material will be harvested and removed much like a thinning, and it is likely the material will be chipped. Some of the bigger material may make saw logs and be sorted in that manner but, for the most part, the method of payment will be through weighing rather than scaling with scalers and the use of the scale stick. The Department is attempting to process a couple of these kinds of sales per year because that kind of material is available and needs to be harvested. It is also partly experimental to see how managing and getting payment for this kind of material, or all material, by weight might work better in the future. It is widely used across the industry. The Department has not gone to weight because it is a big change, and our customers are not ready to make that move.

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

- A. Mark Swanson Logging, Post Office Box 1578, Lewiston, Idaho 83501
- B. Timberworks, Inc., Post Office Box 322, Bovill, Idaho 83806

4. Minutes – approved

- A. Special Land Board Meeting – March 8, 2007
- B. Regular Land Board Meeting – April 16, 2007

• **REGULAR**

5. Endowment Fund Investment Board

- A. Joint Meeting with the Endowment Fund Investment Board

Dean Buffington, Chairman, introduced the members of the EFIB.

- Vice Chairman Gavin Gee, Department of Finance
- Vaughn Heinrich, Retired Superintendent, Valley View School District
- Tom Kealey, Boise Businessman

- Senator Brad Little
- Sue Simmons, Administrator, Department of Transportation
- Richelle Sugiyama, Investment Officer, PERSI
- John Taylor, Insurance Company Executive, North Idaho
- Not Present: Representative Max C. Black

EFIB Staff:

- Larry Johnson, Manager of Investments
- Chris Halverson, Investment Officer
- Andy Potter, Fiscal Officer
- Judy Shock, Office Manager

B. EFIB Manager's Report – *Presented by Larry Johnson, Manager of Investments*

The total fund balances for the first nine months increased \$108 million, or 12.5%. The Fund currently is over a billion dollars. The earnings reserve balances, money available to pay distributions, has increased \$44 million, or 57%, and is now at a record high of \$143 million as of the end of March 2007. Receipts from endowment lands for the first nine months rose to \$62 million, which is a 28% increase over last year, or the same nine month period of fiscal 2006. Every year the Department of Lands provides a forecast of revenues for each endowment. The EFIB then tracks how it is doing against that forecast. Many events can throw the forecast off in terms of how fast buyers harvest, et cetera. But the bottom line is the EFIB is well ahead of the forecast and five endowments have already met their forecast for the year. The EFIB usually expects 80% of its money by this point in the fiscal year, but currently we are at 96% through the end of March 2007.

There are no material legal issues or issues of concern. Mr. Johnson did mention the issue of the agricultural college endowment, and some comments will be made on that after the investment discussion.

C. Investment Report

April earnings were 2.9%, which is slightly ahead of the benchmark for the month. Over the three-year period we have beaten the benchmark, which in essence means if we just invested in index funds, we're ahead by 1.1%. So overall for the last three years, the Fund has returned 12.9%, so endowment funds are growing, particularly fiscal year-to-date we're up 14.4%.

Agricultural College Endowment

Larry Johnson, EFIB Investment Manager, commented that the Investment Board, along with others in state government, has been working on issues associated with the Agricultural College Endowment. He invited Deputy Attorney General Clive Strong to provide an update on the status of the federal legislation related to this issue.

Deputy Attorney General Strong related that inconsistencies were found between the Morrill Act, passed in the mid-1800s, and the State management principles for the overall endowments. In conjunction with the Endowment Board, and the Land Board, work has been done to address those inconsistencies. DAG Strong provided a copy of the Senate bill that will bring the Morrill Act, and the state management principles, into conformity with one another. Senators Crapo and Craig will sponsor the legislation. At this point the legislation is proceeding through Congress, and it is hoped inconsistencies will be resolved in the near future.

Lt. Governor Risch asked if the changes will allow the University to deal with the Canyon County land. DAG Strong stated the canine lands are owned outright by the University so those lands are not subject to this particular restriction. However some lands adjacent to the canine lands are subject to the restriction. This legislation will address that issue and will permit the dairy program in the Magic Valley to move forward.

Attorney General Wasden commented he is pleased that Senators Craig and Crapo have introduced this housecleaning legislation to allow Idaho to administer the Morrill Act lands under applicable standards with other endowments. He is committed to this effort, and he is certain this Board is committed to ensuring the long-term financial return to all of the endowments. This legislation will help achieve that objective. He commended Chairman Buffington and the Endowment Board for their assistance in addressing this inconsistency between the Morrill Act and the objectives of endowment reform. He noted that the EFIB will meet later to work on this very issue to implement a contingency plan to address and ensure that it is in accordance with the Morrill Act in the event this legislation does not pass. Attorney General Wasden assured Chairman Buffington that the Land Board fully supports the EFIB's effort and appreciates their work on this issue.

No action was taken on this agenda item.

6. Subcommittee Report – Review of Lease Terms and Floathome Moorage Rate Structure – Chaired by Controller Donna Jones

SUBCOMMITTEE RECOMMENDATION: (1) The Subcommittee recommends that the Board rescind the second paragraph of the July 6, 1999 "Maintenance and Moorage Rate Facility Policy" related to floathome moorage rates, thereby allowing the market and individual commercial operator's business situations to establish floathome moorage rates. (2) The Subcommittee recommends that if the portion of the Board policy related to floathome moorage rates is rescinded, that the remaining portions of the policy stay in place under the new title of "Marina Maintenance Policy" in order to protect public trust values. (3) The subcommittee also recommends that the Board direct the Department to issue a letter to the floathome owners and commercial marina operators clarifying the Board's position on this matter and its authority relative to the Floating Homes Residency Act.

DISCUSSION: A transcript is available upon written request to Susan Terry, Idaho Department of Lands, Post Office Box 83720, Boise ID 83720-0050.

BOARD ACTION: By Unanimous consent, this item was deferred.

7. Cottage Site Lease Terms – Presented by Mike Murphy, Chief, Bureau of Surface and Mineral Resources

DEPARTMENT RECOMMENDATION: (1) Authorize the Department to initiate informational meetings with cottage site lessees and their respective lessee associations regarding potential terms and rates for renewing cottage site leases and for any new cottage sites which the Board chooses to lease in the future; (2) Authorize the Department to initiate lease auctions during late summer of 2007 for the previously identified two lots at Rocky Point on Priest Lake. Lease rate structures, terms and conditions will be based on the recommendations and will be brought back to the Board for final approval prior to auction.

DISCUSSION: Lt. Governor Risch asked if auction dates have been set. Director Bacon stated the Department is waiting for the Board's approval to move forward. Lt. Governor Risch commented he believes this will be a very eye-opening experience.

Secretary of State Ysursa agreed that this auction will test the market and will show what kind of premium bid is possible. He asked about the terms of the lease. Director Bacon stated the Department's objective is to have a finalized lease ready for the Board's review by the next meeting.

Lt. Governor Risch asked if cottage site leases are currently ten-year leases. Director Bacon responded yes. Lt. Governor Risch suggested the possibility of leasing for thirty years instead with no rent. An auction would be held; cash would be paid for thirty years. At the end of the thirty years, the cottage site reverts back to the State along with the improvements. In that way, people know exactly what they are getting. The market will bid on it, and people will pay X amount of dollars for it.

Division Administrator Kathy Opp stated to synthesize the recommendation, basically the Board would move to using the Department's transaction rate, which is based on a thirty-year mortgage rate, to price the payment. It would be valued based on appraised value, which on the Payette area would change from assessed value to always appraised value. The re-pricing cycle of the lease would be every five years so a lessee would know what their payment would be for five years. Then, consistent with money market re-pricing, the lease has the ability to re-price both based on assessed value and based on interest rate change when the five-year mark is reached. The Department feels the terms should be thirty-year mortgage, but statutorily the Department does not have that ability at this time. The Department would seek to change the law in the future so these leases could be longer term. Initially the lease would have to be a ten-year lease. With market pricing and appraised value, you should not see the premium bid situation because, in theory, you would have priced it at market so the premium bid and the loss of monies that we see changing hands should not occur anymore with that re-pricing structure on assignments. The Department feels this would be a good stab at an initial contract, and if all leases were in this format, the State would see the revenue from this asset type more than double for the beneficiaries, which is where it should be to reflect market.

Lt. Governor Risch expressed his appreciation for the Department's efforts. However, he stated his concern is that some of the frailties seen in the past leases will continue.

Secretary of State Ysursa agreed. He believes the Department is on the right track and should seek feedback from the lessees. He asked about the terms of the lease for the lots being auctioned this summer.

Lt. Governor Risch asked Secretary Ysursa if it is his understanding that the lots being auctioned this summer have to match what has happened in the past or can they stand alone. Secretary of State Ysursa stated that is his impression. He wondered if it is going to be a tipoff to others and has the Board and the Department made up its mind. He stated he will not vote for a new lease on any of the cottages sites that state two and a half percent of market value, which is what the current leases state. He believes the Board can put what it wants in the lease as long as it is up front and everyone knows the terms. Good faith negotiations with the bidders, along with five percent of market value annual rent, will probably not result in a big premium bid while two and a half percent did bring a lot of bidding. He noted that is perhaps the offset. Two and a half percent is not market value. Idaho Code 58-310a says we get market value because, in essence, whether the leases are ten years or thirty years, if the lessees abide by the lease terms, they keep the leases as long as market rent is received.

Lt. Governor Risch stated that was his thought. Instead of arguing with lessees about market rent, hold an auction where they do not pay rent. Instead they pay cash up front, and the State has the money to invest now. If people are considering a cottage site, and realize they can bid on the lot for a thirty-year lease, they will be willing to pay a lot of cash to tie the lot up for thirty years. His suggestion would be to get rid of the argument over what percent of market should be the rental rate and instead let the free market operate.

In response to Secretary of State Ysursa's question regarding what the lease terms will be, Mike Murphy, Chief, Bureau of Surface and Mineral Resources, stated the lease will essentially reflect the recommendations as shown in the attachments to this agenda item. There are some practical matters

that the Department will continue to work through, and it could take a few weeks to review the implications of how that would affect the leases renewing in 2010. The Department is considering whether there will be a staggering of the appraisal process, will it be all in one lump sum and how the Department will deal with that. Staff wanted to take the time to think through some of those practical matters that the implications of these two new leases might have on future lease renewals.

Attorney General Wasden stated it is his understanding that the recommendation being made by the Department is, in part, an information gathering process to learn what we can from the market place and apply those principles into the future as we go through this renewal process. Ms. Opp stated that is correct. If the leases are crafted with the lease terms indicated by Mr. Murphy, the anticipation is that it would sell for the appraised value because that should reflect market. The only exception would be the ten-year. In theory the ideal case would be that it is a thirty-year lease. In those scenarios you would expect no premium bid because it reflects market.

BOARD ACTION: A motion was made by Attorney General Wasden to adopt the Department's recommendations. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

8. Request for Adoption of Formal Policy Regarding Reservation of 25-foot Wide Public Use Right-of-Way Along Navigable Rivers – Presented by George Bacon, Director

DEPARTMENT RECOMMENDATION: Consistent with the recommendation as presented at the March 13, 2007 Board meeting, direct the Department to reserve a 25-foot wide public use right-of-way along navigable rivers when issuing Disclaimers of Interest, while allowing the Department to propose alternatives to the Land Board due to unusual circumstances. Alternatives to the 25-foot wide public use right-of-way will be presented to the Land Board for approval.

DISCUSSION: None.

BOARD ACTION: By unanimous consent, this item was deferred.

9. Request for Conceptual Approval to Sell Public School Endowment Parcels – Elk Valley Lots 7, 8, 9, Elmore County – Presented by Perry Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: Direct the Department to proceed with the appraisal and development of sale packages for each of the parcels with the intention of returning to the State Board of Land Commissioners for approval to begin advertising the lots for sale at public auction in 2008.

DISCUSSION: Lt. Governor Risch asked what was paid for the previously sold Elk Valley lots. Perry Whittaker, Chief, Bureau of Real Estate, stated in 2005 the Department sold two lots, one at \$210,000 and one at \$205,000. The other two lots are being advertised for sale in August 2007 at \$300,000 each. Lt. Governor Risch asked if that would be the minimum bid. Mr. Whittaker stated with the Board's approval the Department will conduct an appraisal probably this fall. After the other two lots are sold, the Department will return to the Board with a request to sell these lots at a minimum value based on the appraisal. Lt. Governor Risch asked how many lots remain. Mr. Whittaker stated two lots have been sold, two are being advertised, and three lots remain. The remaining lots will be sold in 2008.

BOARD ACTION: A motion was made by Attorney General Wasden to adopt the Department's recommendation. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

10. Proposed Future Land Board Meeting Locations – Presented by George Bacon, Director

DEPARTMENT RECOMMENDATION: (1) Direct the Secretary to recommend to the Board early each year meeting sites outside of Boise for the June and October regular meetings of the State Board of Land Commissioners. Recommendations should rotate around the State, with deference given to coordinating agenda items with meeting locations where possible; (2) direct the Secretary to establish a meeting site for the October 2007 regular meeting of the State Board of Land Commissioners in the Lewiston or Sandpoint areas, depending on availability of accommodations.

DISCUSSION: None.

BOARD ACTION: A motion was made by Controller Jones to move the recommendation of the Department (1) to direct the Secretary to recommend to the Board early each year meeting sites outside of Boise for the June and October regular meetings with recommendations rotating around the State, and (2) direct the Secretary to establish a meeting site for the October 2007 regular meeting in the Lewiston or Sandpoint areas. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

11. Disclaimer of Interest for Former River Bed of South Fork of Payette River, Boise County – Presented by George Bacon, Director, and Perry Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: Direct the Department to issue disclaimers of interest for four parcels totaling 34.90 acres of the former bed of the South Fork Payette River. In return, Eagle Springs Ranch, LLC, will pay a fee of \$600.00 to the Department of Lands for this transaction, disclaim three parcels totaling 62.61 acres of river bed to the State of Idaho, and grant a conservation easement to Idaho Foundation for Parks and Lands for public day use.

DISCUSSION: Attorney General Wasden asked for clarification with regard to the conservation easement, as originally proposed, going to a private entity. Recognizing the Board's duty to comply and enforce Public Trust issues, he believes the Board would better serve its responsibility if the easement is held by the State. It is his understanding that the Department would have no objection to the State being the title holder to that easement. Director Bacon stated that is correct. Attorney General Wasden then posed the same question to Scott Turlington, representative for Eagle Springs Ranch, LLC. Mr. Turlington stated Eagle Springs Ranch has no objection.

BOARD ACTION: A motion was made by Attorney General Wasden to move adoption of the Department's recommendation with a modification that the title to that easement be held within the State. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

At 10:50 a.m., a motion was made by Attorney General Wasden to resolve into Executive Session for the purpose of considering personnel matters pursuant to Idaho Code Section 67-2345(1)(b). Controller Jones seconded the motion. The motion carried on a vote of 5-0. Lt. Governor Risch requested that the record reflect unanimous consent.

• **EXECUTIVE SESSION**

- A. To Consider Records that are Exempt from Disclosure [\[Idaho Code § 67-2345\(1\)\(d\)\]](#)**
- B. To Acquire An Interest in Real Property which is not owned by a Public Agency [\[Idaho Code § 67-2345\(1\)\(c\)\]](#)**

C. 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\(1\)\(f\)](#)]

D. To Consider Personnel Matters [[Idaho Code § 67-2345\(1\)\(b\)](#)]

Upon unanimous consent, the Board resolved into Regular Session at 11:17 a.m.

ITEM DISCUSSED NOT ON THE AGENDA

• **Director of the Idaho Department of Lands Performance Objectives for FY 2008**

BOARD ACTION: A motion was made by Attorney General Wasden to adopt the proposed performance objectives for the Director with an amendment to item six noted for the record. Controller Jones seconded the motion. The motion carried on a vote of 5-0. [*In item six, the first occurrence of the word "fire" was deleted.*]

There being no further business to come before the Board, at 11:20 a.m. a motion was made by Attorney General Wasden to adjourn. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ C. L. "Butch" Otter

President, State Board of Land Commissioners and
Governor of the State of Idaho

/s/ Ben Ysursa

Ben Ysursa
Secretary of State

/s/ George B. Bacon

George B. Bacon
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the June 12, 2007 regular Land Board meeting.