



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
April 17, 2008

The regular meeting of the Idaho State Board of Land Commissioners was held on Thursday, March 20, 2008 in Boise, Idaho. The meeting began at 9:00 a.m. in the second floor courtroom of the Borah Post Office building. The Honorable Governor C. L. "Butch" Otter presided. The following members were present:

Honorable Secretary of State Ben Ysursa
Honorable Attorney General Lawrence Wasden
Honorable State Controller Donna Jones

Secretary to the Board Director George Bacon

Superintendent Tom Luna was absent for this meeting. For the record, Governor Otter noted a quorum was present.

• **CONSENT**

A motion was made by Attorney General Wasden to approve the Consent Agenda with agenda item number three being withdrawn. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

1. Director's Report – approved

- A. Interest Rate on Department Transactions – April 2008
- B. Timber Sale Activity Report – March 2008
- C. Timber Sale Official Transactions – March 2008
- D. Legal Matter Summary
- E. Bureau of Surface and Mineral Resources, Official Transactions – February 2008
- F. Bureau of Real Estate, Official Transactions, Land Sale – February 2008
- G. Bureau of Real Estate, Official Transactions, Easement – February 2008
- H. Fire Settlement Information

DISCUSSION: For the record, Director Bacon referred to item B, the March 2008 Timber Sale Activity Report. He stated although the trend is down, it reflects a typical level for this time of year. Current market reports indicate that timber markets are struggling; however, the Department is tracking at a normal level.

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

NORTH OPERATIONS

A. Big Creek	CR-20-0274	2400	MBF	Bonner
B. Boehl's Butte	CR-30-0509	5265	MBF	Clearwater
C. Over View	CR-30-0544	1860	MBF	Benewah

SOUTH OPERATIONS

D. Aden Revoir	CR-60-0165	2820	MBF	Elmore
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DISCUSSION: Director Bacon provided background information on the listed timber sales.

- A. Big Creek Timber Sale – Clearcuts are planned in three units: 50 acres, 36 acres, 5 acres. The biggest problem in this area, and the reason for the clearcuts, is the lack of viable seed trees. The quality and species composition is not adequate to ensure a good genetic base for new seedlings from the few trees that would make seed trees and the remainder of the trees are diseased and have insect problems.
- B. Boehl's Butte Timber Sale – A 63-acre clearcut is planned along with other silvicultural prescriptions. Problems exist with insects, disease and not enough viable seed trees of the right species.
- C. Over View – No clearcuts. Overstory removal.
- D. Aden Revoir – Shelterwood and sanitation harvest. No clearcuts.

Controller Jones asked if sale D, Aden Revoir, does not sell the second time, would it be offered a third time. Director Bacon stated yes. This sale was offered once, did not sell, and then, due to the declining markets, a reappraisal was done. If this sale does not sell the second time, the Department is asking for permission to reoffer the sale a third time without returning to the Board. The fast turnaround would allow the Department to offer the sale when the appraisal is fresh relative to market conditions.

Governor Otter asked about the level of interest expressed for this sale. Director Bacon stated this sale is in south Idaho and out of the Boise area so the amount of interest is relative to the area and mill infrastructure.

3. Disclaimer of Interest for the Former Bed of the North Fork Payette River, Valley County (MacGregor) – Staffed by Keith O'Connor, Lands Program Specialist – **withdrawn**

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for two parcels totaling 12.20 acres of the former bed of the North Fork of the Payette River and to require G. David MacGregor to pay a fee of \$600.00 to the Department of Lands for this transaction.

BOARD ACTION: This agenda item was withdrawn.

4. Disclaimer of Interest for the Former Bed of the Salmon River, Lemhi County (Earl) – Staffed by Keith O'Connor, Lands Program Specialist – **approved**

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one parcel totaling 0.62 acres of the former bed of the Salmon River and to require David Earl and Kathryn M. Earl to pay a fee of \$600.00 to the Department of Lands for this transaction.

BOARD ACTION: Approved.

5. Disclaimer of Interest for Land Above the Established Ordinary High Water Line of Bear Lake, Bear Lake County (Loveland) – Staffed by Keith O’Connor, Lands Program Specialist – approved

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one parcel totaling 2.4 acres of land below the 1875 meander line and above the 5923.65 foot elevation line of Bear Lake and to require Larry Don Loveland to pay a fee of \$600.00 to the Department of Lands for this transaction.

DISCUSSION: Secretary of State Ysursa mentioned he has received inquiries about the proposed Black Bear Mountain Resort and possible exchanges involving state land in the Bear Lake area. He asked if the Department is involved in this effort. Director Bacon stated the Department is not involved at this time. It is the Department’s understanding that the proponents of this project are currently working with the U.S. Forest Service.

Governor Otter commented that during the last legislative session, he signed a piece of legislation regarding the 25-foot public use right-of-way on disclaimers of interest. He noted the legislation used the word “may” instead of “shall.” If the legislation had stated “shall,” he asked if this disclaimer would have been impacted. Director Bacon stated it is his understanding the Department would have been more locked in to receiving the 25-foot public easement. Governor Otter stated initially he was concerned that perhaps it was an infringement on the Board’s authority and responsibility, but after looking into the matter it does not appear to be a problem. Director Bacon noted the wording in another part of that legislation still allows the Board some discretion to make other arrangements depending on the situation.

BOARD ACTION: Approved.

6. Minutes – approved

A. Regular Land Board Meeting – March 20, 2008

• **REGULAR**

7. Endowment Fund Investment Board Manager’s Report – Presented by Larry Johnson, Manager of Investments, EFIB

- A. Monthly Report
- B. Investment Report

Mr. Johnson stated that the fiscal-year-to-date return is minus 2.8%, which is 240 basis points above the fund’s benchmark. Active managers are performing as expected. No action was taken on this agenda item.

8. Fiscal Year 2009 Timber Sales Plan – Presented by Bob Helmer, Chief, Bureau of Forest Management

DEPARTMENT RECOMMENDATION: Direct the Department of Lands to proceed with publication of the FY 2009 Timber Sales Plan.

DISCUSSION: Attorney General Wasden asked for verification that this is not an approval of any particular sales and that each sale will be individually brought before the Board for approval. Director Bacon stated that is correct. Every sale in the plan will be individually brought before the Board for approval. The only exception would be if, for some reason, the sale is downgraded to a salvage or

smaller sale. Those exceptions do not come before the Board. Each supervisory area does anticipate a certain amount of those types of sales, and they list them under "Other" in the plan.

Governor Otter commented that last year's plan shows 212 MBF. Of that amount, Maggie Creek shows 27 MBF this year. He asked if the state is suffering a loss on the cut in order to maintain the health and vitality of the forest. Director Bacon responded that the state is not suffering a loss. The plan was to increase the Maggie Creek area and maintain the others.

Governor Otter remarked that Toni Hardesty, Director, Department of Environmental Quality, is conducting research regarding carbon sequestration and carbon ozone. Some initial reports covered the absorption rate between old and young trees. He asked that Director Bacon synergize with Director Hardesty to bring that kind of information to the Board. He feels the information is valuable not only in terms of overall harvest in order to maintain a healthy forest, but also what the healthy forest does in terms of a carbon footprint. Director Bacon stated the Department has been working with Director Hardesty on carbon issues and currently has a staff member assigned to this effort. Governor Otter stated he would appreciate a presentation on the topic.

BOARD ACTION: A motion was made by Controller Jones to move approval of the Fiscal Year 2009 timber sales plan as presented. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

9. Request to Sell at Public Auction State Endowment Land in Clearwater County (Williams) – Presented by Kurt Houston, Operations Chief-South

DEPARTMENT RECOMMENDATION: Direct the Department to sell at public auction a 0.13 acre, more or less, parcel of endowment land.

DISCUSSION: Attorney General Wasden asked about the nature of the errors in the two previous surveys. John Elsbury, Resource Supervisor, Clearwater Supervisory Area, stated that the surveyor made a short back sight and a line that he projected was about fifty feet off. It resulted in skewing the entire forty-acre parcel about fifty-eight feet.

Secretary of State Ysursa asked if Clearwater County has a requirement for a twenty-foot setback. Mr. Elsbury stated yes.

Governor Otter asked what the minimum size lot for construction of a structure is in Clearwater County. Mr. Elsbury stated it is 250 feet by 250 feet. Governor Otter expressed concern that someone might conflict the auction in order to supposedly build a structure on a lot that is not large enough. Mr. Elsbury stated that possibility was considered. However, this is a parcel that is illegal for anyone but this landowner to do anything with because it is too small and does not meet the county's zoning requirements to put a structure on it. Governor Otter noted that this satisfies the trespass and does not have anything to do with access or egress. Mr. Elsbury stated that is correct.

BOARD ACTION: A motion was made by Attorney General Wasden to adopt the Department's recommendation and direct the Department to sell at public auction a 0.13 acre, more or less, parcel of endowment land described in Attachment 2. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

10. Request to Sell at Public Auction State Endowment Land in Clearwater County (Herzog) – Presented by Kurt Houston, Operations Chief-South

DEPARTMENT RECOMMENDATION: Direct the Department to sell at public auction a 0.14 acre, more or less, parcel of endowment land.

DISCUSSION: None.

BOARD ACTION: A motion was made by Attorney General Wasden to adopt the Department's recommendation. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

ITEMS NOT ON AGENDA – NO BOARD ACTION TAKEN

- The current Land Board meeting date, the third Thursday of each month, conflicts with Superintendent Luna's State Board of Education monthly meetings. With concurrence of Board members present, Governor Otter asked that the Department of Lands research the possibility of another meeting date that would meet the needs of the Board members and for the Department to bring the results of their inquiries to the Board for review and action.
- For the record, Governor Otter noted that the estimated costs associated with the Land Board's off-site meetings scheduled for Pocatello in June and Coeur d'Alene in October are valuable and worth the associated costs. He compared the Land Board off-site meetings with his highly successful Capitol for a Day meetings. Governor Otter feels he can defend the cost against the value at any time.

- **INFORMATION**

Background information was provided by those indicated as presenters (below). No Land Board action is required on the Information Agenda.

11. Legislation Update – *Presented by George Bacon, Director*

12. Status of Lot Sales in Amended Elk Valley Subdivision – *Presented by Perry Whittaker, Chief, Bureau of Real Estate*

DISCUSSION: Attorney General Wasden asked if the two lots offered for sale last year are still on the market and, considering the current real estate market, is this the best time to offer two more lots. Perry Whittaker, Chief, Bureau of Real Estate, responded the Department does not have any lots being advertised at this time. The two lots offered last year were pulled and have not been re-advertised. The Department would offer no more than two lots. Director Bacon added that the Department anticipates moving forward to secure a broker's opinion. Part of that opinion would be to determine market interest. Once a broker's opinion is secured, the Department will determine when to take action.

Governor Otter asked if the lots are out of the floodway. He is familiar with the area and recalls that the riverfront lots had to be elevated three to six feet. Mr. Whittaker stated parts of these lots are encumbered with a floodway so that has to be addressed. Governor Otter asked if building permits have been secured from the Army Corps of Engineers. Mr. Whittaker stated the lots are buildable and other private lots on the river have sold.

13. Forest Harvest Planning Update – *Presented by George Bacon, Director, and Bob Helmer, Chief, Bureau of Forest Management*

DISCUSSION: Governor Otter asked if the Department is making this information available to the beneficiaries. Bob Helmer, Chief, Bureau of Forest Management, stated the Department has contracted with Bill Dryden to develop a communications plan to get the word out internally, to legislators and to beneficiaries. Director Bacon added that the staggering information the Department has gleaned from the process so far is the possibility of increasing productivity 40 to 70 percent on forest land. Considering the Board's constitutional mandate to maximize returns, the Department is excited about the future possibilities.

At 9:55 a.m., a motion was made by Attorney General Wasden that the Board resolve into Executive Session pursuant to Idaho Code § 67-2345(1)(f). Attorney General Wasden requested unanimous consent that the Board resolve into Executive Session for the purpose of considering and advising legal counsel regarding pending litigation and probable litigation. In addition, Attorney General Wasden requested that the secretary record the vote in the minutes of the meeting. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

Executive Session items A, B and C, as shown below, were withdrawn.

- **EXECUTIVE SESSION**

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

~~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 Records that are Exempt from Disclosure [[Idaho Code § 67-2345\(1\)\(d\)](#)]~~

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\(1\)\(f\)](#)]

At 10:20 a.m. a motion was made by Controller Jones to resolve into Regular Session. The Executive Session was conducted pursuant to Idaho Code § 67-2345(1)(f), To Consider and Advise Its Legal Representatives in Pending Litigation or Where There is a General Public Awareness of Probable Litigation. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote. No action was taken by the Board during the Executive Session.

ACTION TAKEN IN REGULAR SESSION ON ITEMS NOT ON THE AGENDA

BOARD ACTION: A motion was made by Attorney General Wasden that the Department be directed to join in an appeal of the District Court decision in Kootenai County, Lake Coeur d'Alene Investments, LLC, versus Idaho Department of Lands, and Chris Keenan versus Idaho Department of Lands, Case Number CV-2006-8728 and CV-2007-4069, for the purpose of protecting the legal interests of the Department and this Board. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board give approval for the Department to resolve the Kurby fire case as discussed in the Executive Session. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

There being no further business to come before the Board, at 10:25 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 4-0, with Superintendent Luna being absent for this vote. Meeting adjourned.

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 May 15, 2008 regular Land Board meeting.