



STATE BOARD OF LAND COMMISSIONERS

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

Ben Yursa, 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
August 19, 2008

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, August 19, 2008 in Boise, Idaho. The meeting began at 9:06 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 Yursa (via conference phone)
Honorable Attorney General Lawrence Wasden
Honorable State Controller Donna Jones
Honorable Superintendent of Public Instruction Tom Luna (via conference phone)

Secretary to the Board Director George Bacon

For the record, Governor Otter recognized the presence of a quorum.

• **CONSENT**

A motion was made by Controller Jones to move adoption of the Consent Agenda in its entirety with corrections as noted. 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 – August 2008
- B. Timber Sale Activity Report
- C. Timber Sale Official Transactions
- D. Legal Matter Summary
- E. Bureau of Surface and Mineral Resources, Official Transactions – June 2008
- F. Bureau of Real Estate, Official Transactions, Land Sale – June 2008
- G. Bureau of Real Estate, Official Transactions, Easement – June 2008
- H. Fire Settlement Information
- I. Fire Season Report

DISCUSSION: Director Bacon highlighted the Fire Season Report, item I. As of August 18, 2008, the estimated net obligation to the suppression account is approximately \$5.5 million. While the season is not over yet, the situation is better than it was at this time last year.

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

<u>NORTH OPERATIONS</u>		<u>County</u>	<u>IDL Area Ofc</u>	
A. Trapper Bonnet	CR-10-0376	1,600 MBF	Bonner/Boundary	Priest Lake
B. Midslope OSR	CR-30-0538	4,300 MBF	Shoshone	St. Joe
C. Mason OSR	CR-41-0037	3,800 MBF	Clearwater	Ponderosa
<u>SOUTH OPERATIONS</u>				
D. Spruced-Up Hat	CR-50-0136	4,645 MBF	Idaho	Payette Lakes
E. Mosquito Skern	CR-50-0145	5,550 MBF	Adams	Payette Lakes
F. Paddy Cake	CR-50-0146	4,550 MBF	Valley	Payette Lakes

DISCUSSION: Attorney General Wasden noted sale D, Spruced-Up Hat, has been offered previously. He asked what the problem is on the sale. Director Bacon stated part of the problem is location. The sale is far from existing markets and that is driving the price lower than what is being seen on a statewide average, which is the starting point on appraisals.

3. **Disclaimer of Interest for the Former Bed of the North Fork Payette River, Valley County (MacGregor)** – Staffed by Kurt Houston, Operations Chief-South

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.

DISCUSSION: Attorney General Wasden noted a typographical error in paragraph two under the heading “DISCUSSION.” The last sentence states “... ordinary high watermark of the Salmon River” and the correct river is the Payette River. Director Bacon stated the document will be corrected.

BOARD ACTION: Approved as corrected.

4. **Disclaimer of Interest for the Former Bed of the Snake River, Nez Perce County, Idaho (Larson)** – Staffed by Kurt Houston, Operations Chief-South

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one parcel totaling 0.18 acre of the former bed of the Snake River and to require John Larson and Molly Larson to pay a fee of \$600.00 to the Department of Lands for this transaction.

BOARD ACTION: Approved.

5. **Disclaimer of Interest for the Former Bed of the Snake River, Owyhee County (Kastera)** – Staffed by Kurt Houston, Operations Chief-South

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for two parcels totaling 12.53 acres of the former bed of the Snake River and to require Kastera Snake River 94 LLC to pay a fee of \$600.00 to the Department of Lands for this transaction.

BOARD ACTION: Approved.

6. Request to Reinstate Land Sale Certificate No. 24751, Bonneville County (Tomchak) – Staffed by Bob Brammer, Assistant Director, Lands, Minerals, Range

DEPARTMENT RECOMMENDATION: Direct the Department to reinstate the cancelled Land Sale Contract No. 24751 to Lois J. Tomchak at the interest rate of 7.5%.

BOARD ACTION: Approved.

7. Release of Easement on the Previously Surplused Property of the Department of Health and Welfare (Tuberculosis Hospital, Gooding) – Staffed by Kurt Houston, Operations Chief-South

DEPARTMENT RECOMMENDATION: Direct the Department to release the easement, whereas, the continuance of such easement is no longer necessary or desirable.

DISCUSSION: Governor Otter asked if this easement is adjacent to the highway. Director Bacon stated it appears to be in the center of the property.

BOARD ACTION: Approved.

8. Minutes – approved as corrected

A. Regular Land Board Meeting – July 17, 2008

DISCUSSION: Attorney General Wasden asked for a wording clarification of the motion to accept the consent agenda. He asked that the wording be changed to state “Attorney General Wasden moved adoption of the Consent Agenda.” The final minutes were amended as directed.

• **REGULAR**

At the request of Superintendent Luna, the Board moved forward to agenda item 11, University of Idaho Forestry Camp Property at McCall (Lease M-5016). After item 11, the Board will return to item 9 and the remainder of the agenda.

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

A. Monthly Report – No action taken on this agenda item.

B. Investment Report – No action taken on this agenda item.

C. Request for Approval of Distributions to Endowment Beneficiaries for FY 2010

EFIB RECOMMENDATION: The Endowment Fund Investment Board recommends that distributions be based on the Distribution Policy approved by the Land Board last month. This will result in an overall 7.6% increase in distributions for fiscal year 2010 compared to fiscal year 2009.

Also, the Endowment Fund Investment Board recommends that \$16.9 million of excess Earnings Reserves for four endowments be transferred to their Permanent Funds effective September 1 since these endowments have more than five years of distributions in their reserves. Further, it is recommended that these transfers not increase the Gain Benchmark

of the funds so as to increase the likelihood that these funds will reach the Gain Benchmark in the future.

The recommended distributions and transfers appear to be achievable and represent an appropriate balance between the interests of current and future beneficiaries, taking into account the current level of earnings reserves and past and expected fund revenues.

BOARD ACTION: A motion was made by Superintendent Luna to reduce the proposed University of Idaho \$2.5 million Permanent Fund distribution to \$1.9 million. Secretary of State Ysursa seconded the motion for discussion purposes. Superintendent Luna stated his intent is to have the option available to the Board but not to implement any solution at this time. Secretary of State Ysursa asked if the intent of the motion was to approve the entire presentation from the EFIB with the change of \$1.9 million on the transfer to the Permanent Fund instead of \$2.5 million. Superintendent Luna stated yes.

For clarification, Superintendent Luna brought forward an amended motion to approve the recommended distribution as outlined, with the exception that the moneys transferred to the Permanent Fund for the University of Idaho be reduced from \$2.5 million to \$1.9 million. With the stated clarification, Secretary of State Ysursa seconded the amended motion. The amended motion carried on a vote of 5-0. For additional clarification Mr. Johnson stated the amended motion included the distribution and the transfer.

- At 10:30 a.m. Superintendent Luna left the meeting.

10. Fiscal Year 2010 Department of Lands Budget Proposal – Presented by George Bacon, Director

DEPARTMENT RECOMMENDATION: That the Board direct the Department to include these supplemental and enhancement requests in the Fiscal Year 2010 budget proposal due on September 1, 2008.

DISCUSSION: Controller Jones asked if the CPTPA budget item includes the helicopter upgrade. Director Bacon stated it does.

BOARD ACTION: A motion was made by Attorney General Wasden to move approval of the Department's budget request. Controller Jones seconded the motion. The motion carried on a vote of 3-0, with Governor Otter recused for this vote and Superintendent Luna absent for this vote.

- At 10:38 a.m. Secretary of State Ysursa left the meeting.
- At 10:38 a.m. a brief recess was taken. The Board reconvened at 10:50 a.m. with a quorum present (Governor Otter, Attorney General Wasden, Controller Jones).

11. University of Idaho Forestry Camp Property at McCall (Lease M-5016) – Presented by George Bacon, Director

DEPARTMENT RECOMMENDATION: That the Board direct the Department to (1) bill the University the balance of the 2008 rent (\$254,425) payable within thirty days; (2) advise the University that the Department will continue to set rental rates for this property based on fair market values as determined by the Department; and (3) work with the University to find an

alternate location for their programs or to see if other options exist that might allow the University to acquire this site, including land exchanged for property that would achieve a rate of return within peer returns for the asset type acquired as established in the Asset Management Plan.

DISCUSSION: A transcript is available upon written request to Susan Terry, Idaho Department of Lands, Post Office Box 83720, Boise, Idaho 83720-0050 or by email to sterry@idl.idaho.gov or by fax to (208) 334-2339.

BOARD ACTION: A motion was made by Attorney General Wasden that (1) the Department move to a transition phase on this property over a three-year period; (2) a reduced rental rate of \$55,535.00 per year be granted to the University of Idaho for this property; and (3) that an ultimate transition solution be sought. Controller Jones seconded the motion.

Superintendent Luna asked for a clarification on the rate to be charged to the University of Idaho. With the consent of Controller Jones, Attorney General Wasden amended his motion to clarify that the current lease ends December 31, 2008. The proposed three-year period would commence beginning January 1, 2009 and would end December 31, 2011. During the proposed three-year period the University of Idaho will be charged a total rate of \$55,535 per year.

• INFORMATION AGENDA

12. **City Restrictions on Greenbelt Adjacent to Riverside Village, Garden City** – *Presented by George Bacon, Director*

DISCUSSION: A transcript is available upon written request to Susan Terry, Idaho Department of Lands, Post Office Box 83720, Boise, Idaho 83720-0050 or by email to sterry@idl.idaho.gov or by fax to (208) 334-2339.

13. **Endowment Lands Public Education and Communications Plan Update** – *Presented by Kathy Opp, Deputy Director and Mike Tracy, Tracy Communications*

DISCUSSION: Governor Otter suggested a baseline poll is needed to help the Board determine if this communication and education effort is successful. Attorney General Wasden noted at this time the video has not been widely distributed so a baseline poll could still be conducted. Governor Otter feels a baseline poll is needed to show how many people understand the purpose of endowment lands. Then after this educational campaign is completed, a significant improvement in this area should be reflected.

Attorney General Wasden commended Mr. Tracy for his efforts and the Department for its creativity. He sees a tremendous need for the public to understand endowment lands. He stated he recently hiked in the McCall area and came across a sign that said *Endowment Land*. He suggested that wording could be added to signs like this to explain briefly about endowment lands. He feels that would be another way to educate the public.

Governor Otter suggested that the Department make an assessment of state publications to look for opportunities to include a short definition of endowment lands. He suggested publications such as state maps, recreational brochures, tourism pamphlets, etc.

(The “*The Land Where Miracles Grow*” DVD was shown.)

Deputy Director Opp stated the Department will proceed with the next phase of the plan. Governor Otter’s suggestion of a baseline poll will be pursued. The Department will return to the

Board at the September meeting with its budget presentation. She noted a lot has been accomplished within the first year contract, and the work was done within the parameters set by the Department.

Deputy Director Opp asked the Board for its thoughts on a distribution strategy. The Department would like to provide a DVD to each legislator with a cover letter and then proceed with a Speaker's Bureau concept. Governor Otter stated every cabinet member should also receive a DVD.

14. Navigable Waters Program Summary – *Presented by Eric Wilson, Navigable Waters/Minerals Program Manager*

DISCUSSION: Governor Otter asked what the Department does to protect the watershed adjacent to a lake. Mr. Wilson stated the Lake Protection Act jurisdiction is limited to the body of land underneath the ordinary high watermark of the lake. However, the Department seeks input from the Department of Environmental Quality regarding large marinas and other applications. The Department also receives comments from the Department of Fish and Game regarding spawning gravels.

Governor Otter asked if the definition of navigable waters is limited to lakes. Mr. Wilson stated it includes lakes and rivers but the Lake Protection Act is toward lakes. The Idaho Department of Water Resources administers the Stream Channel Protection Program on navigable rivers although the Department still administers ownership of those navigable rivers. The Department issues easements across rivers for bridges or utility lines.

Director Bacon noted that recent rule changes increased fees for this program. The Department believes income is starting to match outgo. However, it will take a couple of years to determine the full impact of the fee increases.

15. Grazing Subcommittee Update – *Presented by Bob Brammer, Assistant Director, Lands, Minerals, Range*

DISCUSSION: Attorney General Wasden expressed his appreciation for the work of all involved with the subcommittee. His attendance at the Nampa meeting confirmed his belief that a great deal of misunderstanding exists about what endowment lands are and how they operate. This lack of understanding reaffirmed the need to continue the educational effort that the Board and the Department have engaged in to inform customers, the public at large and other interested parties about the Board's constitutional and fiduciary responsibilities. He urged fellow Board members to review the proposed process and to provide comments and criticisms. He stressed that all input is welcome, positive or negative.

Governor Otter stated one item that was not discussed is an opportunity to include categorical exclusions. He explained that a categorical exclusion gives the Land Board more opportunities to remove fuel or hazards from public lands. If a section of land fits the criteria, the Board could declare a categorical exclusion and bring everyone to the table immediately. If a party is not at the table during the discussions of whether the situation fits the description, or whether the Board can move forward with the categorical exclusion, they can not go into court later and say they have standing. Many times participants are involved in discussions and remedies but a third party, who has not been part of any discussions, then files a lawsuit. If they are not sitting at the table, they do not have standing. While that may seem like a harsh remedy, some options being considered by the subcommittee require that kind of action to move forward. Sometimes it is for the protection of the asset itself rather than just the use.

Governor Otter asked if the state has categorical exclusions for timber sales. Director Bacon stated not in the same sense that the federal government does. Governor Otter asked if the state should have categorical exclusions. Director Bacon stated perhaps in certain situations but the state has a different process. There will always be the threat of someone who did not participate still taking us to federal court on some federal issue. While he does not know if we could eliminate federal standing for someone, the Idaho Supreme Court has ruled that for endowment actions the party needs to have an interest from the standpoint that they are a beneficiary or someone with an interest in the management of the land other than the general public. The ruling stemmed from timber sales in the 1990s.

At 12:10 p.m. a motion was made by Controller Jones to resolve into Executive Session pursuant to Idaho Code § 67-2345(1)(c), to conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency, and 67-2345(1)(f), to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement. Attorney General Wasden seconded the motion. The motion carried on a vote of 3-0, with Secretary of State Yursa and Superintendent Luna being absent for this vote.

- **EXECUTIVE SESSION**

- A. **Idaho Code 67-2345 (1)(c) – To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency.**
- B. **Idaho Code 67-2345 (1)(f) – To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.**

At 12:49 p.m. a motion was made by Attorney General Wasden to resolve into Regular Session. He noted that the Executive Session was held in accordance with the Idaho Open Meeting Law. Controller Jones seconded the motion. The motion carried on a vote of 3-0, with Secretary of State Yursa and Superintendent Luna being absent for this vote. No action was taken by the Board during the Executive Session.

Action Taken on Item Not on the Agenda

A motion was made by Attorney General Wasden that the Board enter into a release with insurance companies and other landowners as discussed in Executive Session and institute an interpleader action as resolution of the case. Controller Jones seconded the motion. The motion carried on a vote of 3-0, with Secretary of State Yursa and Superintendent Luna being absent for this vote.

