



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  
July 17, 2008

The regular meeting of the Idaho State Board of Land Commissioners was held on Thursday, July 17, 2008 in Boise, Idaho. The meeting began at 9:34 a.m. in the second floor courtroom of the Borah Post Office building. The Honorable Ben Ysursa, Acting Chairman, presided. The following members were present:

Honorable Governor C. L. "Butch" Otter (via conference phone)

Honorable Attorney General Lawrence Wasden

Honorable State Controller Donna Jones

Honorable Superintendent of Public Instruction Tom Luna

Secretary to the Board Director George Bacon

Prior to beginning the Consent Agenda, Director Bacon introduced David Groeschl, the new Department of Lands' administrator for the Division of Forestry and Fire. Secretary of State Ysursa welcomed Mr. Groeschl.

• **CONSENT**

Attorney General Wasden moved adoption of the Consent Agenda. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

**1. Director's Report – approved**

A. Interest Rate on Department Transactions – July 2008

B. Timber Sale Activity Report

C. Timber Sale Official Transactions

D. Legal Matter Summary

E. Bureau of Surface and Mineral Resources, Official Transactions – May 2008

F. Bureau of Real Estate, Official Transactions, Land Sale – May 2008

G. Bureau of Real Estate, Official Transactions, Easement – May 2008

H. Fire Settlement Information

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

NORTH OPERATIONS

A. Race Wallow

CR-10-0366

2,500

MBF

Bonner

B. Bear Spray	CR-10-0368	2,200	MBF	Bonner
C. Camp 2	CR-10-0369	950	MBF	Bonner
D. Young's Draw Poles	CR-22-5017	210	MBF	Kootenai
		123,150	LF	Kootenai
E. Ben 10 OSR	CR-30-0535	4,165	MBF	Benewah

SOUTH OPERATIONS

F. Lookout Shelter	CR-42-5032	8,970	MBF	Idaho
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*DISCUSSION:* Director Bacon noted that Sale A, Race Wallow, is a Priest Lake sale. The sale includes twenty-eight acres of clearcut scattered over seven small units with no unit bigger than eight acres. The clearcuts are within a timbered area and would aesthetically appear as small clearings. The three Priest Lake sales are not contiguous.

**3. Request to Complete the Sale and Transfer of the Surplus Property Owned by the Department of Commerce and Labor Located at 6107 Graye Lane, Caldwell, to Canyon County – Staffed by Katherine Takasugi, Deputy Attorney General, Department of Commerce and Labor – approved with changes as noted**

*DEPARTMENT OF COMMERCE AND LABOR RECOMMENDATION:* Upon transfer of title from the Department of Labor, that the Board direct the Department of Lands to complete the sale and transfer of surplus property located at 6107 Graye Lane, Caldwell, to Canyon County based on Canyon County's February 26, 2008 offer at a sales price of \$1,250,000.00.

*DISCUSSION:* Ms. Tagasugi notified the Board of a change in the way the proposed land sale will be handled. The Department of Labor will transfer title to the Department of Lands, and the Department of Lands will execute the sale agreement with Canyon County. Subsequently, the Land Board will execute the deed to Canyon County. The reason for the change in the method of sale is to ensure that there is a clean, clear chain of title from the Idaho Department of Labor to the Department of Lands and then from the Department of Lands to Canyon County. The staff report will be modified accordingly with the recommendation being changed to state that upon the transfer of title from the Department of Labor, the Department of Lands will be directed to complete the sale and transfer of the surplus property located at 6107 Graye Lane, Caldwell, Idaho, to Canyon County based on Canyon County's February 26, 2008 offer at the sale price of \$1,250,000.00.

*BOARD ACTION:* Approved with changes noted above.

**4. Minutes – approved**

- A. Regular Land Board Meeting – June 19, 2008

- **REGULAR**

**5. Endowment Fund Investment Board Manager's Report – Presented by Larry Johnson, Manager of Investments, EFIB**

- A. Monthly Report – Mr. Johnson reported that there had been no significant action taken by the EFIB since the last Land Board meeting and that there were no compliance issues with the portfolio. No action was taken.
- B. Investment Report – Mr. Johnson reported the EFIB finished the fiscal year with a 2.3% loss. However, over the last three years the Fund has had a positive return of 8.1%, or 2.3% above the

benchmark. All of the managers are performing as expected and, in fact, for the fiscal year, eight of nine managers exceeded their benchmark. No action was taken.

C. EFIB Asset Management Plan Section

*EFIB RECOMMENDATION:* Approve the endowment fund section of the Asset Management Plan.

*DISCUSSION:* Attorney General Wasden commented that the asset management plan has addressed land assets. He noted that now the investment financial assets are being addressed. He requested, with the permission of fellow Board members, that an overarching section of the asset management plan be created to assist the Board in coordinating all of its activities. Director Bacon stated the Department recognizes the need to have this kind of linkage and plans to work on the overarching view of the plan. Mr. Johnson added that a section will be included to reflect where lands and funds interact, probably by the end of this year. Deputy Director Opp agreed and stated that the Department planned to add this overarching commentary after the EFIB section was completed.

Secretary of State Ysursa asked about the value of the entire trust. He commented the financial asset side is valued at around \$1.2 billion. Deputy Director Opp stated the land value is about \$2 billion so the total trust is \$3 billion in assets under the Board's control.

Attorney General Wasden asked Director Bacon if he has sufficient direction to go forward with an overarching section bringing the two asset types together in terms of the asset management plan or if a Board action was needed. Director Bacon stated the Department, in coordination with the EFIB, is clear about what needs to happen next and will proceed accordingly.

Superintendent Luna stated he has a number of questions and comments. He is concerned that the distribution policy as outlined considers the value of the permanent fund but appears to ignore the other the pieces of the puzzle – reserve funds and endowment lands. He wondered why one reference in the policy says the Land Board would take into account the level of earnings reserves, but that reserves are not included in the formula in other places in the policy.

Mr. Johnson noted the policy states that the Land Board may adjust the distributions depending on the amount in the earnings reserve because distributions can actually only come from the earnings reserve. If the level of earnings reserve is too low to permit a distribution equal to five percent of the permanent fund, then the distribution would need to be reduced below the five percent guideline.

Superintendent Luna stated he does not understand why the largest revenue stream is not recognized when making distributions and determining the size of the reserve fund. Revenues from endowment lands alone in fiscal year 2007 exceeded the amount of money that was distributed to the beneficiary. He feels there is reason to look at some of the language in this policy to allow the Board more flexibility in determining the amount of distribution. He also questioned the size of the reserve that is required. He feels the policy does not take into account the public school stabilization fund, which contains over \$115 million, and could be used to offset a shortfall in endowment distributions.

Mr. Johnson stated that land revenues are taken into account, but indirectly. Using the public school fund as an example, the expected real return on the total fund (permanent fund plus earnings reserve) is about 4%. Land revenues over time are expected to be about 3.5% of the total fund. So, you have 7.5% per year of real income above inflation. Where does that 7.5% go? Setting distributions at 5% of the permanent fund is about the same as setting them equal to 4% of the total fund. Starting with 7.5% and distributing 4% leaves 3.5% retained in the fund for real growth in corpus. What that means in terms of balancing the needs of future beneficiaries with

current beneficiaries is that current beneficiaries receive about half of the total real income above inflation. Future beneficiaries, thru reinvestment, also receive about half of the total real return and distributions will grow about 3.5% per year above inflation.

Mr. Johnson explained that the main reason distributions were lower than land revenues in 2007 is that there was a conscious effort to build reserves, because the levels were lower than desired. Also, 2007 was a record year for land revenues. If an adequate reserve level does not exist, distributions are held back until the reserve level is built up again. These actions are interrelated in that the reserve level helps determine how much the distributions are and the distributions are increased based on whether enough reserves exist.

Mr. Johnson also confirmed that Superintendent Luna is correct -- the public school stabilization fund was not taken into account by the EFIB in establishing the five year reserve level. He stated it is within the Board's discretion to consider the stabilization fund and perhaps reduce the reserve levels held for public schools. The EFIB debated whether to have different reserve levels for each endowment because certain endowments have more stable land revenues than others. However, the EFIB felt it would be better to simplify the policy and have one reserve level for all endowments, making it easy to understand, administer and communicate the policy. However, this Board has the discretion to change that policy.

Superintendent Luna asked if the Board were to lower the number of years in the reserve fund, what would happen to the funds in excess of the three-year reserve. Mr. Johnson stated it would go back to the permanent fund, which would trigger an increase in distributions.

Superintendent Luna suggested the formation of a subcommittee to look at this policy over the next month. He stated he has more questions about the need for a five-year reserve and the need to continually feed the permanent fund with excess revenues at the current rate. Also, he would like to discuss the Board's obligation to the beneficiary.

Secretary of State Ysursa stated Superintendent Luna has brought up good issues, which have been discussed and debated many times by the Endowment Board and others. The bottom line is the Constitution, Article 9, Section 8, which states maximum long-term financial return. Protecting the fund for future beneficiaries is something that is built into the reserves. The question of whether there is too much in the reserves may need to be evaluated at some point. It is up to the Board if it wants more refinement of the policy. This is the right time to consider that option.

Attorney General Wasden stated this is an issue the Board has discussed repeatedly in terms of its annual determination of the distribution and what the appropriate level in the earnings reserve fund should be. And, what do you do when there is extra money? What about building the base to continue growing dollars into the future? Attorney General Wasden stated he has heard from beneficiaries that they would rather have a steady amount of income than spikes of high amounts one year and low amounts the next year. The Board also has limitations based upon its constitutional and statutory function that should be reflected in this document.

Secretary of State Ysursa stated it is his understanding that next month Mr. Johnson will return with the proposed distribution numbers for fiscal year 2010. In the interim he suggested that Mr. Johnson meet with Superintendent Luna to address any additional questions the Superintendent may have.

Mr. Johnson stated that the issues Superintendent Luna has raised have been well debated and well vetted with the Investment Board and with Land Board staff over time and that the Board has a lot of subjective discretion in setting this policy. Therefore, it would be difficult for a subcommittee to absorb all of the past issues and make changes in a month. Mr. Johnson

suggested the Board approve the policy as is and consider establishing a subcommittee that could examine the issues in detail over the next year.

Superintendent Luna stated he would like to see what could be accomplished in a month. The same exact policy may be brought back to the Board or there may be some tweaking of it. Superintendent Luna believes there are some things that have changed that need to be taken into account, such as the \$115 million stabilization fund at the state level for education. He stated he does not want to wait a year to consider possible changes to the policy.

Governor Otter stated this policy does leave the Board a lot of flexibility. While there is a \$115 million public school stabilization fund today, one legislative session could change that and the Land Board does not control what the Legislature might do with the stabilization fund. However, the Land Board does control, and has constitutional responsibility for, managing the endowment lands and other assets for the maximum long-term benefit of the beneficiaries. Although he does see the stabilization fund as a potential soft landing should trouble arise, it does not remove the Board's fiduciary responsibility.

Superintendent Luna stated he mentioned the stabilization fund as an example of one factor that has changed since this policy was developed. He feels it represents only one of his concerns which is that it appears a lot of the distributions and the size of the reserve fund is based on the financial revenues and does not take into account revenue from lands. He would like those questions dealt with. Governor Otter stated that while he agrees discussions would be very productive, the Board is coming to within a month of setting the distribution and at this point either the old rules or new rules must be followed.

**BOARD ACTION:** For discussion purposes, Controller Jones moved that the endowment fund section of the Asset Management Plan be approved. She further moved that Mr. Johnson and the Land Board be tasked with reviewing the policy this year with Superintendent Luna in full attendance and correcting it for the following year if that is the decision of the Board. Attorney General Wasden seconded the motion.

Superintendent Luna offered a substitute motion that the Board accept what has been presented with his proposed changes: (1) third page, third paragraph, first sentence, "When Earnings Reserves exceed an adequate level, the Land Board may consider transferring the excess reserves to the Permanent Fund or increasing the distribution to beneficiaries"; (2) seventh page, third bullet, "The level of Earnings Reserves deemed adequate is three to five years of future distributions depending on the volatility of each endowment's total revenue stream and the presence of any other dedicated reserve funds." In addition Superintendent Luna's substitute motion was offered with the understanding that over the period of the coming year discussions and additional work would be completed before the policy would come before the Board again. Secretary of State Ysursa acknowledged Superintendent Luna's substitute motion and asked for a second. Hearing none, Secretary of State Ysursa ruled that the substitute motion failed for lack of a second.

**[Original Motion:** Controller Jones moved that the endowment fund section of the Asset Management Plan be approved. She further moved that Mr. Johnson and the Land Board be tasked with reviewing the policy this year, with Superintendent Luna in full attendance. Attorney General Wasden seconded the motion.]

Secretary of State Ysursa stated the original motion, as brought forward by Controller Jones and seconded by Attorney General Wasden, is before the Board for a vote. The motion carried on a vote of 4-1, with Governor Otter, Secretary of State Ysursa, Attorney General Wasden and Controller Jones voting aye; Superintendent Luna voting nay.

**6. Request for Final Approval of a Land Exchange Between J. R. Simplot Company and the Idaho Department of Lands – Presented by Kathy Opp, Deputy Director**

*DEPARTMENT RECOMMENDATION:* Direct the Department to complete the described land exchange.

*DISCUSSION:* None.

*BOARD ACTION:* A motion was made by Attorney General Wasden to move approval of the land exchange as presented. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Governor Otter recused for this vote.

**7. Request for Final Approval to Complete a Land Exchange Between State of Idaho Department of Lands and Pleasant Valley South LLC – Presented by Kathy Opp, Deputy Director**

*DEPARTMENT RECOMMENDATION:* Direct the IDL to complete the final exchange as described.

*DISCUSSION:* Governor Otter asked who the principal is in Pleasant Valley LLC. Ms. Opp stated Mr. Larry Hellhake.

*BOARD ACTION:* A motion was made by Controller Jones to direct the Department to complete the final exchange as described. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

**8. Adoption of IDAPA 20.02.14 – Rules for Selling Forest Products on State-Owned Endowment Land – Presented by George Bacon, Director**

*DEPARTMENT RECOMMENDATION:* Direct the Department to enter into the negotiated rulemaking process to repeal IDAPA 20.02.09 and IDAPA 20.02.10 and to proceed with IDAPA 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Land.

*DISCUSSION:* Attorney General Wasden asked Deputy Attorney General, and Division Chief, Kay Christensen, to answer a question regarding the proposal in IDAPA 20.02.14.004.01. Specifically, Attorney General Wasden referred to paragraph .004, sub-paragraph .01. He question the incorporation by reference of the American National Standard Institute 05.1., 2002 edition, and then the words “and subsequent versions.” He asked Ms. Christensen for her thoughts on the inclusion of the words “and subsequent versions” and whether those words pose a problem.

Ms. Christensen responded that this is a technicality, but it is something that the Board might consider addressing as the rules go forward. Idaho Code 67-5229, the statute that refers to incorporating by reference, states that you have to incorporate using specificity, and that if an agency wants to adopt a subsequent amendment or a later version, it has to do that in a separate rule. She suggested that if the Board approves the rules, the motion should include striking the words “and subsequent versions.” That action would bring the proposed rules into compliance with the Administrative Procedures Act.

*BOARD ACTION:* A motion was made by Attorney General Wasden to propose and adopt the rules with the deletion as outlined, which is to strike the words in paragraph 004.01 “and subsequent versions.” Controller Jones seconded the motion. The motion carried on a vote of 5-0.

**9. Firewood and Miscellaneous Forest Products Selling Rates** – *Presented by Bob Helmer, Chief, Bureau of Forest Management*

*DEPARTMENT RECOMMENDATION:* The Department recommends that the Land Board grant the Director the authority to set market prices and values for firewood and miscellaneous forest products.

*DISCUSSION:* None.

*BOARD ACTION:* A motion was made by Controller Jones to move that the Land Board grant the Director the authority to set market prices and values for firewood and miscellaneous forest products. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

**10. Request for Approval to Use Crop Sharing as an Alternative Methodology for Determining Agriculture Lease Rentals** – *Presented by Bob Brammer, Assistant Director, Lands, Minerals, Range*

*DEPARTMENT RECOMMENDATION:* That the Board approves the Department's use of a cost share/property manager contract as an optional method for determining agriculture lease rents.

*DISCUSSION:* Attorney General Wasden asked if this item is time sensitive. He wonders if it would be appropriate for the Board to perhaps approve this on an experimental basis allowing time to gather information about how this process works and what the outcome may be. Then a more generalized rule or policy could be adopted at a later time. Assistant Director Brammer stated the Department is under a time constraint as these properties are beginning to become available. If this recommendation is not an option, it will impact the Department's analysis and may hinder the possibility of an exchange. In addition, the Department needs to let the proponent know the Board's decision as soon as possible. What the Department is asking today is that the Board approves this as a tool for the tool box. This is likely the first scenario where the Department would use this tool.

Attorney General Wasden asked what kind of timeframe would be necessary for a proper analysis of this process so that the Department could come back to the Board with an indication of whether it was successful and what the parameters would or could have been. Assistant Director Brammer stated the current lessees do have a right of first refusal so they may purchase some of these properties that would fall out of the exchange. That would change the specific analysis with relation to the land exchange. As far as a general analysis of the crop share arrangement, the Department could go ahead with that type of analysis. It is not clear exactly what specific information would be used. Percentages vary depending on crops and particular situations. There is an 8% management fee with this particular property manager.

*BOARD ACTION:* A motion was made by Controller Jones to approve the Department's use of a cost share/property manager contract as an optional method for determining agriculture lease rents. Secretary of State Ysursa seconded the motion. The motion was then amended by Controller Jones to direct the Department to seek a legal review with a subsequent report back to the Board. Secretary of State Ysursa seconded the amended motion. The amended motion carried on a vote of 5-0.

**11. Conflict Applications on Grazing Leases that Expire December 31, 2008** – *Presented by Bob Brammer, Assistant Director, Lands, Minerals, Range*

*DEPARTMENT RECOMMENDATION:* Direct the Department to (1) postpone further action on the nine 2008 conflict leases until a new conflict lease process is adopted by the Board; (2) refund the first year's estimated rental submitted by the conflict applicants; (3) if a new lessee can not be established under a new conflict lease auction process by the November Land Board meeting, issue temporary permits to the current lessees for the 2009 grazing season.

*DISCUSSION:* Attorney General Wasden commented that the Grazing Subcommittee has worked very diligently. Comments have been requested from the public, beneficiaries and others who have an interest in this issue. The comments are currently being reviewed. The Subcommittee is working on recommendations that it can take to the full Board and has a target date of October. Attorney General Wasden stated he is not promising that the Subcommittee's work will be completed by then because there are a number of items still to be covered, but he does believe the Department's recommendation as presented here is appropriate. The Subcommittee recognizes that there are problems with the current auction system. The Subcommittee is trying to make alterations to that system that will be acceptable. The fallback position of having one year permits, which allows the Subcommittee sufficient time to complete its work, is appropriate.

Secretary of State Yursa commended the Subcommittee for its work. He noted one of the issues with the lease is the valuation of improvements. Another is the matter of increased management costs and making sure those costs are known up front and not after the auction. Assistant Director Brammer stated that the improvement valuation process has been established. The Department does provide that information up front and, based on last year's rule changes, there are object and review processes so those issues are resolved prior to the auction. The other issue about administration cost is not readily apparent on these particular leases, but the Department has not done a financial analysis at this point to drill down and determine that. But from a high level, that does not appear to be the same issue that we have had in the past.

*BOARD ACTION:* A motion was made by Attorney General Wasden to direct the Department to postpone further action on the nine 2008 conflict leases until a new conflict lease process is adopted by the Board; that the first estimated rental submitted by the conflict applicants be refunded; and that if a new lease can not be established under a new conflict lease auction process by the November Land Board meeting that the Department issue temporary permits to the current lessees for the 2009 grazing season. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

- **INFORMATION**

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

**12. Recruitment/Retention and Succession Planning** – *Presented by George Bacon, Director*

*DISCUSSION:* Governor Otter stated he recently toured correctional institutions and was impressed with the training of offenders to develop a firefighting unit. Director Bacon stated that part of the training that the Department has sponsored over the years with the Department of Correction has resulted in some prison guards who gained exceptional firefighting qualifications. He noted the Department recently hired one of the prison guards as an assistant fire warden.

**13. Commercial Property Program Presentation** – *Presented by Craig Thompson, Commercial Program Manager, Bureau of Surface and Mineral Resources*

*DISCUSSION:* None.

**14. Update on Richard Jewell Request for Permanent Access Easement through State-Owned Lands in Adams County** – *Presented by Kurt Houston, Operations Chief-South*

*DISCUSSION:* Controller Jones asked if Mr. Jewell has contacted his neighbor regarding access. Director Bacon stated we believe he has made that contact and that Mr. Jewell is also working with the Forest Service.

