



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
November 18, 2008

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, November 18, 2008, in Boise, Idaho. The meeting began at 9:05 a.m. in the second floor courtroom of the Borah 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
- Honorable Superintendent of Public Instruction Tom Luna (via conference phone)

For the record, Governor Otter recognized the presence of a quorum, with Superintendent Luna participating by conference phone.

• **CONSENT**

A motion was made by Attorney General Wasden to adopt the Consent Agenda in its entirety. 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 – November 2008
- B. Timber Sale Activity Report
- C. Timber Sale Official Transactions
- D. Legal Matter Summary
- E. Bureau of Surface and Mineral Resources, Official Transactions – September, October 2008
- F. Fire Settlement Information

DISCUSSION: Governor Otter noted that some sales are not selling, particularly in south Idaho. While part of the reason is log inventory, another part of the reason is seasonal mill shutdowns, which occur every year about this time. He stated the question going forward is how long and deep the shutdowns will be given the current economic situation.

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

NORTH OPERATIONS

				<u>COUNTY</u>	<u>AREA OFFICE</u>
A. White Creek	CR-20-0266	27,753	TONS	Bonner	Pend Oreille (Sandpoint)
B. Lower Big Fox II	CR-20-0278	2,500	MBF	Bonner	Pend Oreille (Sandpoint)

SOUTH OPERATIONS

C. White Pine Seed	CR-40-0980	6,785	MBF	Clearwater	Clearwater (Orofino)
D. Paddy Cake	CR-50-0146	4,550	MBF	Valley	Payette (McCall)

DISCUSSION: Director Bacon provided a handout showing photos of insect and disease damage.

Governor Otter asked if laminated root rot is caused by soil-borne fungus. Director Bacon responded that laminated root rot is in the soil and spreads through the root systems since trees interconnect. The best option is to plant species resistant to these kinds of insects and diseases. Some species, such as pine, larch and cedar, may become infected but will not die and will grow to rotation age.

- 3. Adoption of a Temporary Rule to Update the Principal Office and Area Office Information for the Idaho Department of Lands as defined in IDAPA 20.01.01 – Staffed by Kathy Opp, Deputy Director – approved**

DEPARTMENT RECOMMENDATION: Adopt temporary rule IDAPA 20.01.01, Rules of Practice and Procedure before the State Board of Land Commissioners.

BOARD ACTION: Approved.

- 4. Approval of Proposed Administrative Rule IDAPA 20.02.01.c, Rules Pertaining to the Idaho Forest Practices Act – Staffed by Ara Andrea, Service and Regulatory Program Manager, Bureau of Forestry Assistance – approved**

DEPARTMENT RECOMMENDATION: Approve the pending rule.

DISCUSSION: Governor Otter asked if the Department of Water Resources was consulted during the development of this proposed rule. Director Bacon stated the Department of Water Resources has been involved throughout the process.

BOARD ACTION: Approved.

- 5. Adoption of IDAPA 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Land; Repeal of IDAPA 20.02.09, Method of Selling Products on State-Owned Endowment Lands; Repeal of IDAPA 20.02.10, Selling Forest Products on State-Owned Endowment Lands – Staffed by Bob Helmer, Chief, Bureau of Forest Management – approved**

DEPARTMENT RECOMMENDATION: Adopt as a pending rule IDAPA 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Land, and repeal IDAPA 20.02.09 and IDAPA 20.02.10.

BOARD ACTION: Approved.

- 6. Minutes – approved**

A. Special Land Board Meeting – November 5, 2008

• **REGULAR**

- 7. Joint Meeting with the Endowment Fund Investment Board**

A. Monthly Report – Presented by Larry Johnson, Manager of Investments

B. Investment Report – Presented by Larry Johnson, Manager of Investments

C. Annual Report – Presented by EFIB Members: Dean Buffington, Chairman; John Taylor, Audit Committee Chairman; Larry Johnson, Manager of Investments

- **Dean Buffington, Chairman, EFIB**

Chairman Buffington acknowledged EFIB members in attendance. Those members included: Gavin Gee, Vice Chair; Representative Max Black; Tom Kealey; Senator Brad Little; Vaughn Heinrich; Susan Simmons; Richelle Sugiyama; John Taylor, Chairman, Audit Committee. Others present who support the EFIB included: Julie Weaver, Deputy Attorney General; Janet Becker-Wold and Bill Howard, Asset Consultants, Callan Associates; Bobby Lawrence and James Yee, Audit Representatives, Eide Bailly.

- **Larry Johnson, Manager of Investments, EFIB**

Mr. Johnson introduced his staff: Andy Potter, Fiscal Officer and 36-year veteran of the EFIB; Judy Shock, Office Administrative Manager; Chris Halvorson, Investment Officer.

Manager's Report. Mr. Johnson stated that as of the end of October reserves stand at about three years of approved distributions. With regard to significant actions, the Audit Committee recently reviewed RFPs for renewal of its audit contract and will be recommending to the full board that the Eide Bailly proposal be accepted. Mr. Johnson expressed gratitude to Darla Rankin of the State Controller's office for her assistance in this evaluation.

With regard to upcoming issues and other events, Mr. Johnson mentioned that in September the independent auditor notified the Investment Board that it would provide an 8% rebate on the annual audit fee. The rebate was attributable to EFIB improvements in documentation and internal controls that resulted in significant time savings. Mr. Johnson credited EFIB staff members, Mr. Potter, Mr. Halvorson and Ms. Shock for most of that savings.

Mr. Johnson reviewed a graph showing revenue from endowment lands relative to the forecast provided by the Department of Lands at the beginning of each fiscal year. Recent weakness in timber auctions has not yet been seen on the harvesting and cash flow side. Through October, 43% of the total forecasted revenue has been received as compared to an historical average of 39% by this time of year.

Investment Report. Mr. Johnson stated for the month of October the fund lost 13.8%, which is about in line with the benchmark. The fiscal year-to-date return is -21.9%. Investment managers are performing as expected. Mr. Johnson noted that even bonds lost 2.8% for the first few months of this fiscal year.

Governor Otter asked for an explanation about the downturn in bonds. Mr. Johnson stated it is an issue related to risk spreads and treasury bonds. During the current market there has been a "flight to quality" so everyone wants treasury bonds and everything, except treasury bonds, is further discounted. As yields on corporate bonds, and to a lesser extent mortgage bonds, went up, current prices went down. Since the EFIB accounts for bonds on a market-to-market basis every day, the increase in credit spreads resulted in an unrealized loss.

Annual Report. This report is submitted in compliance with the Land Board's Asset Management Plan. For fiscal year 2008, total fund balances increased about 1%. Earnings reserve balances rose about 20%, receipts from endowment lands totaled \$70 million, and distributions increased almost 8%. During the fiscal year the total investment loss before fees was 2.1%. Over the last five years, the average annual return was a positive 10.2%. Total investment expenses, including manager fees, totaled about .38%, or 38 basis points, for the fiscal year.

- **John Taylor, Chairman, Audit Committee, EFIB**

Audit Summary. The EFIB received an unqualified opinion on its financial statements this year. Also, the independent auditor's report on compliance and internal controls found no exceptions or

inconsistencies with laws and regulations. It is a very clean report, and a very good reflection on EFIB staff.

Policy, Meetings and Strategic Plan. Mr. Johnson reported that there were no material violations of EFIB investment policy and contractual compliance guidelines in the fiscal year. The EFIB held seven different board meetings in fiscal year 2008 with an average attendance of 89%. Five board members had perfect attendance. Mr. Johnson pointed out that a summary of the EFIB's Strategic Plan was included in the briefing materials.

Considering the current economic situation, Governor Otter asked Mr. Johnson if there is any reason to change the current distribution strategy. Mr. Johnson stated that there is no reason to make a change at this point.

Attorney General Wasden thanked the EFIB for its work and dedication to Idaho citizens.

No action was taken on this agenda item.

8. Timber Program Public Involvement Policy – Presented by Bob Helmer, Chief, Bureau of Forest Management

DEPARTMENT RECOMMENDATION: Direct the Department to (1) publish statewide a legal notice that a list of sales proposed for two years in the future is posted on IDL websites; (2) discontinue January and March newspaper advertising of the annual sales plan; (3) continue to make the annual sales plan available on the IDL website as well as on the timber sale auction website; and (4) continue to allow exceptions to the published plan as outlined in the timber sale public information policy.

DISCUSSION: Governor Otter asked that the discussion on this topic include an expression of whether the Department is totally satisfying the intent, if not the spirit, of the existing policy. He asked for assurance that the revised policy continues to include full public disclosure and transparency.

Bob Helmer, Chief, Bureau of Forest Management, explained that the current public involvement policy was adopted in May 1993 and reaffirmed in 1994. The Department is suggesting that the plan be revised to discontinue the January and March newspaper ads. Legal ads will be published notifying the public that the timber sale plan is available for review and comment. Annual plans will be posted on the Department's web site, and the current subscription service will be maintained. Also proposed is a third exception to the published plan which will allow the Department to capture dynamic market opportunities.

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

9. Request for Permanent Access Easement through State-Owned Lands in Adams County [Jewell] – Presented by Kurt Houston, Operations Chief-South

DEPARTMENT RECOMMENDATION: Affirm the Director's decision dated February 21, 2008, denying the easement request.

DISCUSSION: Attorney General Wasden asked if there is a way in which the road structure could be altered in its location that would avoid impacts to the Class I stream. Mr. Houston stated it is the Department's professional opinion in that location there are no improvements that can be made to the road to lessen the impact and risk for sedimentation into the creek.

Governor Otter asked if there is a plan to move the road. Operations Chief Houston stated the current area road access and network is complete. To continue management near the stream, the Department would use off-road skidding equipment and would skid away from the creek to stay

outside of the 75-foot zone required by the Forest Practices Act. The Department would not need to use the existing road nor would it need to create a new road near that location.

Governor Otter asked why the road north of West Mill Creek was an unsuccessful alternative. Operations Chief Houston stated that option was presented at the March Land Board meeting. It appeared to be the only logical alternative that could be used without impacting the main haul road on endowment land. However, it crossed a corner of an adjoining private property, and that property owner chose not to grant Mr. Jewell an easement.

Governor Otter asked how a property can be conveyed without access. Attorney General Wasden stated it would depend upon the specifics with regard to how the parcel was created and its history.

Audience with the Board – Mr. Richard Jewell

Mr. Jewell read a prepared statement into the record.

Governor Otter asked Mr. Jewell how he ended up buying a piece of land that did not have a legitimate perfected easement or right-of-way or something similar. Mr. Jewell stated when he was in the process of purchasing the property legal access was not discussed. He found out about the legal access issue when the title company mentioned there was no legal access. Governor Otter asked if the lack of access was noted in the title papers. Mr. Jewell acknowledged that it was noted in the title report. At that time, however, he and his wife were in the process of actually signing the papers and had to make a decision whether to go forward with the purchase. Governor Otter asked Mr. Jewell why a decision had to be made right then. Mr. Jewell repeated that a decision to purchase the property had to be made at that time, and he and his wife made the decision to purchase it. He stated his reason for the decision was based on the fact that there is an existing road through the property that has been used for years. He did not believe there would be an issue with getting an easement. He stated he also discussed the topic with a Department of Lands' employee, and that employee told him generally there is no problem, and all Mr. Jewell had to do was send the Department a letter requesting an easement. Mr. Jewell stated that is what he did, and his request was denied.

Controller Jones asked Mr. Jewell when he purchased the land. Mr. Jewell responded "about five years ago."

BOARD ACTION: A motion was made by Attorney General Wasden to move adoption of the Department's recommendation. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

• **INFORMATION**

Background information was provided by the presenters listed below. No Land Board action is required on the Information Agenda.

10. Cottage Site Subcommittee Update – Presented by Ben Ysursa, Secretary of State

DISCUSSION: A verbatim transcript is available upon written request to Susan Terry, Department of Lands, 300 North 6th Street, Suite 103, Boise, Idaho 83720-0050, fax (208) 334-2339 or email sterry@idl.idaho.gov.

11. Central Washington Place Marketing Package – Presented by Kathy Opp, Deputy Director

DISCUSSION: Governor Otter noted the appraisal package does not include an assessment of maintenance costs. Kevin McGowan, Thornton, Oliver, Keller Commercial Real Estate, responded that deferred maintenance information is included in the due diligence package, which is the next level of information that would be provided.

12. Endowment Public Polling Results – Presented by Kathy Opp, Deputy Director

DISCUSSION: Governor Otter asked why teachers were separated from general public responses. Mike Tracy, Tracy Communications, responded that a subset was used to determine how educators viewed lands differently than general public voters since education is the main benefactor of endowment land revenues.

Controller Jones asked how many teachers were surveyed. Mr. Tracy responded 75 teachers, K-12 and actively teaching.

Governor Otter questioned the labels under the state-owned land categories. He noted the labels are Public School Lands, Endowment Lands, Grant Lands, Trust Lands and Don't Know. Basically all four labels refer to the same thing. Mr. Tracy stated the polling questions were an attempt to get a sense of not only how people labeled the lands in their minds, but to also possibly provide a strategy of how endowment lands can be addressed through this communication effort.

Governor Otter wondered if the lands would no longer be called "endowment lands" but would be called "Public School Lands" instead. Mr. Tracy stated the idea has been mentioned to use "Public School Endowment Lands" or similar phrasing. Presentations would tie the phrase to the dollars that go to public schools. Since public schools are the major beneficiary, that idea seems to resonate positively with voters and teachers.

Attorney General Wasden referred to the question regarding maintaining recreation opportunities on state forestlands. He asked if the terminology was consistent with the endowment school lands, etc. or if the terminology in the survey means something different. Mr. Tracy responded that it means something different. Many people view the state lands as a place to recreate. The survey questions attempted to determine how they felt about the fee issue. Deputy Director Opp added that the responses show general voter knowledge still identifies the Department of Lands as the same as the Department of Parks and Recreation or the Department of Fish and Game. She feels if a fee structure is pursued, it needs to be strongly delineated that endowment lands are different than lands managed by the other state agencies.

Attorney General Wasden noted the survey did not mention grazing, which covers 1.7 million acres of land. He also did not see any questions regarding commercial or agricultural use. Referring specifically to grazing, he stated he was curious why that question was not asked. Deputy Director Opp stated the information in the meeting material is only a snapshot of the slides. Commercial was specifically queried and framed as diversification opportunities for the state. She stated she did not believe a specific question was asked regarding grazing.

Governor Otter left the meeting at 10:42 a.m. Secretary of State Ysursa chaired the remainder of the meeting.

At 10:47 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 67-2345(1)(f). Attorney General Wasden requested unanimous consent. The purpose of the Executive Session is to communicate with legal counsel regarding legal ramifications of, and legal options for, pending litigation or controversies not yet being litigated but imminently likely to be litigated. Attorney General Wasden requested that the secretary record the vote in the minutes of the meeting. Secretary of State Ysursa acknowledged the unanimous consent request. Hearing no objection, the Board resolved into Executive Session. (Present: Secretary of State Ysursa; Attorney General Wasden; Controller Jones; Superintendent Luna [conference phone]; Absent: Governor Otter)

- EXECUTIVE SESSION

A. To communicate with legal counsel for the public agency or to discuss the legal ramifications of, and legal options for, pending litigation or controversies not yet being litigated but imminently likely to be litigated. [[Idaho Code § 67-2345\(1\)\(f\)](#)]

At 11:06 a.m. a motion was made by Attorney General Wasden to resolve into Regular Session. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Governor Otter being absent for this vote. The Executive Session was held in accordance with the Idaho Open Meeting Law. No action was taken by the Board during the Executive Session.

At 11:07 a.m. a motion was made by Attorney General Wasden to adjourn. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Governor Otter being absent for this vote. Meeting adjourned.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ C. L. "Butch" Otter

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 December 16, 2008 regular Land Board meeting.