



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
 August 18, 2009

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, August 18, 2009, in Boise, Idaho. The meeting began at 9:06 a.m. in the second floor courtroom of the Borah Building. The Honorable Governor C. L. "Butch" Otter presided. For the record, Governor Otter recognized the presence of a quorum. The following members were present:

Honorable Secretary of State Ben Ysursa – *joined via conference phone at 10:09 a.m.*
 Honorable Attorney General Lawrence Wasden
 Honorable State Controller Donna Jones – *joined via conference phone at 9:06 a.m.*
 Honorable Superintendent of Public Instruction Tom Luna

Prior to beginning the Consent Agenda, Attorney General Wasden noted that item 10 is being withdrawn from the agenda. Director Bacon confirmed that Three Rivers Timber has requested that this item be moved to the September 15, 2009 Land Board agenda.

BOARD ACTION: Attorney General Wasden moved to withdraw item 10 from the agenda and to calendar the item for the September Board meeting. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Ysursa being absent for this vote.

• **CONSENT**

A motion was made by Attorney General Wasden to adopt the Consent Agenda in its entirety. Superintendent Luna seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Ysursa being absent for this vote.

1. **Director's Report** – *approved*

- A. Interest Rate on Department Transactions – August 2009
- B. Timber Sale Activity Report
- C. Timber Sale Official Transactions – July 2009
- D. Legal Matter Summary
- E. Bureau of Surface and Mineral Resources Official Transactions – July 2009
- F. Fire Settlement Information
- G. Fire Season Report

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

NORTH OPERATIONS				COUNTY	AREA OFFICE
A. Downfall	CR-21-3014	4,975	MBF	Boundary	Kootenai Valley (Bonners Ferry)
B. Purdue Power	CR-41-0047	7,430	MBF	Latah	Ponderosa (Deary)
SOUTH OPERATIONS					
None					

3. Department of Lands' Legislative Proposals for 2010 – Staffed by George Bacon, Director – approved

DEPARTMENT RECOMMENDATION: That the Board authorize the Department to proceed with the legislative proposals.

DISCUSSION: Governor Otter inquired about the purpose of the Timber Supply Stabilization Act. Director Bacon responded the Act provided that 90% of Department offerings were only available to qualified bidders, and the Board qualified those bidders based on the fact that they manufactured in Idaho. Attorney General Wasden noted that in addition there are some commerce clause implications to the statute.

BOARD ACTION: Approved.

4. Disclaimer of Interest for the Former Bed of the North Fork Payette River, Valley County (City of Cascade) – Staffed by Kurt Houston, Operations Chief-South – approved

DEPARTMENT RECOMMENDATION: That the Board direct the Department to issue a disclaimer of interest for one parcel totaling 9.36 acres of the former bed of the North Fork Payette River and require the City of Cascade to pay the remaining processing fee of \$300 or actual cost, whichever is greater, to the Department of Lands for this transaction.

DISCUSSION: None.

BOARD ACTION: Approved.

5. Results of July 30, 2009 Oil and Gas Lease Auctions – Staffed by Eric Wilson, Bureau of Surface and Mineral Resources – approved

DEPARTMENT RECOMMENDATION: That the Board approve the results of the July 30, 2009 oil and gas lease auctions and direct the Department to issue 27 oil and gas leases to the successful bidders following their timely payment of bonus bids, rent and advertising costs.

DISCUSSION: None.

BOARD ACTION: Approved.

6. Minutes – approved

A. Regular Land Board Meeting – July 21, 2009

• **REGULAR**

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

A. Monthly Report – no action was taken on this agenda item;

- Returns were up by 6% in July; endowment fund reserves are in good shape;
- No compliance issues;
- Upcoming Issues: The EFIB is moving forward to increase the percentage of international equity in the endowment funds equity portfolio and is searching for two managers to assist in that effort;
- School Bond Credit Enhancement Program Follow-up:

The EFIB is responsible for administering a program that uses the assets of the Public School endowment to guaranty school bonds for Idaho's school districts. The Investment Board believes that since any guaranty encumbers and restricts the management of the fund, a fee

should be charged to those who utilize the bond guaranty. The fee is deposited back into the fund itself ensuring that all school beneficiaries profit from every guaranty issued by their fund. EFIB staff originally put in place a \$100 application fee to recover administrative costs and a guaranty fee of two basis points. However, at its last meeting, the full EFIB discussed the issue at some length and decided that more flexibility should be allowed so that fees can be adjusted based on changes in market conditions. While the Investment Board is comfortable with the current \$100 application fee and two basis points guaranty fee, they amended the administrative rule to allow the application fee to be up to \$1000 and the guaranty fee to be between two and five basis points. Some constituents expressed concern about the guaranty fee, but the EFIB feels it can educate people that this is really an issue of fiduciary fairness.

DISCUSSION: Superintendent Luna asked Mr. Johnson to explain the process followed prior to fees being imposed. He asked if it is an action of the Investment Board or if it requires legislative action before the fees can be enforced. Mr. Johnson stated it is his understanding that the Investment Board has the statutory authority to impose fees under temporary rule and those fees would be reviewed by the Legislature in the next session.

Superintendent Luna asked if funds have ever been needed in the past to cover a default. Mr. Johnson stated there has never been a default by an Idaho school district on any bonds. Superintendent Luna remarked that the risk factor appears to be almost zero.

Governor Otter noted that Mr. Johnson's comments reflect the market, or potential changes in the market. Mr. Johnson stated the charge reflects the issue that whenever there is any kind of guaranty on a fund, there is a contingent liability, and that liability under extreme circumstances could be called. In addition, it causes management of the fund to be reevaluated and perhaps handled differently. Mr. Johnson stated in his opinion currently the absolute level of dollars under a guaranty do not significantly affect the investment, but should the fund decide to invest in other guaranties, or assets that are not as liquid as the assets held today, then future guaranties could be more restrictive. Mr. Johnson also noted that current impingement of the fund is small and that is a key reason why the fee is small at two basis points, which is about \$6000 on a \$20 million bond issue.

Governor Otter noted that the change from two basis points to five basis points provides a flexibility of three basis points. He asked if that is reflective of the lack of liquidity or market cost. Mr. Johnson stated the Investment Board is comfortable with two basis points given today's market. However, there is always uncertainty as to what will happen to the pricing of credit in the next few years. The Investment Board is aware that there is a time lag in adjusting administrative rules once they are finalized by the Legislature and felt a need for flexibility if market conditions changed quickly. No action was taken on this agenda item.

B. Investment Report – no action was taken on this agenda item;

- Equity managers experienced strong positive returns in July;
- August-to-date returns are slightly above break-even.

C. Request for Approval of Distributions to Endowment Beneficiaries for FY 2011

EFIB RECOMMENDATION: The Endowment Fund Investment Board recommends that distributions be based on the Distribution Policy and Objectives contained in the Land Board's Asset Management Plan. As shown in the table, included with this recommendation, the result is a slight overall 0.3% increase in distributions for fiscal year 2011 as compared to fiscal year 2010.

Also, the Endowment Fund Investment Board recommends that \$1.5 million of excess Earnings Reserves for two endowments (State Hospital South and University) 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 the University transfer not increase the Gain Benchmark of its fund, so as to increase the likelihood that the fund will reach its 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.

	Distributions To Beneficiaries				Transfer To Permanent Fund**
	Approved	Proposed	% Change*	\$ Change*	
	<u>FY2010</u>	<u>FY2011*</u>			
Public Schools	31,292,400	31,292,400	0.0%	-	-
Ag College	850,800	850,800	0.0%	-	-
Charitable Instit.	2,964,000	2,964,600	0.0%	600	-
Normal School	2,661,600	2,661,600	0.0%	-	-
Penitentiary	1,040,400	1,040,400	0.0%	-	-
School of Science	2,984,400	2,984,400	0.0%	-	-
State Hosp. South	1,532,400	1,663,200	8.5%	130,800	1,023,000
University	2,329,200	2,329,200	0.0%	-	447,000
	<u>45,655,200</u>	<u>45,786,600</u>	<u>0.3%</u>	<u>131,400</u>	<u>1,470,000</u>

* Hold at FY2010 levels, except State Hospital increases based on 5% of 3-year average Permanent Fund balance, adjusted for transfers from Earnings Reserve, and Charitable increases slightly to allow an even amount of monthly distribution to all five of its beneficiaries.

** Amount of Earnings Reserve in excess of five years of the fiscal year 2011 distribution. State Hospital transfer will increase its Gain Benchmark while the University transfer will not.

All calculations subject to adjustment pending final audit of fiscal year 2009 results.

Mr. Johnson indicated that strict adherence to the general distribution rule – 5% of the Permanent Fund – would result in a small decrease in distributions for seven of eight endowments. However, the EFIB believes reserves are sufficient to allow distributions to be held at the current level for those seven endowments. He presented a conservative forecast of reserve levels at the end of FY 2012, which showed that there would still be adequate reserves at that time. However, he cautioned that the forecast assumes timber and financial markets do not move down significantly from today’s already low levels.

DISCUSSION: Governor Otter asked if \$120 is an average stumpage price. Director Bacon stated \$120-\$130 is average and that figure includes cedar and other species. He noted, however, that a lot of sales are appraised at \$80 but are being bid up.

BOARD ACTION: A motion was made by Attorney General Wasden to adopt the recommendation of the Endowment Fund Investment Board with regard to the distributions and transfers as provided in the table shown above. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Ysursa being absent for this vote.

v Secretary of State Ysursa joined the meeting at 10:09 a.m.

8. Follow-up to the Endowment Land Transaction Advisory Committee report from July 2009 – Presented by Kathy Opp, Deputy Director

DEPARTMENT RECOMMENDATION:

1. The department recommends the board finalize suggested language changes in the Constitution and Admissions Bill. Either confirm the use of ELTAC recommended language or assign a deputy attorney general to write and offer alternative changes to be presented at a future board meeting to accomplish the goal of addressing the issues raised by the ELTAC and the department. This is an important step that needs to be finalized prior to launching even a basic educational outreach program.

2. Direct the department to initiate a basic educational outreach program with legislative leadership, local governments (counties) and the beneficiaries that covers the concepts presented in the ELTAC report and this subsequent document. Use ELTAC committee members to help with the effort, as available.
3. Direct the department to use the results gleaned from the educational outreach to design policies that support recommended Constitution and other changes while providing flexibility and transparency without sacrificing returns to the beneficiaries.

DISCUSSION: A verbatim transcript is available upon request. Your request should be sent to ATTN SUSAN TERRY, Idaho Department of Lands, using one of the following methods: (1) U.S. Mail: P O Box 83720, Boise ID 83720-0050; (2) fax: 208-334-2339; or (3) email: sterry@idl.idaho.gov.

BOARD ACTION: A motion was made by Attorney General Wasden that: (1) the Board accept the report of ELTAC; (2) that the Board request the Attorney General's Office to draft appropriate legislation that would provide for amending Article 9, § 8 and 10 of the Idaho Constitution to do the following: (a) to allow the Legislature to provide for means of disposal of endowment lands in addition to the use of public auction, and to specifically clarify that the term public auction not be deleted from the Idaho Constitution but that we apply it in addition to other measures; and (b) remove the 320-acre limitation on the sale of endowment lands to an individual; and (c) remove the 160 acreage limitation on the sale of university lands to any individual and, in addition, that the draft legislation, constitutional language, be submitted to the Department for submission to this Board for review; (3) that the Board request the Attorney General to draft legislation to amend section 5 of the Idaho Admissions Bill to provide for disposal of school lands in accordance with state law and to be submitted to the Department for submission to this Board for review; (4) that the Board direct the Department of Lands to initiate an informal outreach program to inform legislators, local governments and beneficiaries of the reasons for the proposed changes; (5) that the Board direct the Department of Lands to use the input from the informational outreach program to advise the Board of whether modifications to the proposed constitutional changes are warranted; (6) that the Board direct the Department of Lands to use the results of the outreach program to design legislation and policies to implement the recommended constitutional changes with the objective of providing management flexibility while at the same time ensuring transparency of decision-making; (7) that the Board direct the Department of Lands to complete this effort with the objective of submitting any recommended changes to article 9, § 8, along with any implementing legislation to the 2012 Legislature; and (8) that the Board thank the members of the ELTAC for their assistance in reviewing the Board's land transaction policies and in assisting in developing sound business practices for management of state endowment lands and invite them to continue assisting the Board and the Department with that effort. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

9. Fiscal Year 2011 Department of Lands Budget Proposal – Presented by Patrick Hodges, Division Administrator, Support Services

DEPARTMENT RECOMMENDATION: That the Board direct the Department to include the supplemental and enhancement requests in the FY11 budget proposal due on September 1, 2009.

DISCUSSION: Governor Otter noted the Department's budget includes a 3.5 FTP addition. Division Administrator Hodges stated that is correct.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board direct the Department to include the recommended supplemental requests in the Fiscal Year 2011 budget proposal due on September 1, 2009. Superintendent Luna seconded the motion. The motion carried on a vote of 4-0, with Governor Otter recused for this vote.

A motion was made by Attorney General Wasden that the Board direct the Department to include the recommended enhancement requests in the Fiscal Year 2011 budget proposal due on September 1, 2009. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Governor Otter recused for this vote.

10. ~~Request by Three Rivers Timber, Inc., for Hardship Termination of the East Fork Commercial Timber Sale (TS-42-3594)~~ – Presented by David Groeschl, Assistant Director, Forestry and Fire - **WITHDRAWN**

[As repeated from page one, "Prior to beginning the Consent Agenda, Attorney General Wasden noted that item 10 is being withdrawn from the agenda. Director Bacon confirmed that Three Rivers Timber has requested that this item be moved to the September 15, 2009 Land Board agenda.

BOARD ACTION: Attorney General Wasden moved to withdraw item 10 from the agenda and to calendar the item for the September Board meeting. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Ysursa being absent for this vote."]

11. Authorization to Initiate Proposed Rulemakings for IDAPA 20.03.04, Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho and IDAPA 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands - Presented by Eric Wilson, Bureau of Surface and Mineral Resources

DEPARTMENT RECOMMENDATION: That the Board direct the Department to initiate proposed rulemaking for IDAPA 20.03.04, Rules for the Regulation of Beds, Waters and Airspace Over navigable Lakes in the State of Idaho, and IDAPA 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands.

DISCUSSION: A verbatim transcript is available upon request. Your request should be sent to ATTN SUSAN TERRY, Idaho Department of Lands, using one of the following methods: (1) U.S. Mail: P O Box 83720, Boise ID 83720-0050; (2) fax: 208-334-2339; or (3) email: sterry@idl.idaho.gov.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board direct the Department to initiate proposed rulemaking for IDAPA 20.03.04, Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho, and IDAPA 20.03.017, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands with the negotiated rules attached to the Department's recommendation. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 3-2 (*Aye:* Wasden, Ysursa, Jones; *Nay:* Otter, Luna).

● **INFORMATION**

None

At 10:39 a.m., a motion was made by Controller Jones that the Board resolve into Executive Session for the purpose of discussing the acquisition of an interest in real property which is not held by a public agency pursuant to Idaho Code § 67-2345, subsections (1)(c) and that a roll call vote be taken and that the Secretary record the vote in the minutes of the meeting. Attorney General Wasden seconded the motion. Roll Call: *Aye:* Otter, Ysursa, Wasden, Jones, Luna; *Nay:* None. The motion carried on a vote of 5-0.

● **EXECUTIVE SESSION**

[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](#)

- A. Exchange of Lands Not Owned by the State of Idaho
- B. Acquisition of Lands Not Owned by the State of Idaho

