



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
December 15, 2009

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, December 15, 2009, in Boise, Idaho. The meeting began at 9:15 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 – *joined via conference phone at 9:15 a.m.*
Honorable State Controller Donna Jones
Honorable Superintendent of Public Instruction Tom Luna – *arrived at 9:37 a.m.*

For the record, Governor Otter recognized the presence in person of Secretary of State Ysursa and Controller Jones. He noted that Attorney General Wasden would participate by phone and that Superintendent Luna would arrive at approximately 9:30 a.m.

• **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 4-0, with Superintendent Luna being absent for this vote.

1. Director's Report – approved

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

DISCUSSION: Director Bacon noted the Timber Sale Activity Report (item 1B) shows timber volume under contract at approximately ±350 MBF, with an estimated value of \$80 million. Market trends indicate the lumber market has bottomed, reflecting the lowest point in modern

history. Demand is running about 60% to half of normal and the hope is for a big comeback next spring. However, he stated residential housing markets drive softwood demand, which is the product we produce. Prices are holding steady at about \$120-\$130 a thousand, on average.

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>AREA OFFICE</u>
A. Idaho Short	CR-20-0268	3700	MBF	Bonner	Pend Oreille (Sandpoint)
B. No Back OSR	CR-30-0545	3690	MBF	Clearwater	St. Joe (St. Maries)
C. Shattuck	CR-41-0059	10995	MBF	Clearwater	Ponderosa (Deary)
 <u>SOUTH OPERATIONS</u>					
D. Powerline Patch	CR-40-1037	6700	MBF	Clearwater	Clearwater (Orofino)
E. Browns Mountain Pole	CR-42-5034	280	MBF	Clearwater	Maggie Creek (Kamiah)
		82320	LF		

DISCUSSION: None.

3. Disclaimer of Interest for the Former Bed of the North Fork Payette River in Valley County (Osprey Landing, LLC) – Staffed by Kurt Houston, Operations Chief-South – approved

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for five parcels totaling 18.58 acres of the former bed of the North Fork Payette River and to require Osprey Landing LLC to pay the remaining processing fee of \$300 to the Department of Lands for this transaction. Osprey Landing LLC will disclaim 1.63 acres of land located below the ordinary high water mark to the State of Idaho.

DISCUSSION: None.

BOARD ACTION: Approved.

4. Minutes – approved

- A. Regular Land Board Meeting – November 17, 2009

- **REGULAR**

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

- A. Monthly Report
- B. Investment Report

Mr. Johnson provided the following report:

- Returns for the month of November were 4.2% with fiscal year-to-date at 15.9%;
- Since the end of November another 1.8% has been earned with a fiscal year-to-date of over 17%;
- Reserves are strong due to fund returns despite falling land revenues;
- There are no significant actions of the EFIB or any compliance or legal issues to report;
- Next month, an updated forecast of earnings reserves through the end of 2011 will be presented to the Land Board and to the Joint Finance and Appropriation Committee during the EFIB's budget hearing. The Department of Lands is preparing an updated land revenue forecast as part of this effort.

DISCUSSION: Governor Otter commented he would be interested in hearing the EFIB's investment strategy for moving forward, including to what degree it allows for shifts in assets. Mr. Johnson stated the EFIB generally does not tend to vary its asset mix because almost no investor has a successful track record based on timing shifts between bonds and stocks. The endowment fund invests heavily in equities at all times because it is a long-term investor and the return of equities is higher over 15 to 20 year periods. He added that it is important to maintain good reserves because no one can predict when difficult times in the market, such as the recent past, will occur. Mr. Johnson mentioned that Mr. Bob Maynard of PERSI has a graph showing the returns for equities, bonds and T-bills between 1969 and 1990. PERSI's return was lower than all of those over that same period because the strategy during that time was to hire managers who tried to out-guess the market, and they failed. Secretary of State Yursa added Mr. Maynard's advice has always been to "stay the course."

No action was taken on this agenda item.

6. Request for Final Approval to Purchase a 0.33± Acre Unimproved Parcel of Land (Acquisition Parcel) Located North of the Snake River, City of Heyburn (Minidoka County) – Presented by Jane Wright, Strategic Business Analyst

DEPARTMENT RECOMMENDATION: The Department recommends that the Board approve the acquisition of the referenced parcel pursuant to the terms and conditions of the Purchase Sale Agreement.

DISCUSSION: Controller Jones commended the Department for its work on the due diligence portion of this property. She is familiar with the property and thanked the Department for a job well done.

Governor Otter asked who will remove the concrete currently on the property. Ms. Wright stated the Department will take on that responsibility. Governor Otter asked about the cost for removal. Ms. Wright stated it will depend on the needs of a potential tenant. The Department could flatten the property and lease it out or clean it up and market it to a potential tenant who might want the concrete for a loading dock. Concrete that is loose and lying on top of the

ground would be removed. Ms. Wright noted there is a steel structure on the parent parcel, but its value will depend on the needs of the potential tenant. A new skin on the steel structure would last a long time along with the concrete going to the railroad track. Ms. Wright stated she is excited about marketing and leasing this property.

Governor Otter asked about DEQ's environmental assessment of the property. Ms. Wright stated DEQ did complete an environmental assessment and part of their opinion was based on a site remediation report conducted by an Environmental Specialist, Max W. Hammond, PhD, who was hired in 1995 to identify the remediation that was needed, to supervise the remediation as Cenex cleaned the soil and to provide a clean report. The Department ensured that was completed prior to releasing the easement on the parent parcel because this in-holding was not the drill site of the contamination.

Governor Otter asked if a drill core was completed. Ms. Wright stated a drill core was done to a depth of ten to twelve feet. The soil was hauled to a nearby farm because it contained fertilizers that were good for the ground, and soil from the landfill was brought in and filled on top of that. When the hole was dug out, more testing was done. They went down five feet, eight feet, ten feet and, depending on the type of test, they went down even farther on that area of the property. Governor Otter noted at that depth they would have been in the water profile. Ms. Wright stated they were within five feet of it.

Governor Otter commented that he is familiar with this property. He expressed concern about the possibility of nitrates migrating from the property toward the river, which could pose a future problem.

BOARD ACTION: A motion was made by Controller Jones to approve the acquisition of the referenced parcel pursuant to the terms and conditions of the Purchase Sale Agreement. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent from this vote.

** Superintendent Luna joined the meeting at 9:37 a.m.*

7. Results of Conflicted Lease Auction for G-800042 – Presented by Elizabeth Felix, Program Manager, Grazing

DEPARTMENT RECOMMENDATION: The Department recommends the Land Board award lease G800042 to the high bidder, Mr. Robb Dansie.

DISCUSSION: Governor Otter asked if the process worked. Director Bacon stated the process worked well in all of these conflict application situations, and the Department hopes to see greater success moving forward.

Secretary of State Yursa commended the procedures. He stated the proof will be when it is grazer versus non-grazer. However, he noted the issue with improvements has been resolved, and that was a major step. He commented, "It is a work in progress and looking pretty good."

Governor Otter stated he has always had a question. If a non-grazer does not intend to remove the fuel, is there any liability attached to that. Director Bacon stated that is an issue the Department will address on a case-by-case basis in the construction of the lease. The Department will also consider neighboring land uses and other activities. Director Bacon reminded the Board that the Department currently has grazing leases where the lessees do not graze for periods of time and do not take on any liability for that decision. He commented that, due to market conditions and other factors, lessees need to have that flexibility so this can be a difficult issue. Fuel would be more of an issue as leases are renewed after a long period of non-use. For the first lease term, the Department would be in a monitoring mode on a case-by-case basis.

Governor Otter asked if the Department handles these leases on a case-by-case basis, rather than by rule, would the Department be open to discrimination charges based on grazing leases versus other types of leases, such as conservation or recreation. On one hand there is fuel loading that, without removal, could present problems. If the fuel burns, there could also be an issue with invasive grasses. He suggested that it might be a good idea to start reviewing some rules to deal with non-removal of fuel, even if it is a grazer who does not intend to graze this year, or modestly graze. He believes it would be a good idea to have an axiomatic thumbprint that says "this applies to everybody." Director Bacon stated regarding the issue of discriminatory action, if the Department identified that fuel removal was necessary, it would be a requirement no matter who leased the ground for whatever purpose. The Department has always made the assumption that a grazer will remove the fuel, but that does not always occur. In the future grazing leases may need to be modified to ensure that the fuel load is addressed in one way or another.

BOARD ACTION: A motion was made by Attorney General Wasden to approve the conflicted lease auction, G800042. Secretary of State Yursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna abstaining for this vote.

- **INFORMATION**

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

8. State Assessment of Forest Resources – Presented by David Stephenson, Urban Interface Planning Program Manager, IDL, and Steve Kimball, Idaho National Fire Plan Coordinator

DISCUSSION: Governor Otter asked if the map area shown in white represents lands not managed by the State of Idaho. Mr. Stephenson stated the map was developed through a time-distance model. It considers ATV licenses in particular counties, population and travel distances. Governor Otter pointed out the Frank Church River of No Return Wilderness and asked if an assessment was made for that area. In addition, he asked how big a threat the area poses. Mr. Stephenson stated the wilderness areas were masked out, along with areas that receive less than ten inches of precipitation per year, assuming those areas are incapable of

growing trees. Governor Otter asked if an assessment was made of the threat posed by a wilderness area because of the state's inability to manage the land. Mr. Stephenson agreed there is a threat but stated some datasets do not cover those areas for threats, such as noxious weeds. Wilderness areas will be under represented; however, surrounding areas are very critical and important.

Governor Otter stated that goes to his point. Idaho has the largest wilderness area in the continental United States, and those wilderness areas pose a threat to bordering resources. He feels that fact gives Idaho a greater argument for being able to more stringently manage border connections. He asked if that assessment has been made. Mr. Stephenson responded that point is not covered in the geospatial assessment, per se. The composite does include wilderness areas to a certain extent. As strategies are developed, those points will be considered. However, he agrees with Governor Otter's comment, and he believes other stakeholders would also agree.

Superintendent Luna asked if areas categorized as yellow or orange would migrate to higher levels if these strategies are implemented or would some remain stagnant. Mr. Stephenson stated it depends on the issue. On the threats issues, that is probably correct; on the benefits issues, some benefits may be lost if the work is not done.

Governor Otter asked if the assessment covers all forest resources in the state. Mr. Stephenson stated it does. Governor Otter noted only three federal agencies, or sub-agencies, participated in the assessment. He asked what they would do with the information. Director Bacon responded as far as management of federal lands, it gives them a tool to identify high priorities for activities, and it may help leverage both priorities in their work, such as where they spend their time and funding. The Department is hopeful this effort will help the Forest Service be more active in the management of their lands. Governor Otter asked if that is the expectation. Director Bacon stated it is.

Mr. Steve Kimball, Idaho National Fire Plan Coordinator, addressed the Board. Mr. Kimball is co-chair of this project with Mr. Stephenson and is a Forest Service employee. He is currently working with all agencies in the state, mostly on wildfire mitigation and preparation. Mr. Kimball stated when this strategy is complete an effort will be made to engage federal land owners, and all land owners, to discuss better coordination around key areas in the state. Part of what drove the need for this process was a feeling that a lot of grant money was being scattered around the state without focus or set priorities. This effort allows information to be gathered and reviewed to determine areas in the state that need attention for threats and enhancing the resilience to forest health threats and wildfire threats. When this effort is complete, federal agencies, such as the BLM and Forest Service, will be coached that this is an excellent tool to take care of the highest needs in the state while working across ownerships. Currently we have the interest and engagement with the Forest Service and BLM. This will be a very valuable tool as they align their program of work. It will cover a five-year period and when it is complete, the major land owners will see this as the focus points that will best accomplish the strongest needs. We cannot require anyone to align their programs with this. It is more of a

goal that if we can do a better job of coordination and getting our programs aligned, then we will do more good. Mr. Kimball stated that is the message.

At 10:10 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 67-2345(1)(c) and (1)(f) for the purpose of discussing the acquisition of an interest in real property which is not held by a public agency and 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 a roll call vote be taken and that the secretary record the vote in the minutes of the meeting. Controller Jones seconded the motion. Governor Otter called for a roll call vote.

ROLL CALL VOTE: Governor Otter: aye; Secretary of State Yursa: aye; Attorney General Wasden: aye; Controller Jones: aye; Superintendent Luna: aye. Vote tally: 5 aye (Otter, Yursa, Wasden, Jones, Luna); 0 nay.

Prior to beginning the Executive Session, at 10:12 a.m. a brief recess was taken. The Executive Session began at 10:17 a.m.

- **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.**

- Exchange of lands not owned by the State of Idaho
- Acquisition of lands not owned by the State of Idaho

- 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.**

- Commercial lease

At 10:37 a.m. a motion was made by Attorney General Wasden to resolve out of Executive Session and that the official minutes of the meeting reflect that no action was taken by the Board during the Executive Session. Secretary of State Yursa seconded the motion. The motion carried on a vote of 5-0.

At 10:37 a.m. Governor Otter called the meeting to order in Regular Session.

At 10:37 a.m. a motion was made by Attorney General Wasden to adjourn. Secretary of State Yursa seconded the motion. The motion carried on a vote of 5-0. 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 January 19, 2010 regular Land Board meeting.