



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
 March 17, 2009

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, March 17, 2009, in Boise, Idaho. The meeting began at 9:10 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

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

• **CONSENT**

A motion was made by Attorney General Wasden to adopt the Consent Agenda in its entirety. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

1. Director's Report – approved

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

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. Uleda Point OSR	CR-10-0365	1740	MBF	Bonner	Priest Lake (Coolin)
B. Brickel Creek	CR-22-5008	3765	MBF	Kootenai	Mica (Coeur d'Alene)
<u>SOUTH OPERATIONS</u>					
C. Johnson Gulch Relog	CR-40-0946	1745	MBF	Clearwater	Clearwater (Orofino)
D. Knotty Pine	CR-43-4016	2540	MBF	Idaho	Craig Mountain (Craigmont)

3. **Disclaimer of Interest for the Former Bed of the Boise River, Ada County (E, LLC) – Staffed by Kurt Houston, Operations Chief-South – approved**

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for two parcels totaling 12.092 acres of the former bed of the Boise River and require E, LLC, to pay a fee of \$600.00 to the Department of Lands for this transaction.

BOARD ACTION: Approved.

4. **Disclaimer of Interest for the Former Bed of the Payette River, Boise County (Sands, LLC) – Staffed by Kurt Houston, Operations Chief-South – approved**

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one parcel totaling 5.32 acres of the former bed of the Payette River and to require Sands, LLC, to pay a fee of \$600.00 to the Department of Lands for this transaction.

BOARD ACTION: Approved.

5. ***Twin Lakes Dock Association, Inc. v. Idaho Department of Lands, et al., Kootenai County Case No. CV-08-7186* – Staffed by Steve Schuster, Deputy Attorney General – approved**

RECOMMENDATION: Authorize Legal Counsel to execute the *Stipulation for Dismissal*.

BOARD ACTION: Approved.

6. **Timber License Plate Fee Recommendations – Staffed by Betty Munis, Director, Idaho Forest Products Commission – approved**

DEPARTMENT RECOMMENDATION: That the Board direct the Department, in conjunction with the Idaho Forest Products Commission, to proceed with the recommended educational projects.

DISCUSSION: Governor Otter asked if the Board and the Department receives an annual breakdown of how the money has been spent. Director Bacon stated yes.

BOARD ACTION: Approved.

7. **Minutes – approved**

A. Regular Land Board Meeting – February 17, 2009

• **REGULAR**

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

A. Monthly Report

- Despite losses, reserves remain adequate;
- The Investment Board has hired Grantham, Mayo and Capitol Guardian to manage Emerging Market equity mandates;
- Legislation dealing with the Endowment Fund guarantee of school bonds has been introduced in the Senate State Affairs Committee.

B. Investment Report

- Fiscal year-to-date through the end of February the fund was down 31.3%;
- Equity markets were down, both domestically and internationally;
- Interest rates rose which hurt the fixed income account;
- Good news – we have slightly outperformed our benchmark;
- So far this month we are up over 1%;
- The fund and managers are performing as would be expected in these difficult conditions.

Governor Otter asked if any money has been committed to firms who have run into trouble recently. Mr. Johnson stated no.

No action was taken on this agenda item.

9. Request from Empire Lumber Company for Catastrophic Extensions and Interest Relief – Presented by David Groeschl, Assistant Director, Forestry and Fire

DEPARTMENT RECOMMENDATION: Direct the Department to grant a one-year contract extension on all six timber sales but no interest relief.

DISCUSSION: Attorney General Wasden asked for confirmation that Empire Lumber Company has met the qualifications of diligent performance on these contracts. Assistant Director Groeschl stated Empire Lumber Company has met diligent performance on two of the sales. Regarding the other sales, given the current market-related extensions granted in January, the first four expire prior to July 1, 2010, and would qualify; the last two sales would qualify for catastrophic.

If these extensions are granted, Governor Otter asked if the clock starts ticking on July 1, 2010 or does the clock run concurrent with what Empire has already received. Assistant Director Groeschl stated market-related extensions would extend the contract expiration dates by one year. The interest rate paid is calculated back to the original auction date. As those contracts are extended, the interest increases over time due to that longer period of time associated with the sales.

Governor Otter asked about the amount of interest involved. Assistant Director Groeschl stated the Department knows in a broad sense that anywhere from \$4 million to \$6 million dollars is earned each year on stumpage interest. The exact amount has not been calculated for these specific sales.

Governor Otter noted that there are fewer large log mills and the state timber harvests are about two billion board feet behind. He is concerned about what will happen to the capacity to sell larger logs if another large log mill is in jeopardy. Director Bacon stated several large mills operating in Idaho, such as Potlatch Corporation, still maintain large log capacity. The Department believes there will be mill capacity for the big wood for the next ten to twenty years.

Governor Otter stated he is concerned that the loss of one of these larger log mills could be problematic in the future, especially with the increased timber harvest schedule. Assistant Director Groeschl stated Empire plans to rebuild the mill and get the large log side running. In addition, several mills, even though they specialize in or prefer smaller material, still have the capacity to deal with larger logs. However, there are additional handling costs and there is somewhat of a discount at times when they have to do that.

To clarify the Department's request, Attorney General Wasden asked if the Department is seeking to grant a one-year extension on all six timber sales, but no interest relief, which is consistent with past practice. He noted a one-year market extension was granted last month for North Lewis, Divide Saddle, Leftover Lewis and Casey Facey. Big Seed OSR and Pierce Creek South would receive a one-year extension based upon the Board's action at this meeting as well as the other four timber sales. Assistant Director Groeschl responded market-related extensions for the four

sales approved by the Land Board last month required each purchaser to submit a written request stating whether they would like to receive the market-related extension. To date this is the first request received from Empire. The first four sales would qualify under the market-related one-year extensions, and the other two sales would qualify for one-year catastrophic extensions.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board approve the Department recommendation to give a one-year contract extension on all six timber sales, but no interest relief, as has been outlined; that is that the four sales, North Lewis, Divide Saddle, Leftover Lewis and Casey Facey, receive a one-year market extension and that Big Seed OSR and Pierce Creek South receive the one-year catastrophic extension. Controller Jones seconded the motion. The motion carried on a vote of 4-1. (*Aye* – Ysursa, Wasden, Jones, Luna; *Nay* – Otter)

10. Endowment Reform Review Task Force Update – *Presented by Kathy Opp, Deputy Director*

DEPARTMENT RECOMMENDATION: (1) Thank the Endowment Reform Review Task Force and discharge its members from service; (2) Direct the Department to formulate an *Endowment Land Transaction Advisory Committee (ELTAC)* for the express purpose of reviewing the constitutional and Admissions Act language for consistency with modern business practices. Committee objectives and timeline as defined. A key outcome will be the ability of these external experts to assist the Board with legislative and public education efforts should constitutional or Admissions Act changes be warranted. The Department will return to the Board with the proposed committee composition for formal approval at the April 21, 2009 regular meeting.

DISCUSSION: Secretary of State Ysursa commended the Department for taking this action. He stated the obvious composition of this task force would necessitate extremely close communication with the Attorney General's office and other legal staff related to the Board, Admissions Act, Constitution, etc. He asked if that would be implicit in this recommendation. Deputy Director Opp stated in addition to the professionals mentioned in the recommendation, the Department contemplated the benefits of a facilitator to capture the ideas and thoughts of the Task Force, and a deputy attorney general, who could provide counsel on what the constitutional language means today and how the Department has to function.

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

11. FY2010 JFAC Budget Setting – *Presented by Kathy Opp, Deputy Director*

DISCUSSION: Governor Otter commented that JFAC began setting budgets yesterday with a 5% reduction in personnel costs. He objected to the 5% automatic reduction in federal grant and dedicated fund agencies, such as the Department of Fish and Game. Half of the Fish and Game budget comes from the federal government and the other half comes from Idaho sportsmen. He feels Fish and Game is the agency that should make the decision. However, he noted the other side of the argument is whenever state employees receive salary increases, dedicated fund agencies receive the same increases. He added that JFAC is leaving the question open so it can be decided not only on the applicability to the departments, but also on the amounts because the amounts vary between 3, 5, 7 and 9% based on the equation used.

Superintendent Luna commented it is obvious the intent of the letter is to bring to light the fact that this is a revenue generating department and the cut could limit the revenues generated. He compared the situation to the Tax Commission where it was claimed a reduction in staff would decrease tax collections. He wondered if others will make the same claim and this is just one of the many agency letters that the Legislature will receive.

Governor Otter stated he fully expects agencies that share general fund moneys to be the ones eventually limited. Currently it is all agencies. He believes it is beyond the Legislature's capacity to do this because of the dedicated fund nature and federal grants. The federal grant money does not return to the general fund but returns to the federal government. He wonders if the letter might be premature.

Attorney General Wasden stated the Department of Lands and the Land Board have a unique responsibility in that it falls under the auspices of the Constitution and a specifically dedicated constitutional responsibility. He feels the core of this letter is to caution against inhibiting the Board from fulfillment of that responsibility.

Governor Otter responded he could make the same argument for public education. Superintendent Luna agreed. Attorney General Wasden stated the specific constitutional provision here is in terms of the return to the endowment and that is a very unique feature of this responsibility. While there is a constitutional provision for education, for the Controller, for the Governor, for the Attorney General and others, this responsibility is unique in state government because it is to make money, and to do so you have to have the personnel. That is a unique fiduciary responsibility for each Board member.

Superintendent Luna feels the letter may be premature. He agrees with Governor Otter's comments. He asked if the assumption is that there are no inefficiencies to be found in the Department of Lands. He is sure that is not the case as it is with all state agencies. He feels the Board is taking a risk by assuming that no inefficiencies can be found therefore they can not thrive under a smaller budget.

Secretary of State Ysursa stated he does not believe the letter is premature. Budgets are being set now. In fact his budget was set this morning with 5% cut from personnel costs. Governor Otter responded that in his leadership meeting he was told JFAC was leaving that open ended at this time. It has not been decided if the cut will be 5% or who it will apply to and those decisions will be made at a later date. It also is still being decided whether the cut will be 3, 5, 7 or 9%.

BOARD ACTION: A motion was made by Attorney General Wasden to approve and adopt the letter to be delivered to the Honorable Dean Cameron and the Honorable Maxine Bell with all due respect. Controller Jones seconded the motion. The motion carried on a vote of 3-2. (*Aye* – Ysursa, Wasden, Jones; *Nay* – Otter, Luna)

- **INFORMATION**

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

12. 2009 Legislative Session – Status of Department Rule Changes and Legislation –
Presented by George Bacon, Director

DISCUSSION: Secretary of State Ysursa asked if the pending legislation regarding float homes affects the Department. Director Bacon stated the float home legislation seems to be working its way through successfully, as amended, and the legislation changes the definition of a float home to more of a generic definition – any floating residence. The Department reviewed the legislation and does not believe it will impact its administration or how float homes are counted on the lakes. The main purpose of the legislation appears to be to ensure these properties are taxed as property, and it is more about taxation for the counties.

13. Grazing Fee for Calendar Year 2010 – Presented by Elizabeth Felix, Bureau of Surface and Mineral Resources

DISCUSSION: Governor Otter commented when he was buying grass in the private sector, he was charged by the pound, and it appears that direction is being followed here. Ms. Felix stated right now the Department is limited by the formula adopted by the Board and that formula goes with the AUM rates. Governor Otter noted it seems like we are trying to reflect market price. Director Bacon stated that is correct. Other factors are also taken into consideration based on the complicated formula the University of Idaho helped design many years ago.

14. Wind Lease and Request for Proposal – Presented by Sharon Murray, Bureau of Surface and Mineral Resources and Julie Weaver, Deputy Attorney General

DISCUSSION: Governor Otter noted in many cases wind resources are isolated and require access to the grid. He asked how the Department will handle grid access and if the lease covers that topic. Director Bacon stated a number of proposals have been considered. In every case the ownership is mixed. While in some cases the state may be the big owner, the land is not totally state land. One consideration during any negotiation to develop a lease is the ability of the applicant to acquire access to a grid. That would be part of the lease whether in the form of road access, power line rights-of-way, etc. Some access may actually leave the wind farm area and travel across state land. That would all be worked out through the lease.

Ms. Murray stated the Department currently has a situation where an entity is interested in leasing land. They actually have an agreement with the BLM. The state has scattered sections within the land that BLM owns and that is where the wind turbines would be placed. The state also has a big block of land north of that area called the Burley Block. The intent is to place a transmission line across the Burley Block to about Lake Walcott where it could tie into the major power line. The assumption is an easement or lease would go across the land for the transmission lines.

Governor Otter commented Paul Kjellander, Administrator, Office of Energy Resources, is working on an energy corridor which would involve one environmental impact statement depending on the width of the corridor. Mr. Kjellander is contemplating that the corridor will be two, three or four miles wide, which will simplify where the grid will be placed and would include multiple leases for access to the grid. The idea is to have multiple utilities use the same corridor so that environmental impact statements, etc., can be simplified. He asked Director Bacon to provide a copy of the lease to Mr. Kjellander for review. Director Bacon stated he would do so. Director Bacon added that the Department has been working closely with Mr. Kjellander on charting where the corridor will be located.

At 10:08 a.m. a motion was made by Secretary of State Ysursa that the Board, by unanimous consent, resolve into Executive Session pursuant to 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. Without objection, Governor Otter so ordered. (*Aye* – Otter, Ysursa, Wasden, Jones, Luna; *Nay* – None)

• **EXECUTIVE SESSION**

- A. 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.

At 10:33 a.m. a motion was made by Secretary of State Ysursa to resolve into Regular Session. Controller Jones seconded the motion. The motion carried on a vote of 5-0. (*Aye* – Otter, Ysursa, Wasden, Jones, Luna; *Nay* – None) The Executive Session was held in accordance with the Idaho Open Meeting Law pursuant to 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. No action was taken by the Board during the Executive Session.

There being no further business to come before the Board, at 10:34 a.m. a motion was made by Attorney General Wasden to adjourn. Secretary of State Ysursa 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 April 21, 2009 regular Land Board meeting.