



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 17, 2009

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, November 17, 2009, in Boise, Idaho. The meeting began at 9:11 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 – *joined via conference phone at 9:11 a.m.*

For the record, Governor Otter recognized the presence of all members of the Land Board in person and by phone.

Prior to beginning the Consent Agenda, Attorney General Wasden asked that the Board take a moment to express condolences to Superintendent Luna on the passing of his father. Superintendent Luna thanked the Board members for their thoughts and support.

• **CONSENT**

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

**1. Director's Report – approved**

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

*DISCUSSION:* Regarding the Timber Sale Activity Report (Item 1-B), Director Bacon noted that the monthly harvest value is down considerably, which was expected. He stated the downturn is not necessarily the result of lower stumpage prices on bidding but is related to

the fact that customers are unable to sell their finished product until the housing market returns.

*BOARD ACTION:* Approved.

- 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. Lost Girl	CR-31-0017	6,085	MBF	Kootenai	Cataldo (Kingston)
<u>SOUTH OPERATIONS</u>					
B. South John	CR-50-0151	2,935	MBF	Idaho	Payette Lakes (McCall)

*DISCUSSION:* None.

*BOARD ACTION:* Approved.

- 3. Disclaimer of Interest for the Former Bed of the Payette River, Payette County, Idaho (Fallon Enterprises, Inc.)** – Staffed by Kurt Houston, Operations Chief-South – **approved**

*DEPARTMENT RECOMMENDATION:* Direct the Department to issue a disclaimer of interest for five parcels totaling 97.01 acres of the former bed of the Payette River and to require Fallon Enterprises, Inc., to pay the remaining processing fee of \$300.00 to the Department of Lands for this transaction.

*DISCUSSION:* None.

*BOARD ACTION:* Approved.

- 4. Disclaimer of Interest for the Former Bed of the Payette River, Boise County, Idaho (Horseshoe Bend Hydroelectric Company)** – Staffed by Kurt Houston, Operations Chief-South – **approved**

*DEPARTMENT RECOMMENDATION:* Direct the Department to issue a disclaimer of interest for three parcels totaling 1.7 acres of the former bed of the Payette River and to require Horseshoe Bend Hydroelectric Company to pay the remaining processing fee of \$300 to the Department of Lands for this transaction.

*DISCUSSION:* None.

*BOARD ACTION:* Approved.

- 5. Agreement for Purchase of Conservation Easement (Project: Gold Creek Ranch-Phase II)** – Staffed by David Groeschl, Assistant Director, Forestry and Fire – **approved**

*DEPARTMENT RECOMMENDATION:* Authorize Idaho Department of Lands to acquire a conservation easement on 240 acres.

*DISCUSSION:* None.

*BOARD ACTION:* Approved.

- 6. Updated Request on Wolf Lodge Property Site Identified as Surplus by Idaho Department of Fish and Game and Approved for Disposal at the February 17, 2009 Land Board Meeting – Staffed by Steve Elam, Department of Fish and Game – approved**

*DEPARTMENT RECOMMENDATION:* Direct the Idaho Department of Lands to advertise the property for sale at \$241,000 and conduct a public auction to dispose of this surplus property including the mineral rights.

*DISCUSSION:* None.

*BOARD ACTION:* Approved.

- 7. Updated Request on Bennett Property Site Identified as Surplus by Idaho Department of Fish and Game and Approved for Disposal at the February 17, 2009 Land Board Meeting – Staffed by Steve Elam, Department of Fish and Game – approved**

*DEPARTMENT RECOMMENDATION:* Direct the Idaho Department of Lands to advertise the property for sale at \$60,000 and conduct a public auction to dispose of this surplus property including the mineral rights.

*DISCUSSION:* None.

*BOARD ACTION:* Approved.

- 8. Updated Request on Orofino/Grangemont Check Station Property Site Identified as Surplus by Idaho Department of Fish and Game and Approved for Disposal at the February 17, 2009 Land Board Meeting – Staffed by Steve Elam, Department of Fish and Game – approved**

*DEPARTMENT RECOMMENDATION:* Direct the Idaho Department of Lands to advertise the property for sale at \$30,000 and conduct a public auction to dispose of this surplus property including the mineral rights.

*DISCUSSION:* None.

*BOARD ACTION:* Approved.

- 9. Minutes – approved**

A. Regular Land Board Meeting – October 20, 2009

• **REGULAR**

- 10. 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, Endowment Fund Investment Board, introduced EFIB members to the Board. He noted the EFIB has two purposes for today's meeting. The first is to provide a report from the EFIB's independent auditor covering the last audit, and the second is to provide Mr. Johnson's regular report to the Land Board.

EFIB Members:

- **Dean Buffington, Chairman**
- Gavin Gee, Vice Chair;
- Representative Max Black;
- Vaughn Heinrich;
- Sue Simmons;
- Richelle Sugiyama;
- John Taylor, Chairman, Audit Committee;
- Senator Chuck Winder;
- Thomas Kealey (*not present*).

Audit Report

Mr. John Taylor, Chairman, EFIB Audit Committee, provided a review of the audit report completed by Eide Bailly. The auditor's opinion for this year's report is unqualified. Mr. Taylor highlighted the following audit report findings:

- The auditors reviewed internal controls and found no instances of non-compliance or misstatements;
- In addition to the regular audit report, the independent auditor's report on compliance and internal controls found no discrepancies, non-compliant items and no material weaknesses.

Mr. Taylor also noted various supplemental pages and reports that have been added to allow the different beneficiaries to review the performance of the fund over the last few years. Mr. Taylor stated he hopes the supplementary reports will be useful to the Land Board and the beneficiaries.

*DISCUSSION:* For the record, Attorney General Wasden stated he has a matter for full disclosure, and that is his daughter-in-law has recently been employed as an accountant for Eide Bailly. To his knowledge, she was not involved in this project. Governor Otter acknowledged Attorney General Wasden's disclosure.

EFIB Manager's Report

Mr. Larry Johnson, Manager of Investments, introduced EFIB staff:

- Chris Halvorson, Investment Officer, EFIB;
- Andy Potter, Fiscal Officer, EFIB;
- Judy Shock, Administration, EFIB;
- Julie Weaver, Deputy Attorney General, Office of the Attorney General.

Mr. Johnson also introduced the following people:

- Janet Becker-Wold, Asset Consultant, Callan & Associates, Denver;

- Jae Hallett, Eide Bailly (Audit Firm);
- Rhet Hulbert, Investment Manager, Clearwater Associates.

Mr. Johnson noted there are no legal or compliance issues to report.

Mr. Johnson stated when endowment distributions for Fiscal Year 2011 were established by the Land Board in August 2009, the Investment Board committed to monitoring key variables that run behind those assumptions to ensure adequate reserves can be maintained despite the current recession. Mr. Johnson referred to two additional charts. He stated that earlier, Director Bacon reported a drop in land revenues for this fiscal year. However, the lower revenues are actually in line with the Department's earlier projections. The endowments have received approximately 37% of the year's total forecasted revenues in the first four months of the current fiscal year, which is typical. Therefore, at this point, Mr. Johnson stated revenues are consistent with the level used by the EFIB in preparing the cash flow forecasts used to set the FY2011 distributions.

Mr. Johnson stated the good news is that the other income source for the endowments, which is the return on the endowment funds, is running higher than anticipated. Land revenues coming in at expected levels, combined with higher than expected fund revenues, equals reserves that are a little bit higher than expected. Currently the Public School Endowment has about three years of distributions in reserve and all of the other endowments have even more. As a result, the EFIB believes all endowments have reserves sufficient to maintain distributions in 2012 and beyond.

Investment Report:

- The report covers through October 31, 2009;
- The Fund lost 1.6% in October; fiscal year-to-date total: 11.3%, which is about even with the benchmark;
- Active managers are performing as expected;
- Through November 16, 2009 the Fund is up another 5.5%, which brings the fiscal year-to-date total to 17%;
- EFIB Return Against Peers Report:
  - The report shows the range of returns from more than 100 public funds;
  - The Idaho endowment fund ranks in the 15<sup>th</sup> percentile (1=good; 100=bad) for the third quarter of calendar 2009;
  - For the last five years, the endowment fund ranks in the 10<sup>th</sup> percentile with a better performance than 90% of other public funds;
  - The endowment fund finished the last quarter ahead of PERSI, but PERSI finished ahead of the endowment fund over longer time periods.

Annual Report

Certain annual reporting requirements for the Investment Board are laid out in the Land Board's Asset Management Plan.

- The total fund decreased 18% in 2009;
- Earnings reserves went down 20%;
- Receipts from Lands dropped about 17%;
- Distributions were up almost 10% to \$42 million;

- For the last five years, the average return was a positive 2.6%;
- There are no material violations in investment policy or guidelines;
- Report on EFIB meetings:
  - Five board meetings were held for the year ending October 31, 2009;
  - 86% attendance (5 members had perfect attendance at all meetings);

*DISCUSSION:*

*QUESTIONS ON THE AUDITED FINANCIAL STATEMENTS:*

Governor Otter asked about the wording in the Eide Bailly Audit Report on page 2.

*(excerpt from Financial Statements for the Fiscal Year Ended June 30, 2009, page 2)*

“The schedules on pages 32 through 34 have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on them.”

Governor Otter asked why there is no opinion on the quality of the pages which refer to returns of the asset managers. Mr. Johnson stated that while EFIB staff is confident in the numbers, it has been a challenge for the auditor to express an opinion as you move to four or five years out. Over time, investment managers have been discharged, so the difficulty has been integrating records of managers who were discharged four and five years ago. Eide Bailly auditing standards are very high, and currently there is not enough documentation to meet the necessary auditing requirements.

Governor Otter asked if in the future the investment staff will have enough documentation to meet that standard. Mr. Johnson stated yes: investment staff is currently keeping the necessary level of records.

Governor Otter next asked about the final paragraph on page 4 of the Endowment Funds FY2009 Financial Statements:

*(excerpt from Financial Statements for the Fiscal Year Ended June 30, 2009, page 4)*

“The financial assets of all institutions are pooled for investment purposes and distributions are based on their proportionate share of the total pooled fund. Assets of the Public School endowment account for approximately two-thirds of the total of the Endowment Funds.”

Governor Otter noted as beneficiaries obtain certain assets over time, some of those assets are more valuable for one beneficiary than for another. If a section of land is sold for \$100, and another section of land is sold for \$10,000, and then that \$10,100 is pooled into five different stocks, with two stocks losing and three stocks gaining, with a net gain overall, is that money then proportioned to the beneficiaries accordingly? In other words, the beneficiary who received \$100 receives a lesser proportionate share than the beneficiary who received \$10,000? Mr. Johnson stated yes. Each endowment is accounted for separately. Governor Otter asked if those numbers have been extracted from the pool figures. Mr. Johnson stated yes. As an example, Mr. Johnson stated it is similar to the State of

Idaho's 401(k) plan where all of the money is pooled for investment purposes, but the record keeper keeps track of how much investment income is allocated to each account.

Mr. Johnson stated that the Department of Lands provides detailed records on where every dollar of land revenue comes from, including which endowment it comes from and whether it goes to the Permanent Fund or to the Earnings Reserve Fund. All of that information is carefully tracked and the audit report confirms that the EFIB has done a good job of keeping track of where the money is for each individual endowment.

Governor Otter referred to page 17:

*(Excerpt from Financial Statements for the Fiscal Year Ended June 30, 2009, page 17)*

"Federal law also requires that losses to the Agricultural College fund must be made up by the State, but the methodology for restoring losses to that endowment has not been established."

Referring to the paragraph above, Governor Otter asked why that protocol has not been established. Mr. Johnson stated this is an issue which was discovered only a couple of years ago, so it is relatively new. It would be within the purview of the Legislative to establish how they would choose to do that. Governor Otter asked the legislative members of the EFIB to comment and Senator Chuck Winder responded that they were working on it.

Attorney General Wasden asked Mr. Jae Hallett, Eide Bailly, if the independent auditors received full cooperation from the EFIB, the State Land Board and associated staff from both boards in the preparation of this audit. Mr. Hallett stated yes. They did an excellent job and the auditors appreciated the preparation of the documents.

Referring to Governor Otter's question from page 2 of the audit report, Mr. Hallett stated the problem is that the records have not been tracked for a full five years. Until recent years, only three years of data were reported and audited. Mr. Hallett offered that Eide Bailly would be happy to try to audit the one or two out years that have never been audited. Governor Otter stated he understands the problem and he is mostly satisfied with Mr. Johnson's belief in the correctness of the figures.

Governor Otter stated while he is not suggesting there are any deficiencies in the safeguards, reporting or values of the figures or correctness, but that he does not want any surprises. Establishing the methodology for the Agricultural College, and having to go into the general fund and take money out to make up any shortfall is something we should turn our attention to and get done.

Attorney General Wasden expressed his appreciation to the members of the EFIB for the tremendous effort and professionalism they put forth and the hours that they spend doing so. Governor Otter and Secretary of State Ysursa concurred.

Secretary of State Ysursa stated in these economic times it speaks volumes about the work of the EFIB that the distribution to Public Schools is \$31.3 million for Fiscal Year 2010 and that the same amount will apply for Fiscal Year 2011.

No action was taken on this agenda item.

**11. Review of Public Relations Contract** – Presented by Kathy Opp, Deputy Director, Bob Moore, Moore Information, and Mike Tracy, Tracy Communications

Deputy Director Opp introduced Mr. Bob Moore of Moore Information.

Mr. Moore provided a brief highlight of the follow-up public opinion survey:

- The survey was conducted statewide among voters and teachers;
- Today 69% say they are aware of the Board versus 59% a year ago;
- Today 35% statewide know what the Board does versus 28% a year ago;
- 59% of voters statewide support the assigned role of the Board;
- Support grows to 71% after voters are informed that \$60 million is generated for schools based on the Board's management activities;
- Voters considered fish and wildlife habitat, forest products, jobs, recreation and revenues for schools to be important uses of state lands;
- Voters considered the most important use of school lands to be the generation of revenue for schools;
- Voters widely support user fees for recreation and maintenance of public land, but using those fees to support public schools did not generate majority support; voters were divided on that issue;
- In terms of providing more funding for public schools, voters narrowly supported increasing timber harvest on state lands but are divided on increasing mining activity.

*DEPARTMENT RECOMMENDATION:* Direct the Department to engage in a professional services agreement under the Board's contracting authority to continue the public education program related to endowment lands. The estimated cost for these professional services in any fiscal year shall not exceed \$85,000. Additional projects may be added with prior approval from the Board.

*DISCUSSION:* Secretary of State Ysursa cited an Idaho Supreme Court Case, *Ameritel Inns, Inc., v. The Pocatello-Chubbuck Auditorium or Community Center District, dba The Pocatello Convention & Visitors Bureau* as possibly having an impact on the Board's decision for this agenda item. He suggested that the Attorney General's office may need to give the Board guidance on the effect of that case and how far the Board can go as it relates to the proposed constitutional amendments and the expenditure of public funds.

Attorney General Wasden agreed. While he believes the educational effort needs to continue, he is concerned that the Board "dot our I-s and cross our T-s" with regard to the expenditure of public funds as it relates to the constitutional amendments. He agrees that the Board will need a legal analysis to make certain it does not cross that line. While he supports the communications plan, he wants to preserve that one little segment of it for further legal analysis so that the Board can act properly in this case.

Governor Otter recalled that the genesis of this educational effort was an understanding of what endowment lands really are, and it was generated after several legislative proposals were advanced that obviously spoke to a good intent but were totally in violation of this Board's fiduciary responsibility for management of those lands. He asked if the 105 legislators have been polled to see if they understand what endowment lands are. He

commented that may be where we need to start because it seems like the greatest misunderstanding was there at one time.

Deputy Director Opp stated the Department would like to get a presentation in front of a couple of the legislative committees this year to explain some baseline awareness issues related to endowment lands and concepts the Board is exploring with 2012. A big effort this year is to get in front of endowment beneficiaries to explain where the Endowment Land Transaction Advisory Committee (ELTAC) findings came out and why the added flexibility could enhance potential earnings in the future. Director Bacon and Deputy Director Opp will be scheduling meetings and educational forums with legislators during the next session.

Governor Otter stated he would encourage the Department to get in front of the resource committees in both bodies to not only share the data that has been accumulated from the baseline, and the informational level that people now have, but also the basics of what can and cannot be done with endowment lands.

*Noted for the Record:* Governor Otter recognized the presence of Deputy Director Opp's parents in the audience. He thanked them for their attendance at today's meeting.

**BOARD ACTION:** A motion was made by Secretary of State Ysursa to approve the Department's recommendation with the caveat on the expenditure of public funds, as iterated by Attorney General Wasden. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

*[Excerpt verbatim] Attorney General Wasden: "Governor, and I completely agree with that. I think that this educational effort needs to continue, but I am concerned that we dot our 'I-s' and cross our 'T-s' with regard to the expenditure of public funds as it relates to the constitutional amendments. We just need to be very cautious here, and we do need to do some legal analysis to make certain that we do not cross that line. That's not a good thing for this Board to do. So I will support the communications plan, but I want to preserve that one little segment of it for further legal analysis so that we can act properly here."*

**12. Request by Three Rivers Timber, Inc., for Hardship Termination of the South Shanghai Timber Sale (TS-40-3644) – Presented by David Groeschl, Assistant Director, Forestry and Fire**

**DEPARTMENT RECOMMENDATION:** Approve hardship termination of the South Shanghai Timber Sale (TS-40-3644) and assess damages of \$150,006.70 to Three Rivers Timber, Inc.

**DISCUSSION:** Governor Otter questioned whether the Board should attempt to collect the damages. Director Bacon stated that is a question that could be reviewed with legal counsel. However, one of the unknown factors is whether the assets, the mill, will sell. If the mill sells, the people who owe money to the State would walk away owing money when at that point they would have the money to pay the debt. When looking at the situation in that light, we will have to wait to see how the scenario plays out on the sale of the mill. The Department's understanding is that it will probably be a break-even situation. If the State finds itself trying to get blood from a turnip, a decision would have to be made based on that scenario.

Governor Otter stated the receivership records show a pretty dire circumstance. He is concerned about rising legal fees on this and other sales.

Attorney General Wasden stated this item has had the same cost benefit analysis that has to be done with every collection activity to determine whether more money is being spent than will be collected. Governor Otter asked if that is something that would normally be done anyway. Attorney General Wasden stated absolutely.

*BOARD ACTION:* A motion was made by Attorney General Wasden to move adoption of the Department recommendation that the Board approve the hardship termination of the South Shanghai Timber Sale, TS-40-3644, and assess damages of \$150,006.70 to Three Rivers Timber, Inc. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

**13. Authorization to Submit Pending 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, to the 2010 Legislature** – *Presented by Eric Wilson, Mineral and Navigable Waters Program Manager, Bureau of Surface and Mineral Resources*

*DEPARTMENT RECOMMENDATION:* Direct the Department to submit Pending Rules 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,” to the 2010 legislative session.

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

*BOARD ACTION:* A motion was made by Attorney General Wasden to move adoption of the Department’s recommendation that the Department submit the pending rules 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,” to the 2010 legislative session. Controller Jones seconded the motion. Governor Otter called for a *roll call vote*.

*ROLL CALL VOTE:* Governor Otter: nay; Secretary of State Ysursa: aye; Attorney General Wasden: aye; Controller Jones: aye; Superintendent Luna: nay. Vote tally: 3 aye (Ysursa, Wasden, Jones); 2 nay (Otter, Luna).

*\* Superintendent Luna left the meeting at 10:28 a.m.*

*\* Governor Otter left the meeting at 10:30 a.m. and returned at 10:34 a.m.*

**14. Rental Rate Recommendations for Grazing, Farming, Conservation, Noncommercial Recreation and Communication Site Leases** – *Presented by Bob Brammer, Assistant Director, Lands, Minerals, Range*

*DEPARTMENT RECOMMENDATION:* Approve the Department’s recommendation of rental rate determination for each of the five lease types covered by IDAPA 20.03.14.

*DISCUSSION:* Governor Otter recalled earlier discussions with the Grazing Subcommittee about non-grazers managing the ground to remove the fuel load because of the potential for wildfire. Assistant Director Brammer stated there were some concerns and discussions about non-grazing as related to wildfire and rangeland productivity decline over time. The Department's recommendation is to handle those issues on a case-by-case basis based on an assessment by area staff. It would be applicable on certain lands; other lands it may not be. Lease provisions and mitigation measures would be developed to specifically address those concerns.

*BOARD ACTION:* A motion was made by Controller Jones to approve the Department's recommendation of the rental rate determination for each of the five lease types covered by IDAPA 20.03.14. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

**15. Results of Conflicted Lease Auctions** – *Presented by Bob Brammer, Assistant Director, Lands, Minerals, Range*

*DEPARTMENT RECOMMENDATION:* (1) The Department recommends the Land Board award the leases to the high bidders for the auctions held for leases G600045, G600046, G430003, G430005, G800038, G800039, G800040, G800041 and G800044; (2) The Department recommends the Land Board award lease G430004 to Greg Johnson, the second high bidder, based on the withdrawal by Kyle Stapleton, the high bidder, after the auction. This action will result in Mr. Stapleton forfeiting his deposit of the lease first-year rent.

*DISCUSSION:* Governor Otter asked for the deposit amount. Assistant Director Brammer stated \$244.90. Governor Otter asked if that amount covered the Department's cost. Assistant Director Brammer stated it did not. The Department's cost related to the improvement valuation was slightly higher, and there are other costs associated with the auction. However, in this case the new \$250 application fee was not used. The new fee would have helped to cover costs associated with processing the application and setting up the auction.

Governor Otter asked what would stop him and his neighbor from making a deal on his lease. The neighbor conflicts the lease and then turns it down because he does not want to pay for the improvements. Assistant Director Brammer stated the Department has applicants sign an affidavit of non-collusion that they have not made, or offered, some type of compensation for withdrawal of a bid. However, the Department knows there are deals that happen, and there is no way to prove it. Governor Otter suggested bonding the asset or the improvements so that is a foregone conclusion. He asked if the high bidder knew the improvement costs before making his bid. Assistant Director Brammer stated bidders do not know at the time they apply. However, they do know at the time of auction. That is where the Department gets into a little bit of a bind because the applicants enter the process by submitting an application not knowing where improvement values may fall out. The Department does not want to incur the expense of an improvement valuation if the lease does not go to auction and maintains that rough estimates can be made for improvements. The Department can inform applicants what those creditable improvements are. Governor Otter asked if the Department currently does that. Assistant Director Brammer stated the Department does not list those specifically. However, the

applicant can ask that question – what are the creditable improvements – by visiting with the area office staff.

Secretary of State Ysursa asked if Mr. Stapleton knew the value of the improvement when he participated in the auction. Assistant Director Brammer stated yes, he did. Secretary of State Ysursa asked if the Department puts in dollar-increment limits. He noted the other bid was \$251, and the winning bid was \$252. Assistant Director Brammer stated area staff has the discretion to set that increment. It is generally set at \$1. Assistant Director Brammer recalled the historical Chipmunk Grazing Association auction that went on for four hours because of one-dollar increments and ended up around \$160,000. However, he noted that is something the Department can review.

*BOARD ACTION:* A motion was made by Secretary of State Ysursa to approve the Department's recommendation. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

**16. Request for Final Approval to Purchase 160 Acres of Timberland near Rathdrum ID ("Siverson T" Property) – Presented by Jane Wright, Strategic Business Analyst**

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

*DISCUSSION:* None.

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

\* At 10:57 a.m., a brief recess was taken; at 11:06 a.m. the meeting resumed.

**17. Request for Land Board Approval to Complete a Land Exchange between the State of Idaho Department of Lands and Avista Corporation – Presented by Kate Langford, Land Use Planner, Sr.**

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

*DISCUSSION:* Governor Otter asked if there are any existing private contiguous property owner easements or rights-of-way across the land that the State is trading to Avista. Ms. Langford stated no, there are not.

*BOARD ACTION:* A motion was made by Attorney General Wasden to move the Department recommendation to complete the final exchange as described. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

- **INFORMATION**

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

**18. Biomass** – Presented by David Groeschl, Assistant Director, Forestry and Fire

*DISCUSSION:* Attorney General Wasden commented that one of the techniques of forestry is to remove the limbs, etc. Those items become the slash piles and are left on the ground for a period of time to drop nutrients back into the forest soils. He asked if there would be a reduction in timber growth in future years because of the removal of those nutrients for consumption in an energy facility of some sort. Assistant Director Groeschl stated the Department looks at it by site type. The amount of residual biomass that should be left on a site varies by the type of site, and that is the soils, the steepness of the site and other factors. On the drier, sandier, poorer sites the Department tries to leave more residual biomass for nutrient cycling purposes. A lot of the nutrients are in the needles, and research has shown that needles can actually drop off during harvesting so that needles and fine twigs stay on the site. Nutrients actually leach out within nine months to a year. In addition, 40-50% of a tree's biomass is actually below ground in the stump and root systems. About 80-90% of a tree's root system is within 18 inches of the ground's surface so there is still a significant amount of biomass that stays in place underground as well as some of the fines that are left on site.

Governor Otter noted another use for the slash piles is for herbicide, insecticide and bacterial control by stacking up the limbs. Rather than attack a healthy tree, bugs would go into the slash pile and then the pile was burned. He asked if an accommodation of some sort would be made for a commercial application of insecticide in order to protect trees from Tussock moth or bark beetle. Assistant Director Groeschl stated he does not have a definitive answer to that question. However, the Department will continue to monitor the sites for outbreaks. He noted that one of the things that will typically happen is if the piles are chipped, usually there is a delay between the time that a sale might be finished and when the piles are actually chipped so it is almost the same effect with chipping the piles as you might have with burning the piles.

Governor Otter asked if the Department has made an assessment on the BTU value of Idaho's seven main species. Assistant Director Groeschl stated the Department does have a table that shows what the BTU value is per pound of wood, and that table could be sent to all of the Board members. Governor Otter commented that it will differ between species. Assistant Director Groeschl stated it does, and some species are better than others. He added that juniper is actually a good one.

Governor Otter asked if the Department has determined, or at least investigated, what an economically-sized megawatt plant would be. He has heard anywhere from 50 down to 25, 20. Assistant Director Groeschl stated the Department has looked at several proposals from various companies, and they range in size. Some believe the optimal size is the community-based biomass facilities, between 5 to 15 megawatts, while others have approached the Department with plans for larger facilities up to 50 megawatt. From a supply standpoint, Assistant Director Groeschl stated they need to size the plant based on the realistic

availability of supply from both private and state lands within a certain drive distance from the facility.

Governor Otter stated he has been told that a 50-megawatt power plant would require 800,000 green ton a year in order to operate at maximum load. Assistant Director Groeschl stated one of the proposals for a 50-megawatt plant estimated they would need 550,000 green tons per year, but the Department has also heard higher numbers.

Governor Otter commented 550 up to say 800 is a sizeable chunk of land. He asked if the State can get that amount within a 130-mile radius. Assistant Director Groeschl stated if it is based off of state lands only, or state and private lands, then it is highly doubtful that it would come off within that distance given that federal lands make up 70% of the land base in northern Idaho. That fact has to be factored into the equation.

Governor Otter asked if the Department has discussed the economics with industry. He asked what their amortization would be and how quickly they would want to pay that off. Assistant Director Groeschl stated industry has not shared their financial payback information. Governor Otter stated if you were going to invest your money, you have to attract capital. You are going to have to show a relatively fairly good return and that normally takes seven to eight years. So that would be a seven-to-eight year supply at 550 to 800,000 tons per year for a 50-megawatt plant.

Director Bacon stated some of the information he has received indicates they do not believe they can secure bank loans without showing a 15-20 year supply. It seems that is where there is a huge disconnect on what they want to do and what they can do.

Governor Otter commented this would be a good topic to present to the legislature. He believes there may be some legislative configuring in order to be able to accomplish some of this. He asked what other biomass resources could be mapped within the area outside of forest products (trees). He asked if the Department has looked to see what else could be used in these plants. Assistant Director Groeschl stated some of these folks have considered municipal waste as a potential biomass source. They are considering various types of designs for these systems where they can incorporate other potentials as well.

Governor Otter asked if stubble would also be considered. Assistant Director Groeschl stated the Department has not considered stubble in its analysis because the endowment lands tend to be in the north and are not agricultural land.

No action was taken on this agenda item.

At 11:38 a.m., a motion was made by Secretary of State Ysursa to enter 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 the legal ramifications of and legal options for pending litigation or controversy not yet being litigated but imminently likely to be litigated. Secretary of State Ysursa 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. Director Bacon noted that a correction is needed to the motion to include Idaho Code § 67-2345(1)(d), to consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code.

Secretary of State Ysursa amended his motion to include Idaho Code § 67-2345(1)(d). Controller Jones consented to, and seconded, the amended motion. Governor Otter called for a *roll call vote*.

*ROLL CALL VOTE:* Governor Otter: aye; Secretary of State Ysursa: aye; Attorney General Wasden: aye; Controller Jones: aye; Superintendent Luna: absent. Vote tally: 4 aye (Otter, Ysursa, Wasden, Jones); 1 absent (Luna).

- **EXECUTIVE SESSION**

- A. **Idaho Code § 67-2345(1)(d) – to consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code**
  - Update on Specific Endowment Land Issues
- 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 litigation
  - Grazing lease litigation

At 12:14 p.m. a motion was made by Secretary of State Ysursa that the Board resolve into Regular Session and that the official minutes of the meeting reflect that no final action was taken, or final decision made, during the Executive Session. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

*Action Taken on Executive Session Item*

*BOARD ACTION:* A motion was made by Attorney General Wasden that the Board authorize the Attorney General's office to execute a settlement in the Lazy Y Ranch case, Federal District Court Case Number 06-CV-340-MHW, for settling that case, for dismissal of the lawsuit, payment of the attorneys' fees and resolution of the case. Attorney General Wasden submitted a draft of the Settlement Agreement and Joint Stipulation of Dismissal for the record. Governor Otter noted that without objection the draft will be included in the record. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Superintendent Luna being absent for this vote.

At 12:16 p.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 Superintendent Luna 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 15, 2009 regular Land Board meeting.