



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

State Board of Land Commissioners
Regular Land Board Meeting – October 20, 2009
Final Minutes

Video Conference Meeting Held Off-Site at University of Idaho, Moscow and Boise

On October 20, 2009 the State Board of Land Commissioners held their second off-site meeting of the calendar year. Due to budget constraints, the meeting was held by video conferencing between the University of Idaho, Moscow, and the University of Idaho, Water Center, Boise.

Governor Otter opened the session by welcoming University of Idaho President M. Duane Nellis, the recently installed 17th President of the University of Idaho.

President Nellis expressed his appreciation for the economic assistance brought to higher education through the diligent efforts of the State Board of Land Commissioners, the Department of Lands and the Endowment Fund Investment Board. He acknowledged the collaborative relationship between the University of Idaho and those who manage endowment lands and investments and noted that there are many more opportunities for collaboration. He thanked the Land Board, Department of Lands and Endowment Fund Investment Board for their vision and willingness to "think out of the box" in working with the University of Idaho and other higher education in the state.

As part of the State Land Board's educational outreach, Governor Otter provided additional information, historical and financial, about Idaho's endowment land management. Three charts (as shown on pages 2-3) were displayed.

CHART 1

Establishment of the Endowments

Section 8 of the Idaho Admission Bill: The United States granted 72 sections of land “for university purposes.” The proceeds from the disposal of these lands are required to be deposited in “a permanent fund to be safely invested” and the income is to be used “exclusively for university purposes.”

IDAHO DEPARTMENT OF LANDS

Section 10 of the Idaho Admission Bill: The United States granted 90,000 acres of land “for the use and support of an agricultural college . . .”

Section 11 of the Idaho Admission Bill: The United States granted 100,000 acres “for the establishment and maintenance of a scientific school.”

CHART 2

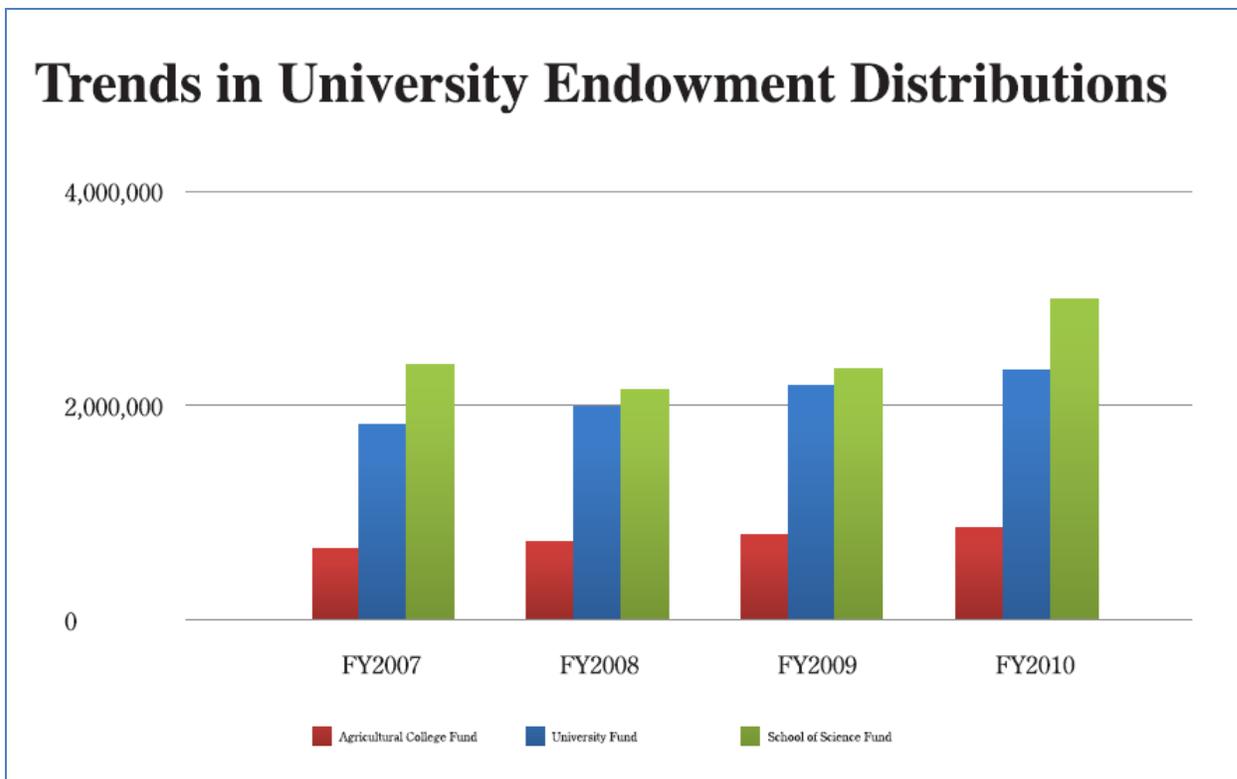


University of Idaho Endowment Assets

as of June 30, 2009

	Acres	Est. Land Value	Financial Assets	Total Value
Agricultural College	33,526	\$18,263,870	\$17,571,375	\$35,868,771
School of Science	75,835	\$50,088,231	\$61,834,039	\$111,998,105
University of Idaho	54,656	\$32,840,953	\$50,544,094	\$83,439,703
Total	164,017	\$101,193,054	\$129,949,508	\$231,306,579

CHART 3



Governor Otter:

“With great wisdom the Founding Fathers of Idaho established in the State’s constitutional language nine endowments to generate revenue for specific trust beneficiaries in perpetuity. Three of those trusts reside within the University of Idaho. Excerpts from the granting language for the Agricultural College Fund, the School of Science Fund and the University Fund, demonstrate how each of these funds were established for a specific purpose under the Idaho Admissions Bill. Section 8 of the Idaho Admissions Bill granted 72 sections for the University Fund; Section 10 granted 90,000 acres for the Agricultural Fund and Section 11 granted 100,000 acres for the Science Fund.

The State Board of Land Commissioners manages a bounty of assets for each trust. As shown in Chart 2, assets for all three trusts total over 164,000 acres of land with an estimated land value in excess of \$100 million and financial assets totaling nearly \$130 million.

Chart 3 shows the trends in University endowment distributions. The bar chart demonstrates the general trend toward increasing annual distributions of the three dedicated endowment funds assigned in the Idaho Constitution for the Agricultural College Fund, the University Fund and the School of Science Fund. As part of an overarching Asset Management philosophy, the Land Board is committed to managing these trust funds in such a way as to provide a steady and increasing annual distribution that beneficiaries can count on even in tough times, and I think that would be now.”

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STATE BOARD OF LAND COMMISSIONERS
October 20, 2009 Regular Meeting
Video Conference Meeting Held Off-Site at University of Idaho, Moscow and Boise

The regular meeting of the Idaho State Board of Land Commissioners began at 9:19 a.m. (Pacific). All members of the Land Board and Director George Bacon, Secretary to the Board, participated in the meeting from the University of Idaho, Moscow. Additional Land Board and Department of Lands' staff participated from the University of Idaho, Water Center, Boise. The Honorable Governor C. L. "Butch" Otter presided at the Moscow location.

The following State Land Board members were present at the Moscow location:

Honorable Governor C. L. "Butch" Otter
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.

Prior to beginning the Consent Agenda, Director Bacon thanked President Nellis for his kind remarks. Director Bacon commented that he is also a University of Idaho alumnus. He stated the Department works very hard to ensure that the endowment lands are well managed. He also noted the presence of some of the Department's local staff in the audience.

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 – October 2009
- B. Timber Sale Activity Report
- C. Timber Sale Official Transactions – September 2009
- D. Legal Matter Summary
- E. Bureau of Surface and Mineral Resources Official Transactions – September 2009
- F. Fire Settlement Information
- G. Fire Season Report

DISCUSSION: In referring to the Timber Sale Activity Report, item B, Director Bacon highlighted the chart showing monthly harvest volume. As the Department projected, the monthly harvest is down and far from normal. The downturn is not anticipated to severely impact income. The Department continues to closely monitor the situation and is hopeful, as the economy recovers, that those numbers will start to inch up again, especially next spring.

Governor Otter asked how far below the projected harvest of 223 million board feet will the Department be for this year. Director Bacon estimated about 30% statewide. Every year the Department anticipates that the harvest will equal sales, but those contracts cover a period of years, which allows industry some flexibility to play the markets. While that flexibility may

result in higher bidding at the table, the down side is if purchasers choose not to harvest, the Department is unable to control the flow of wood to the mills.

Director Bacon directed the Board’s attention to the Fire Season Report, item G. He noted this is the last report for this fire season, and it was a great year.

Governor Otter asked if there is any residual remaining in the fire fund. He recalled that a certain amount of money is appropriated each year after which deficiency warrants are utilized. Director Bacon stated that in some years the season is started with a surplus. However, he does not believe that occurred this year due to a change in how the deficiency warrants are handled. Prior to the current year, the Department made projections for deficiency warrants. This year the Department started with zero so there was no start-up money for suppression.

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. Childs Creek OSR	CR-30-0564	2,685	MBF	Shoshone	St. Joe (St. Maries)
B. No Bowl Pole	CR-30-0568	375	MBF	Clearwater	St. Joe (St. Maries)
		167,840	LF		
C. Bull Run Creek	CR-31-0014	1,585	MBF	Kootenai	Cataldo (Kingston)
<u>SOUTH OPERATIONS</u>					
D. North Gulch Pulp	CR-42-5030	16,470	MBF	Clearwater	Maggie Creek (Kamiah)

DISCUSSION: Governor Otter asked if the Department is on schedule with the Maggie Creek Pulp Plan. Director Bacon stated the Department anticipated it would take ten years to clean up the pulp stands and, yes, the Department is on schedule. The North Gulch Pulp sale will help the Department stay on track due to the nature of the terrain and the way the timber is positioned. Sale sizes will differ. The North Gulch Pulp sale is a larger sale. The Department’s plan is to harvest two to three million feet per year, and this sale alone is a million-plus.

✚ Prior to introducing agenda item 3, which is a disclaimer of interest on the Salmon River, Director Bacon noted this is one of two disclaimers on the agenda; the second disclaimer is on the Regular Agenda. Director Bacon commented that he would take a brief moment to review for the Board why the Department handles disclaimers on rivers.

[Director Bacon Verbatim Start]

“As you know, the State owns the beds and banks of submerged lands, or formerly submerged lands that were part of navigable waterways. This ownership is for land below the ordinary high water mark at the time the State was admitted to the Union.

As a trustee, the Board has a fiduciary responsibility to protect these lands on the behalf of the public. The State’s ownership is complicated by the fact that rivers change their location over time. In addition, Idaho case law has established that title to public trust lands above the ordinary high water mark may be questioned. For example, a riparian owner can acquire ownership through accretion. Accretion is a gradual deposit of material by water causing it to become dry land. Adjacent land owners can claim title to these alluvial deposits, which are above the ordinary

high water mark and contiguous to their property. Because of man's modification of river flows, and intervening hydrologic events since statehood, establishment of the ordinary high water mark may be complex and difficult. However, Idaho Code 58-104(9) helps us define the natural, or ordinary high water mark, as a line which the water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. Therefore, determining the state's ownership is predicated upon the physical location of that line.

Generally, land owners seeking to clear title over disputed lands would have to go to court in a Quiet Title action. Given the complexity and expense of resolving these disputes, the Board has developed a process to evaluate whether the claim of ownership is meritorious. If it is determined that the state has a valid claim to the lands in question, then the Board refuses to disclaim the property. On the other hand, if the upland owner has a valid claim, the Board has a disclaimer process that ensures public trust interests are not compromised. This process has the Department first locate the ordinary high water mark. Above this location the Board usually requires a twenty-five foot public right-of-way as a condition for disclaiming title to any disputed land. This process is codified in section 58-119(a), Idaho Code, and we believe it preserves the public trust interest while resolving property line disputes between the state and adjacent owners.

Before you today in the consent agenda is a small disclaimer to the City of Riggins. The Department has examined it and determined accretion would be involved. And in exchange for a twenty-five foot public right-of-way, we're recommending a disclaimer of interest on a parcel totaling .742 acres to the City of Riggins."

[Director Bacon Verbatim End]

DISCUSSION: Governor Otter asked if the twenty-five foot right-of-way provision is included in Idaho Code. Secretary of State Ysursa stated it is not in code; it is in Land Board policy.

3. Disclaimer of Interest for the Former Bed of the Salmon River, Idaho County (City of Riggins) – approved

DEPARTMENT RECOMMENDATION: That the Board direct the Department to issue a disclaimer of interest for one parcel totaling 0.742 acres of the former bed of the Salmon River and require the City of Riggins to pay the remaining processing fee of \$300 to the Department of Lands for this transaction.

DISCUSSION: None.

BOARD ACTION: Approved.

4. Request for Approval of Lease Adjustment to Communication site Lease M8066 held by Aircell, LLC, including the Sublease of a Portion of M8066 to T-Mobile West Corporation – approved

DEPARTMENT RECOMMENDATION: That the Board direct the Department to approve the sublease approval lease adjustment to communications site lease M8066, including the change in annual rental adjustment method.

DISCUSSION: None.

BOARD ACTION: Approved.

5. **Minutes – approved**

A. Regular Land Board Meeting – September 15, 2009

• **REGULAR**

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

- A. Monthly Report
- B. Investment Report

Mr. Johnson reported that returns for September were 3.5%, and fiscal year-to-date returns were up to 13%. Managers performed as expected, and endowment fund reserves remain healthy. There were no significant actions of the Investment Board, and there are no legal actions to bring to the Land Board's attention. The November Land Board meeting will be a joint meeting with the Endowment Fund Investment Board. The EFIB will present its annual report, including a report on its financial statement, at that time.

BOARD ACTION: A motion was made by Controller Jones to adopt the Endowment Fund Investment Board Manager's Report. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

7. **Disclaimer of Interest for the Former Bed of the Snake River, Twin Falls County (D & J Miller, LLC) – Presented by Kurt Houston, Operations Chief-South**

RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one parcel totaling 2.26 acres of land that is not part of the bed of the Snake River and to require D & J Miller, LLC, to pay the remaining processing fee of \$300 to the Department of Lands for this transaction. As a further condition, D & J Miller, LLC, shall grant to the State of Idaho an easement twenty-five feet in width for a public use right-of-way along and adjacent to the existing Ordinary High Water Mark of the Snake River.

DISCUSSION: A verbatim transcript will be available upon written request to Idaho Department of Lands, Attn: Susan Terry, Post Office Box 83720, Boise ID 83720-0050; email sterry@idl.idaho.gov; fax (208) 334-3698.

BOARD ACTION: A motion was made by Attorney General Wasden to direct the Department of Lands to issue a disclaimer of interest for one parcel totaling 2.26 acres of land that is not part of the bed of the Snake River and to require D & J Miller, LLC, to pay the remaining processing fee of \$300 to the Department of Lands for this transaction. As a further condition, D & J Miller, LLC, shall grant to the State of Idaho an easement twenty-five feet in width for a public use right-of-way along and adjacent to the existing Ordinary High Water Mark of the Snake River. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

8. **Authorization to Submit IDAPA 20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation and Communication Site Leases, as a Pending Rule – Presented by Bob Brammer, Assistant Director, Lands, Minerals, Range**

DEPARTMENT RECOMMENDATION: (1) That the Board direct the Department to submit the revised IDAPA 20.03.14, "Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation and Communication Site Leases" to the 2010 legislative session as a pending rule; (2) Direct the Department to return to the Land Board at the November 2009 meeting with proposed recommendations addressing the rental rate structure for grazing, farming, conservation, noncommercial recreation and communications site leases and any necessary definitions.

DISCUSSION: Secretary of State Ysursa asked if there was any discussion about changing the formula used to calculate the AUM rate. Assistant Director Brammer stated discussions and comments received did not focus specifically on the formula. The concern was deleting the definition of AUM in the rules, which addresses how animal units are applied to an AUM [for example, a cow-calf pair is one AUM; a horse is one and a half AUMs]. Those definitions determine how the AUM rate is applied. When the Department brings the recommendations to the Board at the November meeting, the current formula and how animal units are applied will be reiterated. The Department will not change the formula.

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

- **INFORMATION**

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

9. Review of Grazing Program Accounting – Presented by Patrick Hodges, Division Administrator, Support Services and Jae Hallett, Eide Bailley

DISCUSSION: Attorney General Wasden thanked Mr. Hallett for his work on this project. He stated that he and Governor Otter requested this review of the Department's grazing program accounting.

Attorney General Wasden noted the report points out that the allocation of FTPs to this program was deficient in its reporting. He asked if that is an accurate reflection of the report. Mr. Hallett stated it is an accurate reflection. However, he added that while the Department's method of calculating the number of FTEs is an acceptable method, it would be more accurate to use positive time reporting.

Attorney General Wasden also noted the report suggested the allocation of legal costs could be more accurately applied on a parcel-by-parcel or project-by-project basis as opposed to being charged to the overall program. He asked Mr. Hallett for additional details on that suggestion. Mr. Hallett stated at present those costs are reported as coming out of various sources in terms of either from the Attorney General's office or from an outside source. Those costs are not specific to a parcel or to an area. He recommended, to the extent that the Department is able to identify costs specific to a parcel or an area, that those costs should always be charged to that parcel or area and should not be included as an overhead cost that is allocated to all areas.

Attorney General Wasden stated it is his understanding that the Department has accepted the recommendations made by Mr. Hallett and is prepared to implement them. Mr. Hallett stated it is his understanding that the implementation has taken place.

Attorney General Wasden again thanked Mr. Hallett for his professional work on this project.

10. Update on Idaho Department of Lands' American Recovery & Reinvestment Act (ARRA – aka "Federal Stimulus") Projects – Presented by David Groeschl, Assistant Director, Forestry and Fire

DISCUSSION: Superintendent Luna noted that oftentimes with federal grants there are allowances for indirect monies to be used for managing and administering programs. He asked if there is an allowance in these grants for indirect funds, either at the state or local level. Direct Bacon stated indirect costs are a part of these grants, and he asked David Groeschl, Assistant Director, Forestry and Fire, to provide details for the Board.

