



STATE BOARD OF LAND COMMISSIONERS

C. L. "Butch" Otter, Governor and President of the Board
 Ben Ysursa, Secretary of State
 Lawrence G. Wasden, Attorney General
 Donna M. Jones, State Controller
 Tom Luna, Superintendent of Public Instruction
 George B. Bacon, Secretary to the Board

Final Minutes
 Regular Land Board Meeting
 August 17, 2010

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, August 17, 2010, in Boise, Idaho. The meeting began at 9:09 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 (*via conference phone*)
- Honorable Attorney General Lawrence Wasden
- Honorable State Controller Donna Jones
- Honorable Superintendent of Public Instruction Tom Luna (*via conference phone*)

Governor Otter called the meeting to order. Superintendent Luna joined the meeting at 9:09 a.m.; Secretary of State Ysursa joined the meeting at 9:40 a.m.

● **CONSENT AGENDA**

1. Director's Report

- A. Interest Rate on Department Transactions – August 2010
- B. Timber Sale Activity and Information Report – July 2010
- C. Division of Lands, Minerals, Range Official Transactions – July 2010
- D. Legal Matter Summary – July 2010
- E. Fire Settlement Information – July 2010
- F. Fire Season Report

DISCUSSION: Referring to the Timber Sale Activity and Information Report (item 1-B), Director Bacon noted that the national media is projecting a flat housing market for the next year or two. The Department will continue to monitor trends and reports.

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

<u>NORTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
A. Hunters Echo	CR-10-0383	2,900	MBF	Bonner Boundary	Priest Lake (Coolin)
B. Jungle Up	CR-10-0388	1,600	MBF	Bonner	Priest Lake (Coolin)
C. Big Eddy Bugs	CR-30-0589	1,675	MBF	Shoshone	St. Joe (St. Maries)

SOUTH OPERATIONS

				<u>COUNTY</u>	<u>AREA OFFICE</u>
D. Democrat OSR	CR-40-0992	5,290	MBF	Clearwater	Clearwater (Orofino)
E. Swamp Flag Pulp	CR-42-5044	6,443	MBF	Clearwater	Maggie Creek (Kamiah)
F. Burcham Resale	CR-42-5050	1,260	MBF	Clearwater	Maggie Creek (Kamiah)

3. Disclaimer of Interest for the Former Riverbed of the Pend Oreille River in Bonner County (Martin, et al.) – Staffed by Roger Jansson, Operations Chief-North

DEPARTMENT RECOMMENDATION: That the Board direct the Department to issue a disclaimer of interest for this one (1) parcel of land totaling 1.946 acres of former bed of the Pend Oreille River and to require Josh Martin, et al., to pay the remainder fee of \$300 for a total of \$600 for this transaction.

DISCUSSION: Governor Otter asked if the Department of Lands or the Idaho Department of Water Resources would have control over the type of riprap or other infrastructure that might be used if the 25-foot public use right-of-way is not reserved. Director Bacon stated even though the land underneath may be privately held, the Department and IDWR would still be involved through the permitting process.

BOARD ACTION: Approved.

4. Minutes

A. Regular Land Board Meeting – July 20, 2010

CONSENT AGENDA BOARD ACTION: A motion was made by Controller Jones to approve the Consent Agenda in its entirety. Attorney General Wasden seconded the motion. The motion to approve the consent agenda (items 1-4 above) carried on a vote of 4-0, with Secretary of State Ysursa being absent from this vote.

• **REGULAR AGENDA**

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

A. Manager's Report – No action was taken on this item.

The first month of the fiscal year ended with a five percent return. At the end of June, endowment reserves were at least four times distributions for all endowments, with the exception of Public School, which was about 2.2 times adjusted for the special distribution.

The EFIB updates the Public School Reserve Fund forecast each month. Using the low case land revenue forecast completed in July by the Department of Lands, Public School is expected to end 2012 at about 1.8 times distributions in reserve.

There are no compliance or legal issues.

The Endowment Fund Investment Board met Wednesday the 11th and approved the recommended distributions and transfers to be covered later in the meeting.

Mr. Johnson also noted that the Investment Board's work plan to address questions raised by Superintendent Luna at the May and July 2010 Land Board meetings is on track and should be completed by December.

- B. Investment Report – No action was taken on this item.
- C. FY 2012 Distributions and Transfers

EFIB RECOMMENDATION: That the Board approve the recommended distributions and transfers.

Mr. Johnson. As detailed in the briefing material, proposed distributions for FY2012 are basically unchanged from fiscal year 2011, with two exceptions. One is that the Public School endowment reduces by \$22 million due to the special distribution, and, two, State Hospital South increases by 15% due to the transfer of excess earnings to their Permanent Fund. Four endowments exceeded the five-year threshold for adequate reserves at June, 2010, so the EFIB believes it is safe to transfer those excess funds to the Permanent Fund to boost distributions and protect the purchasing power of future generations.

The EFIB also recommends that \$3.9 million be transferred from reserves to the Permanent Funds of four endowments. Because the State Hospital South endowment has kept pace with inflation and population growth, the EFIB recommends that its transfer increase its gain benchmark. Other transfers are, in essence, making up for losses in purchasing power and would not raise the gain benchmark.

In considering distributions for fiscal year 2012, the primary concern is with the endowments that have less than five years of desired reserves. The number one priority of the Distribution Policy is to avoid reductions, but the key question is whether there are enough reserves so that it is prudent to hold those distributions at current levels, despite the fact that the 5% formula calls for a modest reduction for seven of eight endowments.

To make that evaluation, revenues and expenses through 2013 were reviewed under a "reasonable worst case scenario," using a conservative timber revenue forecast and an assumption that the endowment fund would earn a two percent return instead of the normally expected seven or eight percent return. Using this "reasonable worst case scenario" no endowment will exhaust its reserves by 2013. Therefore the Investment Board believes it is prudent to maintain 2012 distributions at current levels, including for those endowments with less than five years of reserves. The Public School endowment is the weakest, at 1.8 times coverage. However, the EFIB believes, based on the Public School's specific financial characteristics, that 1.8 is still an adequate level of reserves, so there are no red flags indicating a need to cut distributions now.

While it is believed 2011 and 2012 distributions are safe, there are some circumstances under which a reduction in 2013 or 2014 distributions may be necessary.

1. If future fund returns are negative;
2. If additional hardship terminations are offered on existing timber contracts;
3. If a material number of existing timber contracts are abrogated by purchaser bankruptcies;
4. If any additional special distributions are authorized;
5. If future timber prices fall below the level assumed in the low revenue scenario.

Mr. Johnson closed his comments by recommending that the Land Board approve the distributions and transfers as endorsed by the Endowment Fund Investment Board.

DISCUSSION: Governor Otter asked if there is any way to measure the effect of the \$22 million special distribution. Mr. Johnson responded that as we move away from 2011, the cost will be what the fund returned. For example, if the fund returns 15%, then the cost would be 15% of \$22 million. If the fund returns are flat, then the cost will be low. Another indicator will be if we find ourselves in the uncomfortable position of having to make cuts to the Public School's distributions because reserves are too low. Governor Otter stated it would be valuable for the Board to know five years from now what the effect of the special distribution was should the Board ever be faced with that question again.

BOARD ACTION FOR ITEM 5-C: A motion was made by Attorney General Wasden that the Board approve the recommendation of the Endowment Fund Investment Board that distributions be based on the distribution policy and objectives as currently stated in the Land Board's Asset Management Plan. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Yursa being absent from this vote.

6. Department of Lands Fiscal Year 2012 Budget Proposal – Presented by Patrick Hodges, Division Administrator, Support Services

DEPARTMENT RECOMMENDATION: That the Board direct the Department to include the supplemental and enhancement requests in the Fiscal Year 2012 budget proposal due on September 1, 2010.

DISCUSSION: None.

BOARD ACTION: A motion was made by Controller Jones to direct the Department to include the supplemental and enhancement requests in the Fiscal Year 2012 budget proposal due on September 1, 2010. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Yursa absent from this vote.

- Secretary of State Yursa joined the meeting at 9:40 a.m.

7. Request by Three Rivers Timber, Inc. for Hardship Termination of the Old Maggie Road (TS-42-3628) Timber Sale Contract – Presented by David Groeschl, Assistant Director, Forestry and Fire

DEPARTMENT RECOMMENDATION: That the Board approve the hardship termination of the Old Maggie Road timber sale (TS-42-3628) and assess damages of \$522,522.54 to Three Rivers Timber, Inc.

DISCUSSION: Governor Otter asked if anyone present wished to speak to this issue. Ms. Jan Sylvester, representative of Idaho PTA, requested that the Board act with undivided loyalty and in the best interest of the beneficiaries on this sale.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board approve the hardship termination of the Old Maggie Road timber sale (TS-42-3628) and assess damages of \$522,522.54 to Three Rivers Timber, Inc. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

8. Request for Final Approval to Purchase 4.96 Acres of Property Zoned C-2, Including Improvements, in the City of Boise – Presented by Kathy Opp, Deputy Director

DEPARTMENT RECOMMENDATION: That the Board approve the acquisition of the referenced property pursuant to the terms and conditions of the Purchase Sale Agreement.

DISCUSSION: Governor Otter asked if there is a possibility of future expansion on this property. Deputy Director Opp stated there would be limited, if any, opportunities for expansion. She noted that there are existing single family dwellings to the north of the property and a new subdivision of fairly high density to the west of the property.

Governor Otter asked if the appraisal included information on “useful life.” Deputy Director Opp stated the appraiser and property condition assessment indicate a useful life of 35-plus years. The facility has good block construction, metal roofs, has been well maintained and is ten years old. Governor Otter noted that the maintenance and repair expense of roughly \$7,600 per year will also help extend the facility’s useful life. Deputy Director Opp stated that is correct.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board approve the acquisition of the referenced property pursuant to the terms and conditions of the Purchase Sale Agreement. 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. Department of Lands Administrative Rules Update – Presented by George Bacon, Director

DISCUSSION: None.

10. Legislative Ideas – Presented by George Bacon, Director

DISCUSSION: None.

9:52 a.m. – A motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 67-2345(1)(d) for the purpose of considering attorney-client communication, which is exempt from disclosure under chapter 3, title 9, Idaho Code. 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. Noting that the motion had been moved and seconded, Governor Otter called for a roll call vote. Roll Call – Aye: Ysursa, Wasden, Jones, Luna, Otter; Nay: 0; Absent: 0. The motion carried on a vote of 5-0.

9:53 a.m. – Prior to beginning the Executive Session, a brief recess was taken.

10:01 a.m. – Governor Otter called the meeting to order in Executive Session.

10:01 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 during this Executive Session. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

10:02 a.m. – Governor Otter called the meeting to order in Regular Session.

10:02 a.m. – A motion was made by Attorney General Wasden to amend the published agenda. He noted that the agenda states the Board will enter 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. It has been determined that a more appropriate provision for this Executive Session is actually under Idaho Code § 67-2345(1)(d), as stated in the earlier motion to enter into Executive Session. However, the original motion did not correspond with the notice given on the published agenda. Therefore, Attorney General Wasden moved that the Board amend its agenda to reflect the more appropriate code section, which is Idaho Code § 67-2345(1)(d). Controller Jones seconded the motion. Governor Otter called for a roll call vote. Roll Call – Aye: Ysursa, Wasden, Jones, Luna, Otter; Nay: 0; Absent: 0. The motion carried on a vote of 5-0.

10:04 a.m. – Attorney General Wasden noted for the record that the agenda has officially been amended. He then moved that, pursuant to Idaho Code § 67-2345(1)(d), the Board resolve into Executive Session for the purpose of considering attorney-client communication, which is exempt from disclosure under chapter 3, title 9, Idaho Code. He requested that a roll call vote be taken and that the secretary record the vote in the minutes of the meeting. Governor Otter called for a roll call vote. Roll Call – Aye: Ysursa, Wasden, Jones, Luna, Otter; Nay: 0; Absent: 0. The motion carried on a vote of 5-0.

• **EXECUTIVE SESSION – AS AMENDED (REFER TO MOTIONS ABOVE)**

A. Idaho Code 67-2345 (1)(d) – To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code. Topic: Discussion of an attorney-client document exempt from disclosure

