



STATE BOARD OF LAND COMMISSIONERS

C. L. "Butch" Otter, Governor and President of the Board  
Ben Yursa, 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  
State Board of Land Commissioners  
Regular Meeting  
May 17, 2011

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, May 17, 2011 in Boise, Idaho. The meeting began at 9:17 a.m. in the State Capitol Building, Senate and House Auditorium, Lower Level, West Wing, Room WW02, 514 West Jefferson Street, Boise. The Honorable Governor C. L. "Butch" Otter presided. The following members were present:

Honorable Secretary of State Ben Yursa  
Honorable Attorney General Lawrence Wasden (*via conference phone*)  
Honorable State Controller Donna Jones  
Honorable Superintendent of Public Instruction Tom Luna

For the record, Governor Otter recognized the presence of all Board members, either in person or by telephone communication.

• **CONSENT**

**1. Director's Report**

- A. Interest Rate on Department Transactions – May 2011
- B. Timber Sale Activity and Information Report – April 2011
- C. Division of Lands, Minerals, Range Official Transactions – April 2011
- D. Legal Matter Summary – April 2011

*DISCUSSION:* Referring to the Timber Sale Activity and Information Report, Director Bacon noted the Department is seeing a pretty good uptick in the value of timber sales right now. Director Bacon explained this typically happens in a rising market, especially in the spring of the year; the report indicates a 90% upbid over appraised price as the market is growing faster than sales are appraised. Director Bacon offered a note of caution, however, stating that housing markets in the United States remain historically weak. Global and overseas demand appears to be driving the increase, and some purchasers are starting to produce metric lumber for the Asian markets. The market looks good but the Department is still cautious about where timber prices might go in the future.

**2. Timber Sales for Approval – 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. Lonely Bear	CR-10-0400	2,050	MBF	Bonner	Priest Lake (Coolin)
B. Highland Face	CR-21-3019	5,165	MBF	Boundary	Kootenai Valley (Bonners Ferry)
C. Lost Again	CR-22-5020	1,635	MBF	Kootenai	Mica (CDA)
D. Slim Daveggio	CR-30-0594	4,565	MBF	Shoshone	St. Joe (St. Maries)
E. East Fork Olson Creek	CR-30-0586	7,125	MBF	Shoshone	St. Joe (St. Maries)
F. Green Acres	CR-30-0587	5,890	MBF	Benewah	St. Joe (St. Maries)
G. Teakean	CR-41-0054	6,590	MBF	Clearwater	Ponderosa (Deary)
H. Elk Slew Reoffer	CR-41-0068	5,590	MBF	Latah	Ponderosa (Deary)
<u>SOUTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
I. Slo-Doe Pole	CR-40-1057	2,990	MBF	Clearwater	Clearwater (Orofino)
		8,700	Poles		
J. Seawall	CR-42-5041	1,585	MBF	Idaho	Maggie Creek (Kamiah)
K. Pasture II Pulp	CR-42-5055	5,870	MBF	Idaho	Maggie Creek (Kamiah)
L. Upper Olive	CR-50-0161	17,806	TONS	Washington	Payette Lakes (McCall)

*DISCUSSION:* Controller Jones commented on the mixture of FY2011 and FY2012 sales being presented this month. Director Bacon indicated that the Department is moving forward on the FY2012 timber sales plan that was approved by the Board in April, so individual sales are being brought forward to the Board now. Attorney General Wasden commented on the naming of sale H "Elk Slew Reoffer," and stated his understanding that slough is spelled S L O U G H. Director Bacon offered to research why it is spelled S L E W, and suggested it is a play on words. Director Bacon also noted that the Department asks foresters not to repeat sale names, which is challenging with 100+ years of sales.

**3. Disclaimer of Interest for the former bed of the North Fork of the Payette River, Valley County, Idaho – Staffed by Kurt Houston, Operations Chief-South**

*DEPARTMENT RECOMMENDATION:* Direct the Department to issue a disclaimer of interest for one parcel totaling 0.60 acres of the former bed of the North Fork of the Payette River, and to require Delbert E. Gossi to pay the remaining processing fee of \$1,006.27 to the Department of Lands for this transaction.

*DISCUSSION:* Governor Otter asked, given that the disclaimer also includes 120 square feet of land below the high water mark, if the State has ownership of the channel bed, why we would need a disclaimer on our land. Director Bacon explained that the Department often receives reciprocal disclaimers where land records indicate that the deeded land is not necessarily below high water, but indeed it is below high water. So when the Department does these disclaimers and the land owner has an opportunity to correct their title, they disclaim to us that portion which is deeded but really below ordinary high water mark; otherwise they continue to pay taxes on it. It's beneficial to both parties.

**4. Approval of Minutes – April 19, 2011 Regular Meeting (Boise)**

**CONSENT AGENDA BOARD ACTION:** A motion was made by Controller Jones to approve the Consent Agenda as presented. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

- **REGULAR**

**5. Joint Meeting with the Endowment Fund Investment Board** – *Presented by Dean Buffington, Chairman, and Larry Johnson, Manager of Investments, Endowment Fund Investment Board*

Director Bacon recognized the presence of the Endowment Fund Investment Board (EFIB). Chairman Buffington stated the EFIB would hold their meeting following the presentation of this agenda item.

- A. **Manager's Report** – Mr. Johnson noted that the EFIB has agreed to approve funding for the Endowment Fund's independent auditor to perform limited testing of the endowment revenues and expenses reported by the Department of Lands. Mr. Johnson explained in past years this work has been done by the Legislative Auditors Office but that Office has decided to do less work with Department of Lands because they perceive that to be a low-risk area. The EFIB thought it was appropriate for this work to continue by an independent auditor.
- B. **Investment Report** – April was a very good month; returns of the total fund were up 3%, taking us year to date to over 26%. Fiscal year to date we have outperformed our benchmark by about 1.3%, 130 basis points. All EFIB investment managers are performing as expected.
- C. **Semi-Annual Report** – Mr. Johnson indicated this report is required by the Land Board's Asset Management Plan. It describes the EFIB mission and responsibilities, identifies board members, includes a financial summary for fiscal year to date, compares the Endowment Fund with other public funds, presents coverage ratios for each of the nine endowment funds and graphs inland lumber prices back to 1995. Speaking on the financial summary, Mr. Johnson noted that total fund balances have increased 22% compared to previous year end, and earnings reserve balances are up 19%. Mr. Johnson also commented that receipts from endowment land rose to \$55 million for the first nine months of FY2011, a 55% increase over the same period in FY2010 and about equal to FY2009. Mr. Johnson stated FY2011 financial statements of endowment funds will be distributed to the Land Board in October. Mr. Johnson explained that the Endowment Fund has been outperforming other public funds, ranking 11 out of 100 for the past fiscal year, and 12 out of 100 over the past five fiscal years. Regarding earnings reserve coverage ratios, Mr. Johnson noted the target is to have five years, or 500%, and every endowment fund except Public Schools is over that 500% level. Mr. Johnson also added that the coverage for State Hospital South is understated due to a change in calculating income for that endowment. State Hospital South is now eligible to receive capital gains of their permanent fund; however, such transfers occur only at year end, and that fund will reflect eight or nine years of coverage when that transfer is made.
- D. **Distribution Policy Discussion** – At the December 2010 Land Board meeting, Superintendent Luna asked that more work be done to ensure that a proper balance between current and future beneficiaries is achieved in the Land Board's Distribution Policy and Attorney General Wasden asked that historical data be restated to include the impact of General Fund subsidies of endowment management prior to year 2001. Covering the conclusions of this review, Mr. Johnson noted that restating historical distributions has only a modest

impact on historical trend data and that the Investment Board believes that the current Distribution Policy contains sufficient protection for current beneficiaries. Those protections are 1) distributions are fixed as % of the Permanent Fund – an increase in Permanent Fund results in an increase of distributions, and 2) excess income in Reserves is transferred to the Permanent Fund – funds are not "hoarded" in Earnings Reserve to avoid an increase in distribution. Further, distributions must reflect expected income; as income expectations change, distributions must change, which was the reason reductions in distributions occurred in the first half of the last decade.

*DISCUSSION:* Governor Otter referred to recent General Fund cuts, commenting that the Land Board established 500% coverage in Earnings Reserve and inquired if the Earnings Reserve should have an upper limit. Mr. Johnson clarified that 500% is the established upper limit; once a fund reaches 500%, the excess is transferred to the Permanent Fund on an annual basis, which then drives an increase in distributions. The Investment Board's philosophy is that there should not be one-time only distributions because that income needs to go into the Permanent Fund so it can keep up with inflation and population growth. Superintendent Luna commented on the example given that a "30% increase in Permanent Fund automatically drives 30% increase in distributions (higher assets support a higher sustainable distribution)" stating his understanding that distributions to the current beneficiary increase only after compensating for population growth and inflation in the Permanent Fund. Mr. Johnson clarified that as the future beneficiary [Permanent Fund] keeps up with inflation and population growth, because the distribution is calculated as a percentage of that number, a 10% increase in the Permanent Fund would drive a 10% increase in the distribution. A disconnect occurs only when income expectations change, which is what happened early in the last decade when income was expected at a much higher level than actually occurred: distribution percentage was reduced from 8 1/2% to 5%. Superintendent Luna stated that distribution was cut to the current beneficiary to protect the future beneficiary. Mr. Johnson clarified that per Idaho Constitution, the current beneficiary may only receive income; if there is no income, there can be no distribution. In FY 2003, Public School distributions had to be halted temporarily because its reserve fund fell to zero. Secretary of State Ysursa thanked the members of the Investment Board for their service.

**6. Lot Solutions Process Update and Cottage Site Plan Recommendations – Presented by Kathy Opp, Deputy Director, and Kate Langford, Strategic Business Analyst-Planning**

*DEPARTMENT RECOMMENDATION:* The Department recommends that the Land Board approve implementation of the Cottage Site Plan – Processes to Unify the Estate, subject to the recommended revisions outlined by this memorandum:

1. Appraisals:
  - a. Utilize appraiser lists to contract work as needed (see related recommendation No. 4)
  - b. Appraisal reviews subject to USPAP and cost borne by party requesting such review
2. Sites Eligible to Apply for Unification Processes:
  - a. Completion of Lot Solutions process is required
3. Processes:
  - a. Voluntary Consolidated Land Exchange
  - b. Voluntary Rolling Auctions
  - c. Continue Leasing, with program closure based on future Land Board reviews

4. **Installment Opportunity:**
  - a. Retain the option for installment payments in an auction transaction
  - b. Out-source installment payment account management
5. Solicit through Request for Proposal a pool of appraisers available for each lake, to efficiently complete valuations as needed based on transaction cycles or to perform appraisal reviews as needed.
6. Solicit through Request for Proposal escrow company services, one for each lake.
7. Solicit through Request for Proposal an IDL Due Diligence Facilitator to conduct due diligence and underwriting reviews on properties to be acquired in accordance with IDL underwriting standards.
8. Solicit through Request for Proposal an auction service and marketing firm to assist with large scale Voluntary Rolling Auctions in a timely and orderly manner.

*DISCUSSION:* A verbatim transcript is available by request to the Department of Lands, Attn: Land Board Recorder, Post Office Box 83720, Boise, Idaho 83720-0050 or by email to [public\\_records\\_request@idl.idaho.gov](mailto:public_records_request@idl.idaho.gov).

*BOARD ACTION:* A motion was made by Controller Jones that the Board adopt the Department recommendations with the exclusion of item 4, the installment opportunity. Superintendent Luna seconded the motion. The motion carried on a vote of 5-0.

**7. Camas Prairie Land Exchange – Presented by Jane Wright, Strategic Business Analyst**

*DEPARTMENT RECOMMENDATION:* The Department recommends that the Board approve the Camas Prairie land exchange pursuant to the terms and conditions of the Land Exchange Agreement between Clearwater LLC and the Idaho Department of Lands. A few key terms within the LEX agreement are as follows:

1. Payment of \$117,000 to the Idaho Department of Lands to equalize the appraised values.
2. Recordation of official surveys and identification of all survey corners on the properties the Department proposes to acquire. Cost of surveying Clearwater Land to be acquired by IDL to be paid by the Department. Survey work to commence within 30 days of execution of the Land Exchange Agreement. Actual cost of survey work cannot drive the 20 year NPV considerably lower than estimated, due to marginal Land Exchange position.
3. Title acceptable to the Department on all parcels.
4. The Clearwater Group LLC agrees to waive the requirement to have Environmental Site Assessment Phase I studies conducted on State properties. As such, Clearwater releases the State of Idaho from any liability related to unknown environmental conditions.

5. Any rental income for cash leases on Clearwater properties shall be prorated between Clearwater and the Department as of the date of closing using a 1/12th proration for each calendar month of the crop season beginning September 1, 2010, and ending August 31, 2011.
6. Closing to occur within 30 days from completion of survey work on the Clearwater properties.

*DISCUSSION:* A verbatim transcript is available by request to the Department of Lands, Attn: Land Board Recorder, Post Office Box 83720, Boise, Idaho 83720-0050 or by email to [public\\_records\\_request@idl.idaho.gov](mailto:public_records_request@idl.idaho.gov).

*BOARD ACTION:* A motion was made by Controller Jones that the Board adopt the Department recommendation contingent upon the implementation of the six items identified in the recommendation, and that this transaction must be fully completed and closed by September 30, 2011. Superintendent Luna seconded the motion. The motion carried on a vote of 5-0.

**8. Temporary and Negotiated Rules for Geothermal Leasing – Presented by Eric Wilson, Minerals Program Manager**

*DEPARTMENT RECOMMENDATION:*

1. Adopt the proposed temporary rule for IDAPA 20.03.15 with an effective date of July 1, 2011.
2. Authorize the Department to enter into negotiated rulemaking for permanent rule changes to IDAPA 20.03.15.

*DISCUSSION:* None.

*BOARD ACTION:* A motion was made by Secretary of State Ysursa that the Board approve the Department recommendation. Superintendent Luna seconded the motion. The motion carried on a vote of 5-0.

• **INFORMATION**

None

At 11:11 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 67-2345, subsection (1), subsection (f) for the purpose of communicating with legal counsel to discuss the legal ramifications of and legal options for pending litigation. Attorney General Wasden requested that a roll call vote be taken and that the secretary record the vote in the minutes of the meeting. Secretary of State Ysursa seconded the motion. The motion carried on a roll call vote of 5-0, aye. *Roll Call Vote: Aye:* Ysursa, Wasden, Jones, Luna, Otter; *Nay:* None; *Absent:* 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. [TOPIC: Tamarack Litigation]
- 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. [TOPIC: Cottage Site Litigation]

At 11:33 a.m. the Board resolved out of Executive Session by unanimous consent. No action was taken by the Board during the Executive Session.

At 11:34 a.m. a motion to adjourn was made by Attorney General Wasden. 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 June 21, 2011 regular Land Board meeting.