



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

Kathy J. Opp, Secretary to the Board

Final Minutes  
State Board of Land Commissioners' Regular Meeting  
September 20, 2011

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, September 20, 2011 in Boise, Idaho. The meeting began at 9:25 a.m. in the second floor courtroom of the Borah Building, 304 North 8th 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  
Honorable State Controller Donna Jones  
Honorable Superintendent of Public Instruction Tom Luna

For the record, Governor Otter recognized the presence of all Board members.

• **CONSENT**

**1. Director's Report**

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

*DISCUSSION:* Commenting on the Timber Sale Activity Report, Deputy Director Opp noted that there were 12 timber sales in August with net sale value of \$9.5 million. Continuing the trend of the past year, lumber and timber markets are fairly soft and are being buoyed primarily by exports to China; domestic markets are quite soft. Deputy Director Opp pointed out that harvest receipts are about 88% of 5-year average while harvest volume is about 143% of that average. Referring to the Lands, Minerals, Range Official Transactions, Deputy Director Opp noted several residential cottage site assignments, some with premium rent. Regarding the Fire Season Update, Deputy Director Opp stated that we are now in extreme fire danger, which is expected to continue through a warm Indian summer. The Department's net obligations after participation in cooperative agreements are about \$2.5 million; we're very fortunate to have had

a cool fire season in Idaho. However, as a precautionary measure due to present extreme fire conditions, the Department has extended aircraft contracts on a day-to-day basis for the next two weeks.

Governor Otter asked if the Forest Service consults the Department at all, in reference to the Forest Service electing to control fires on federal land and let them burn, in particular the one at North Fork in the Salmon region where it burned into beetle kill. Deputy Director Opp responded yes, if there are endowment lands in the vicinity, the Forest Service does consult with the Department; the Department may even assign a resource to advise the Forest Service that suppression is necessary if a fire is running towards private ownership or endowment ownership. Governor Otter further inquired, in those instances where the Department agrees to let the fire burn, if the Department conditions that agreement by requesting that salvage be allowed as soon as feasible for any timber value left. Kurt Houston, Operations Chief-South, responded that is not normally a condition. When a defined boundary exists between state endowment land or private lands, and federal lands, the Department obtains agreement that the Forest Service will go into full suppression mode. On a piece of isolated endowment land within a large block of federal ownership, where there is no current access, it wouldn't pay to build road to access and harvest that timber, but the Department would ask the Forest Service to take additional steps as possible, putting safety first, to try and limit the fire's impact on those isolated acres. Governor Otter acknowledged the Forest Service's reasoning, because once fire gets into beetle kill it becomes very dangerous, but noted that it invites natural disaster to the good forests around the fire if salvage isn't done and reforestation started.

**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. Three Bit	CR-30-0573	6,280	MBF	Shoshone	St. Joe (St. Maries)
B. Jackass Creek	CR-31-0021	2,860	MBF	Shoshone	Cataldo (Kingston)
<u>SOUTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
C. West Fork Goose Creek	CR-43-4026	2,915	MBF	Idaho	Craig Mtn. (Craigmont)

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

- A. Manager's Report – Mr. Johnson stated that distributions for FY2012 and FY2013 are well-secured by reserves. The financial statements for FY2011 for the endowment funds have been completed and audited. No audit issues were identified and all Board members received copies of the audit and statements.
- B. Investment Report – Mr. Johnson noted that the Fund had losses in excess of 4% for August; losses have continued in September, down almost another 1.7%. Fiscal year to date the Fund is down about 7% with many disruptions and concerns expressed in the equity markets; all managers are performing as expected in this environment.

*DISCUSSION:* Governor Otter wondered about the broad disclaimer in the Endowment Fund Investment Board (EFIB) independent audit report, page 2 "We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance." Mr. Johnson provided background that Legislative Services Office (LSO) focuses on those areas of the state for which there is the greatest risk for the overall state; LSO views the Department of Lands as a low risk area in terms of misstating the state's financial statements. The Investment Board chose to have independent auditors review annually some key accounting procedures at the Department of Lands; they don't review the whole Department but they look at how revenues are accounted, how expenses are accounted and how payroll is allocated to make sure that it is being done according to normal and standard procedures. The independent auditors went through those categories, found no issues, but are unable to issue an opinion on the whole structure of the Department of Lands and their whole reporting process. Governor Otter noted that the independent auditors did select 40 items each from accounts receivable, accounts payable and payroll, and asked if the auditors selected those or if the EFIB selected those, and did the auditors receive the information. Mr. Johnson responded that the auditors selected the 40 items and did receive the information. However, the way audit standards are written, auditors are not able to issue an opinion on the whole organization because it was not reviewed in entirety. Governor Otter inquired if the independent auditors ever do a complete audit. Mr. Johnson replied that a complete audit is performed by LSO every three years. Governor Otter asked when the last complete LSO audit was performed. Deputy Director Opp responded that it was completed in 2009 and added that although LSO doesn't perform a full audit every year, they do audit procedures every year.

**4. Lava Hot Springs Foundation, Lava Hot Springs Senior Citizens, Inc. – Staffed by Mark Lowe, Executive Director, Lava Hot Springs Foundation and Kurt Houston, Operations Chief-South**

*DEPARTMENT RECOMMENDATION:* It is the recommendation of the Lava Hot Springs Foundation to approve the extension of the existing lease between the State of Idaho, acting through the Lava Hot Springs Foundation, and the Lava Hot Springs Senior Citizens, Inc. for a period of ten years.

*DISCUSSION:* Secretary of State Yursa inquired if this agreement is one that requires Board of Examiners and Land Board approval. Deputy Director Opp affirmed that this item was also on the Board of Examiners consent agenda this same date. Attorney General Wasden commented that it makes sense for only one entity to approve such agreements, more suitably the Land Board, and the issue could be resolved statutorily.

**5. Approval of Minutes – August 16, 2011 Regular Meeting (Boise)**

**6. Approval of Minutes – August 23, 2011 Special Meeting (Boise)**

**7. Approval of Minutes – August 29, 2011 Special Meeting (Boise)**

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

- **REGULAR**

**8. Department of Lands Fiscal Year 2013 Budget** – Presented by Lisa Johnson, Financial Officer

*DEPARTMENT RECOMMENDATION:* Approve the Agency FY13 Budget Request as submitted to the Division of Financial Management and the Legislative Services Office on September 1, 2011.

For the record, Governor Otter noted that the Chairman will abstain from voting on this item as the Governor's Office submits an Executive agency budget.

*DISCUSSION:* Superintended Luna asked for clarification that the amount for administration of the oil and gas program is the \$224,000 figure. Ms. Johnson responded yes.

*BOARD ACTION:* A motion was made by Attorney General Wasden that the Board adopt the Department recommendation, that is, approve the Agency FY13 Budget Request as submitted to the Division of Financial Management and the Legislative Services Office on September 1, 2011. Secretary of State Yursa seconded the motion. The motion carried on a vote of 4-0, with Governor Otter abstaining.

**9. Request for extension of deadline to complete Camas Prairie Land Exchange** – Presented by Kathy Opp, Deputy Director

*DEPARTMENT RECOMMENDATION:* Approve an extension of time to complete the Camas Prairie Land Exchange subject to the following conditions:

1. All legal issues related to property title must be resolved to the satisfaction of IDL legal counsel by October 15, 2011. If the current legal issues regarding acceptable title are not resolved by the October 15, 2011 deadline, the exchange agreement with Clearwater Group LLC will immediately terminate.

*DISCUSSION:* Attorney General Wasden asked if the October deadline allows sufficient time to complete the project. Deputy Director Opp explained that the October 15th deadline is for resolution of legal title issues such that surveys and other due diligence items can then be initiated. The Department is not attempting to set a closing deadline at this time. Secretary of State Yursa noted that the recommendation calls for "All legal issues . . . be resolved" which might include a plethora of issues and also wondered if the October 15 deadline allows enough time. Mr. Follett clarified that legal issues from the Department's perspective are those identified in the June 7th letter to Clearwater Group LLC, the title commitment issues. Mr. Follett further stated there are standard legal title issues relating to contracts, releases, liens and encumbrances more typical on property transactions that parties to a transaction have released at the time of closing. The Department has asked for an assurance that those releases affecting four other parcels will be secured. Controller Jones commented that when the Board approved this land exchange at the May 17, 2011 meeting, the motion was designed to ensure the exchange would move forward on a timeline that was agreeable to all parties and in the best interest of the Trust. Controller Jones allowed that progress has been made and it is reasonable to extend the time frame until October 15 to resolve remaining legal issues. Governor Otter

inquired how much the Department has invested in this transaction to date. Deputy Director Opp replied the transaction on a Net Present Value basis remains positive over a 20 year period and offered to provide a term sheet with hard costs incurred by both parties.

*BOARD ACTION:* A motion was made by Attorney General Wasden that the Board adopt the Department recommendation, that is, all legal issues related to property title must be resolved to the satisfaction of IDL legal counsel by October 15, 2011. If the current legal issues regarding acceptable title are not resolved by the October 15, 2011 deadline, the exchange agreement with Clearwater Group LLC will immediately terminate. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

**10. Natural Resources Interim Committee Update – Presented by Kathy Opp, Deputy Director**

*DEPARTMENT RECOMMENDATION:* Direct the Department to craft updates to the Asset Management Plan to further clarify the role of the Land Board, to reflect policy changes since original adoption (such as the orderly disposition of the cottage site asset), and to clarify desirable types of land investments, as discussed above. The Department shall provide such updates for Land Board consideration no later than its November 2011 meeting.

*DISCUSSION:* Attorney General Wasden commented that clarification in the Asset Management Plan (AMP) is appropriate to help focus thoughts and actions of the Board and also to help educate the public and legislature. Secretary of State Ysursa asked for the balance of the Land Bank Fund. Deputy Director Opp responded that it is approximately \$126,000.

Superintendent Luna inquired who would be involved in crafting updates to the AMP. Deputy Director Opp replied the AMP is a policy of the Land Board so the Department would prepare language and review with Board members and staff for approval and concurrence. Superintendent Luna asked if input received during the 2-day Natural Resources Interim Committee was adequate to assist in crafting the updates. Deputy Director Opp pointed out that since implementation of the AMP things have changed with regard to Board policy, such as unification of Cottage Site estates and case law, some of which came out in the discussion, and that has prompted the need to update the AMP to reflect these changes in policy so it is more clearly understood by others. Superintendent Luna conveyed that having input from Board members and Board staff would help so when the updated AMP comes before the Board for action, many of the philosophical differences will have been worked out.

Governor Otter expressed that the Affordable Self Storage acquisition seems to have changed the character of the Board's participation from the posture of a landlord to dependency upon the operation for profit or for loss. Deputy Director Opp indicated the Department does have other commercial leases constituting a participation in the success of a business; often those are fixed rates, but Tamarack was one that had a percentage of revenue associated with it. Governor Otter commented that confusion has come from what Article 9 Section 8 says and a general philosophy that the Land Board, that government, is not going to be in competition with the private sector. Governor Otter inquired if the Department has reviewed or discussed any mechanism by which local units of government would continue to receive the same amount of money they were receiving from property tax. Deputy Director Opp noted some members of the

legislature fully understood the Land Board's statewide mandate as the Trust and members also suggested it's not the Land Board's duty to perform that leveling.

Superintendent Luna stated the problem is that this burden is shifted onto other property tax payers because value is removed from the property tax base in that school district/city/county. The school district still receives the income from the bond that was passed, but everybody else is now going to pay more to satisfy that debt because a portion of that tax base was removed from the tax rolls. Secretary of State Ysursa commented that in discussions regarding leveling, more than just property taxes should be taken into account; Endowment property has potential impact on other tax types as well. Secretary of State Ysursa added the whole impact of Endowment activities should be considered, as was recently illustrated in a study by Professor Crabb of Northwest Nazarene University. Attorney General Wasden noted that in a transaction involving a property which is exempt and then comes on to the tax rolls, it has that same effect in that locale; in other words, it reduces the amount of property tax that some entity is going to be paying. What is really happening is a shift of where those taxes are coming from; it's not in the total sense imposing the burden on every other taxpayer. The entire transaction and its full impact has to be contemplated.

Superintendent Luna reiterated his question regarding what kind of input the Department will gather in crafting updates to the Asset Management Plan. Deputy Director Opp responded the Department intends to work with Board members and staff.

*BOARD ACTION:* A motion was made by Attorney General Wasden that the Board adopt the Department recommendation, that is, the Department to craft updates to the Asset Management Plan to further clarify the role of the Land Board, to reflect policy changes since original adoption (such as the orderly disposition of the cottage site asset), and to clarify desirable types of land investments, as discussed within the presentation, and for the Department to provide such updates for Land Board consideration no later than its November 2011 meeting. Controller Jones seconded the motion. The motion carried on a vote of 5-0.

- **INFORMATION**

None

- **EXECUTIVE SESSION**

None

At 10:16 a.m. a motion to adjourn was made by Secretary of State Ysursa. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0. Meeting adjourned.

