



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

Tom Schultz, Secretary to the Board

Final Minutes

State Board of Land Commissioners' Regular Meeting

January 17, 2012

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, January 17, 2012 in Boise, Idaho. The meeting began at 8:59 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 Ysursa  
Honorable Attorney General Lawrence Wasden  
Honorable State Controller Donna Jones

For the record, Governor Otter recognized the presence of all Board members with the exception of Superintendent Tom Luna who was presenting testimony to the Senate Education Committee.

• **CONSENT**

**1. Director's Report**

- A. Interest Rate on Department Transactions – January 2012
- B. Timber Sale Activity and Information Report – December 2011
- C. Division of Lands, Minerals, Range Official Transactions – December 2011
- D. Legal Matter Summary – December 2011

*DISCUSSION:* Director Schultz noted that the Department's interest rate is 3.75%. Referring to the Timber Sale Activity Report, Director Schultz stated that the Department has roughly 460 MMBF under contract with an estimated value of \$95,000,000. The average price is \$208/MBF which is commensurate with prices over the past few years. Director Schultz remarked that timber harvest receipts to date are just over \$31,000,000; the Department's revenue estimates for FY2012 is \$36,000,000 – \$52,000,000, low to high, so timber receipts are keeping in line with estimates. The Department is at approximately 77% of volume sold for FY2012 timber sales plan and expects to meet that target. Director Schultz noted several commercial and non-commercial leases on the LMR Official Transactions Report and identified several residential lease assignments, one with premium rent; the assignment on that lease occurred before change in policy took effect. Also on the LMR report, Director Schultz clarified that the reclamation plans under Cancellations/Reinstatements were plans that either concluded or were not completed due to lack of mining.

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

NORTH OPERATIONS

A. Kat Tail	CR-21-3023	1,960	MBF	<u>COUNTY</u> Boundary	<u>AREA OFFICE</u> Kootenai Valley (Bonners Ferry)
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SOUTH OPERATIONS

B. Bip Creek Road	CR-40-1080	3,165	MBF	<u>COUNTY</u> Clearwater	<u>AREA OFFICE</u> Clearwater (Orofino)
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**3. Determination of Ordinary High Water Mark and Disclaimer of Interest in Uplands Adjacent to the Clearwater River, Clearwater County, Idaho** – Staffed by Steve Schuster, Deputy Attorney General

*DEPARTMENT RECOMMENDATION:* Direct IDL to issue a disclaimer of interest to the land along the Clearwater River north of the surveyed OHWM shown on Attachment 3, including the 20-foot limitation to the 25-foot public access easement near the identified structures. Direct legal counsel to then proceed to stipulate to dismissal of the pending lawsuit, Clearwater River Properties LLC v. State of Idaho Department of Lands et al., Clearwater County Case No. CV-2009-84, after all instruments have been executed and recorded.

*DISCUSSION:* Governor Otter asked if this is a meandering exemption. Mr. Schuster replied that generally the public right of way is ambulatory to the extent that it moves with the high water mark as the high water mark moves over time. Governor Otter commented that it has been the practice to identify the meander by metes and bounds so if there is erosion, the 25' right of way exemption does not continue to erode away. Mr. Schuster confirmed that the right of way is ambulatory in that regard.

**4. Approval of Minutes** – December 20, 2011 Regular Meeting (Boise)

**CONSENT AGENDA BOARD ACTION:** A motion was made by Controller Jones that the Board adopt the Consent Agenda. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0.

• **REGULAR**

**5. Land Board Meetings Outside of Boise** – Presented by Tom Schultz, Director

*DEPARTMENT RECOMMENDATION:* That the State Board of Land Commissioners forego setting two regular meetings outside of Boise in calendar year 2012 due to budgetary concerns.

*DISCUSSION:* Attorney General Wasden offered his pleasure with Land Board off-site meetings in the past and recognized the benefit of bringing the Land Board directly to the public. Attorney General Wasden acknowledged budget issues are a factor this year but expressed his desire to pursue off-site meetings again in the future and not table the matter indefinitely. Governor Otter clarified, and Director Schultz confirmed the intent is not to permanently abandon the practice; the consideration is just for calendar year 2012. Governor Otter agreed with Attorney General Wasden's assessment, noting that meetings including those in Pocatello, Lewiston and McCall were beneficial to local residents and the Board.

*BOARD ACTION:* A motion was made by Secretary of State Ysursa that the Board approve the Department recommendation. Controller Jones seconded the motion. The motion carried on a vote of 4-0.

Secretary of State Ysursa requested a brief interlude to commend Director Schultz for his admirable conduct and testimony during the recent Interim Committee on Natural Resources, and re-affirmed the Board's decision to hire Director Schultz to lead the Department. Secretary of State Ysursa stated that several committee members offered to him their approval of Director Schultz. Governor Otter added he has received complimentary feedback from legislators for Director Schultz as well. Director Schultz expressed appreciation to Secretary of State Ysursa and Governor Otter for their remarks.

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

- **INFORMATION**

**6. Land Revenue Forecast** – *Presented by Patrick Hodges, Division Administrator-Support Services*

*DISCUSSION:* Mr. Hodges stated that the Department's revenue is heavily dependent on timber, with some of the smaller endowments relying on timber for up to 99% of their revenue. Mr. Hodges pointed out the wide-ranging variability of the smaller endowments total revenues as shown in the graph on Attachment 2. The graph also includes an average line to show the potential smoothing effect on smaller endowments revenues if they were pooled. Mr. Hodges commented on the benefit of the earnings reserve account with 5 years of distributions to buffer wide swings in revenues from year to year given the highly volatile revenue for these smaller endowments. Governor Otter asked if the quality of the timber stand makes up the major difference between the Normal School which is consistently above the average and the Agricultural College which consistently runs below the average. Mr. Hodges replied it is sometimes the size of the land ownership; each endowment doesn't have the same number of acres. They also have different revenue producing assets. Normal School has higher revenue than average; that endowment has some commercial property and some cottage sites which produce a steady stream of above average returns, whereas some of the other endowments don't have those types of assets in their portfolios.

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

- A. *Manager's Report* – Mr. Johnson stated that reserves continue to be strong. Mr. Johnson observed that the Public School Endowment's Credit Enhancement Program for school bonds was recently rated by Standard and Poor's at the "AAA" credit rating level. Mr. Johnson added the program had previously only been rated by Moody's and having a second top rating should assist schools in getting the very lowest interest rate possible on bonds that they issue.
- B. *Investment Report* – Mr. Johnson noted the Endowment Fund more or less broke even in the month of December, up 0.1% which brings fiscal year to date returns to -4.9%. Thus far in January the Fund has gained back almost two percentage points. Fund managers are performing as expected.
- C. *Updated Forecast of Endowment Fund Reserves* – Mr. Johnson recalled that the Land Board approved FY2013 distributions at the August Board meeting. Traditionally the Endowment Fund Investment Board (EFIB) provides an update after five months. Although the Endowment Fund has had some losses they are not material enough to change the EFIB conclusion that the distributions approved in August are still reasonable and prudent and there is no need to start planning now for any possible reduction in distributions in the future.

*DISCUSSION:* Governor Otter asked if Mr. Johnson had attended the Interim Committee hearings. Mr. Johnson replied yes. Governor Otter inquired if the EFIB had prepared any kind of analysis on possible impact to the investment stream that some of the potential legislation being discussed by the Committee may have; for instance, not being able to hold five years values in the Land Bank before it is re-invested. Mr. Johnson responded that the EFIB has not done any analysis, in part because any legislation is at this point uncertain. Mr. Johnson noted the near term impact is rather a subjective measure; for example finding a great piece of property that would open access to a lot of acres and being unable to buy it due to restrictions in statute. Mr. Johnson stated that to the extent the Land Board is precluded from making prudent and profitable investments, over time that would have an impact. Governor Otter commented that it may benefit the Board to revisit the reasons behind statutory changes made in 1995 that allowed the Board more management and more flexibility, including what has happened since compared to what happened before. Mr. Johnson offered to work with the Department in that effort. Secretary of State Ysursa recalled one purpose of the Land Bank was to retain the land base, because once land was sold and proceeds went into the Permanent Fund, those proceeds could not be withdrawn and utilized to purchase other land or assets. Secretary of State Ysursa noted some of the other Constitutional amendments that year had to do with the Endowment Fund and how it was invested, moving the Fund from strictly fixed income to a split of equities and fixed income. Secretary of State Ysursa inquired if Land Bank funds are invested by EFIB. Mr. Johnson replied EFIB is responsible for investing those funds but in the past has left funds with the Treasurer in a shorter term interest account with the idea that those funds at any time could be expended and therefore need to be liquid.

At 9:25 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 67-2345 subsection (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. 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. *Roll Call Vote:* Aye: Ysursa, Wasden, Jones, Otter; Nay: None; Absent: Luna.

- **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: Update on Cottage Site Defaults]

At 9:39 a.m. the Board resolved out of Executive Session by unanimous consent. No action was taken by the Board during the Executive Session.

At 9:40 a.m. a motion was made by Attorney General Wasden to adjourn. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0. Meeting adjourned.

