



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
Brandon Woolf, Acting State Controller
Tom Luna, Superintendent of Public Instruction

Tom Schultz, Secretary to the Board

Final Minutes
State Board of Land Commissioners' Regular Meeting
August 21, 2012

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, August 21, 2012 in the Senate Hearing Room (Room WW55) at the State Capitol, 700 W Jefferson, Boise, Idaho. The meeting began at 9:03 a.m. 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 Acting State Controller Brandon Woolf

For the record, Governor Otter recognized the presence of four Board members and the absence of Superintendent Luna.

• **CONSENT**

1. Director's Report

- A. Interest Rate on Department Transactions – August 2012
- B. Timber Sale Activity and Information Report – July 2012
- C. Division of Lands, Minerals, Range Official Transactions – July 2012
- D. Legal Matter Summary – July 2012
- E. Fire Season Report – July 2012

DISCUSSION: Referring to the Timber Sale Activity and Information Report, Director Schultz noted the Department sold ten timber sales in July with total net sale value reflecting a 52% upbid over appraised value. Director Schultz stated the Department has 433 MMBF under contract with an estimated value of \$90 million. Fiscal year to date harvest receipts are just over \$4.3 million and the Department has sold approximately 46% of its FY2013 timber sale plan. Director Schultz commented new housing starts are at their highest level since 2008.

Director Schultz pointed out several items from the LMR Official Transaction Report, including a new commercial lease with Kestrel West LLC in the Garro Building; a fair number of oil and gas lease assignments from Bridge Energy to Alta Mesa, quite a few grazing cancellations and two residential assignments. Director Schultz indicated the residential assignments were within the same family; the assignor requested a split assignment.

Governor Otter remarked on the number of fires presently burning in Idaho and inquired if the Department has developed a salvage plan for timber burned. Director Schultz commented that acres burned on state land is primarily secondary base; there has not been a significant amount of timber burned on endowment land. The Department did arrange salvage at Priest Lake due to the severe wind blow that occurred in July. Director Schultz indicated that David Groeschl, State Forester and Division Administrator of Forestry and Fire, will provide an update on the fire season.

State Forester David Groeschl briefly recapped the Fire Season Update report: Emergency Fire Suppression expenditures are approximately \$7.6 million, Suppression Account will recover an estimated \$3.1 million; the Department has used three Incident Command teams, one Type 3 and two Type 2. Department personnel are also assisting on several ongoing fires within Forest Service or Bureau of Land Management protection.

Mr. Groeschl extended condolences in the tragic death of Forest Service firefighter Anne Veseth on the Steep Corner Fire. Mr. Groeschl explained this fire is within the Clearwater-Potlatch Timber Protective Association protection area; the Department is the lead investigator into the cause and origin of the fire. OSHA, the Forest Service law enforcement branch and a fact-finding, serious accident investigation team are each conducting investigations as well. Mr. Groeschl stated the Department is not able to comment on these investigations until they are completed.

Regarding firefighting efforts, Mr. Groeschl indicated that containment is anticipated on the Steep Corner Fire in the next couple of days. Mr. Groeschl remarked the Idaho National Guard was mobilized for assistance on the Trinity Ridge Fire. All resources are presently stretched thin; there is a need for helicopters and crews on the ground. The Guard will also give support on other fires across the state as needed. Department personnel are assisting on the Trinity Ridge Fire, the Halstead Fire and the Mustang Complex. Trinity Ridge and Halstead are only 5% – 10% contained. Mr. Groeschl made note that the next couple of weeks will be challenging as there is no significant rainfall forecasted and lightning strikes are probable. Mr. Groeschl affirmed the Department will continue to be aggressive in fire suppression on private and state lands under its protection and continue to assist on other fires.

Attorney General Wasden mentioned a newspaper headline reporting allegations of lack of communication and training for firefighting crews on the Steep Corner Fire and expressed concern for Department crews. Attorney General Wasden asked Mr. Groeschl if he is satisfied with the Department's internal coordination. Mr. Groeschl responded firefighter safety is the Department's number one priority. The Department is very diligent about providing training, ensuring qualifications, supplying necessary personal protective equipment (PPE) and making sure crews are aware of hazards and that communication systems are up to date. Mr. Groeschl described the Department's primary focus is initial attack and Department personnel are very experienced with initial attack as well as extended attack should a fire escape. Mr. Groeschl acknowledged that fire fighting is a very hazardous undertaking and expressed his pride and confidence in Department staff. Mr. Groeschl offered assurance that firefighter safety will continue to be highest priority.

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. Caribou	CR-20-0297	32,577	TONS	Bonner	Pend Oreille (Sandpoint)
B. Bond Creek Pole	CR-30-0602	3,125	Poles	Benewah	St. Joe (St. Maries)
		470	MBF		
C. Park Chop	CR-41-0069	7,580	MBF	Clearwater	Ponderosa (Deary)
<u>SOUTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
D. Northern Yak	CR-42-5062	3,455	MBF	Idaho	Maggie Creek (Kamiah)

3. Results of August 3, 2012 Oil and Gas Lease Auctions – Staffed by Eric Wilson, Program Manager-Minerals

DEPARTMENT RECOMMENDATION: Approve the results of the August 3, 2012 oil and gas lease auctions, and direct the Department to issue 44 oil and gas leases to the successful bidders following their timely payment of bonus bids, rent, and advertising costs.

4. Approval of Minutes – July 17, 2012 Regular Meeting (Boise)

5. Approval of Minutes – August 1, 2012 Special Meeting (Boise)

CONSENT AGENDA BOARD ACTION: A motion was made by Attorney General Wasden that the Board approve the Consent Agenda. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0.

• **REGULAR**

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

- A. Manager's Report
- B. Investment Report
- C. FY 2014 Distributions and Transfers

EFIB RECOMMENDATION: Approve the recommended distributions and transfers.

DISCUSSION: Mr. Johnson stated distributions are well secured for FY2013 and FY2014. Mr. Johnson reported the Endowment Fund Investment Board met and approved EFIB staff recommendations for FY2014 distributions and transfers; also, the EFIB Audit Committee met and approved FY2013 financial statements. The Investment Board Executive Committee interviewed several investment managers to replace a manager discharged earlier this year. There were no legal or compliance issues. Mr. Johnson announced Warren Bakes was appointed to fill the Board position designated for an education administrator and Gavin Gee was reappointed to another four-year term. Mr. Johnson expressed appreciation to three entities for contributing to the early release of the endowment funds' FY2012 audited financial statements: The Northern Trust (EFIB custodian bank and investment record keeper), Andy Potter and Judy Shock (EFIB staff) and Department of Lands' accounting team.

Mr. Johnson noted the Capitol Endowment serves to fund maintenance and repair of the Capitol building. Currently there is no reserve fund to accumulate income for major maintenance on the Capitol; therefore the Capitol Commission is drafting legislation to establish a separate maintenance reserve. Mr. Johnson stated the Investment Board is supporting those efforts. Mr. Johnson remarked the reserve fund would be funded with annual distributions from the Capitol Permanent Fund.

On the matter of FY2014 distributions and transfers, Mr. Johnson explained the Land Board is responsible by statute to determine the allocation of earnings reserves; how much to distribute to beneficiaries, how much to retain and how much to transfer to permanent funds. The Asset Management Plan requires the EFIB to provide recommendations to the Board. The EFIB makes recommendations annually in August so beneficiaries can include distribution amounts in their proposed budgets due in September. Mr. Johnson stated six of eight endowments will see an increase in distribution for FY2014 and will have transfers to permanent funds: Ag College, Charitable Institutions, Penitentiary, School of science, State Hospital South and University. Two endowments – Public School and Normal School – will have distributions held at the FY2013 level because their earnings reserve funds hold less than 5 years of reserves, and will therefore not have transfers to their permanent funds. Mr. Johnson noted the transfer to the permanent fund for the Ag College Endowment will be smaller than normal because the EFIB recommends temporarily holding 7 years in reserves due to forecasted below average land income for that endowment. Governor Otter inquired how long the temporary hold on Ag College earnings reserves is expected to remain. Mr. Johnson replied that it is difficult to estimate; until land revenues start to rise for Ag College, temporary could mean five years.

BOARD ACTION: A motion was made by Attorney General Wasden to approve the Endowment Fund Investment Board recommendation. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0.

7. Third Extension of the Caribou Chop (TS-10-3623) Timber Sale Contract – Staffed by David Groeschl, State Forester and Division Administrator-Forestry and Fire

DEPARTMENT RECOMMENDATION: Upon payment of the remaining estimated stumpage value and interest of \$52,443.23, grant Idaho Forest Group, LLC, a third one-year extension to complete all terms of the Caribou Chop timber sale contract.

DISCUSSION: Governor Otter asked how often the Department receives a request for a third extension. Mr. Groeschl responded it is very rare with the Department's current extension policy; it was somewhat more common five years ago and prior. Governor Otter inquired if Idaho Forest Group has ever received a third extension. Mr. Groeschl replied not to his knowledge. Secretary of State Ysursa asked about the Department's expectation that the sale will be completed in September. Mr. Groeschl restated the Department fully expects the sale will be completed in September.

BOARD ACTION: A motion was made by Secretary of State Ysursa to approve the Department recommendation. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0.

8. Approval of Riverbed Mineral Lease E500010, Mike Conklin – Presented by Eric Wilson, Program Manager-Minerals

DEPARTMENT RECOMMENDATION: Approve the Director's Final Order for issuance of Riverbed Mineral Lease E500010.

DISCUSSION: Mr. Wilson recounted background information, summary of concerns and the Department recommendation as prepared in the printed Board memo.

Dr. John Gordon of Boise, Idaho, retired physician and steelhead fisherman, presented several concerns and comments in opposition to the lease, summarized here: dredge activities are leaving holes that are hazardous to fishermen, many deep enough a person might drown; annual spring runoff is not adequate to fill these holes; the 1954 Idaho Dredge Mining Act gave administration to the Land Board and directed that there be periodic inspections, collection of bond and royalty should be followed; the Hearing Officer's report says activity has caused no damage however Mr. Conklin's own affidavit states he did not dredge during the past 2 years.

Governor Otter asked if Mr. Wilson would like to respond to Dr. Gordon's testimony. Mr. Wilson replied that Dr. Gordon's testimony is better directed to Idaho Department of Water Resources (IDWR) as regulatory authority. Governor Otter asked Dr. Gordon if he had spoken with IDWR. Dr. Gordon reiterated the 1954 Dredge Mining Act that designated the Land Board as the administrative agent.

Secretary of State Ysursa thanked Dr. Gordon for his comments and remarked the Land Board has to perform a balancing act when there are competing interests for public trust land. Secretary of State Ysursa acknowledged the 1954 law and noted some amendments have been made to that law since then. Dr. Gordon mentioned a 1991 mineral leasing law that eliminated the royalty and bond requirement of recreational dredging and expressed a wish that recreational dredge miners had more supervision. Dr. Gordon commented the original act provided that dredge holes would be covered and the stream bed restored within 60 days and did not see where that provision has been eliminated.

Governor Otter inquired if the Idaho Fish and Game Department had been notified and if there was a response. Dr. Gordon responded that the Lewiston Fish and Game office received a letter, contacted their superiors and were advised not to respond. Mr. Wilson replied to the Governor's question, stating Fish and Game was notified and further remarking that Fish and Game works with IDWR on the recreational mining permit each year. Mr. Wilson explained an extensive list of streams is published indicating which streams are open and the times they are open. Several agencies assist IDWR with production of this list, including Fish and Game. If a stream is not listed, it is closed. Mr. Wilson again stated that Idaho Department of Water Resources administers recreational dredging.

Mr. Jonathan Oppenheimer, Senior Conservation Associate with the Idaho Conservation League (ICL), gave testimony in opposition of the lease on behalf of ICL, summarized as follows: Mr. Conklin's proposed lease application is inconsistent with state and federal law; the Land Board has a duty to ensure the public interests are upheld; the Land Board is responsible for

ensuring reclamation occurs on surface mining operations and should not waive reclamation requirements; dredge holes are not self-reclaiming; statutes do not allow the Land Board to waive bond or royalty or reclamation; the Land Board should not establish rules inconsistent with statute; applicant does not hold a valid water right; Mr. Conklin has not conducted any suction dredge mining in the past two years; the Department has not performed inspections to determine impact; Mr. Conklin's exploration location permit expires September 1, 2012; exploration locations are regularly cancelled upon issuance of the lease; regulation of activities is not only appropriate but required by IDAPA 20.03.05 which regulates riverbed mineral leasing.

Attorney General Wasden recapped Mr. Oppenheimer's concerns as follows: restoration – no actual reclamation occurring; required reclamation plan does not exist here; the Land Board cannot waive royalty or bond requirements; no valid water right; factual issue – no suction mining occurring under current permit. Mr. Oppenheimer agreed those are the primary concerns of ICL. Attorney General Wasden asked Mr. Wilson if he would like to respond.

Mr. Wilson stated IDAPA 20.03.02 specifically excludes all activities that occur in a navigable river when there is a valid stream channel alteration permit in effect. Mr. Conklin has a valid permit issued by Water Resources; the Department assumes he has exercised his rights under that permit. The Department does not have adequate staff to investigate every exploration location along the Salmon River and clear water body in the state.

Attorney General Wasden inquired if the Department's conclusions would be different given adequate staff. Mr. Wilson replied that recreational mining is administered by Water Resources; the Department doesn't duplicate regulatory responsibilities with Water Resources. Attorney General Wasden asked if the Department recommendation would be different based on which set of factors Mr. Conklin is engaged. Mr. Wilson responded that the Department's conclusions would not be any different. Mr. Wilson explained the mineral lease would simply give Mr. Conklin the exclusive right to conduct recreational mining activities for that stretch of the river; mining activities is under IDWR authority. The Department's concern would be that Mr. Conklin is the only person conducting activity within the specified lease area. If the activities are recreational mining as defined in the rules, there is no bond requirement.

Attorney General Wasden asked Mr. Wilson's perception on time needed to fill the holes. Mr. Wilson replied that it depends on water flow; if spring runoff is low, it may not be enough to fill holes each year. Mr. Wilson added that the flow has been high the past three consecutive years.

Governor Otter commented that previous testimony indicates Mr. Conklin has not dredged in the last two years; under the lease he would have exclusive right of activity. Governor Otter asked if others have done dredging with Mr. Conklin's permission. Mr. Wilson replied the Department does not know.

Mr. Oppenheimer requested permission to respond to one specific issue: Title 47 chapter 15 regarding surface mining – every operator conducting surface mining operations which disturb less than 2 acres within the state of Idaho shall wherever possible put the land so disturbed to approximate the previous contour of the lands. Mr. Oppenheimer noted rules were implemented for the application of the Idaho Surface Mining Act; however, those do not waive

the requirements to recontour and reclaim the land, they only waive the requirement for a bond and ICL disputes whether or not those rules are legal in the light of statutory language.

BOARD ACTION: A motion was made by Secretary of State Yursa to adopt the Department recommendation. Controller Woolf seconded the motion. Attorney General Wasden offered a substitute motion to table this matter until the regularly scheduled September Land Board meeting to allow for a site visit of the proposed lease area. Secretary of State Yursa withdrew his motion, with the consent of Controller Woolf. Secretary of State Yursa then seconded the substitute motion put forth by Attorney General Wasden. The substitute motion carried on a vote of 4-0.

Governor Otter advised that this matter will be heard at the September 18, 2012 regular Land Board meeting. Secretary of State Yursa suggested that Department staff research relationship of statute to rules and the concept of administrative rules going outside or contrary to statute.

9. FY2014 Budget Enhancements – Presented by Lisa Johnson, Financial Officer

DEPARTMENT RECOMMENDATION: Direct the Department to include these supplemental and enhancement requests in the FY14 budget proposal due on September 4, 2012.

DISCUSSION: Controller Woolf asked about item 2 from the FY2014 Enhancement Requests; the Department is requesting \$146,600 in personnel costs, but no additional FTEs are requested. Ms. Johnson elaborated that the \$146,600 is directed solely to seasonal firefighters.

BOARD ACTION: For the record, Governor Otter stated the Chair will not vote on this item because the Governor's Office develops a separate budget proposal for each state agency.

A motion was made by Attorney General Wasden to approve the Department recommendation. Controller Woolf seconded the motion. The motion carried on a vote of 3-0, with Governor Otter recused for this vote.

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

- **INFORMATION**

10. 2014 Cottage Site Lease Auction Process – Presented by Bob Brammer, Division Administrator-Lands, Minerals, Range

DISCUSSION: Secretary of State Yursa commended Mr. Brammer and the Department on development of the cottage site lease auction process. Regarding item 5 and the requirement for challengers to deposit an amount equal to the value of improvements – Secretary of State Yursa inquired what the Department does for grazing lot improvements. Mr. Brammer responded that requirement is consistent for all conflicted auctions, including grazing. Secretary of State Yursa asked if that is by rule or statute. Mr. Brammer answered it is in the grazing lease rules and the Department wants consistency with cottage site leases as well.

Controller Woolf asked what is the historical number of cabins sold each year on each lake. Deputy Director Opp replied that based on Department research over the last several years, the average is 8–12 and those are not leasehold transactions.

At 10:42 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 67-2345(1) subsections (d) and (f) for the purpose of considering records that are exempt from disclosure and communicating with legal counsel regarding 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, Woolf, Otter; *Nay*: None; *Absent*: Luna.

- **EXECUTIVE SESSION**

- A. Idaho Code 67-2345(1)(d) – to consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code; and 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 Leasing]

At 11:21 a.m. the Board resolved out of Executive Session by unanimous consent. No action was taken by the Board during the Executive Session.

There being no further business before the Board, at 11:21 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.

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/ Thomas M. Schultz, Jr.

Thomas M. Schultz, Jr.
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the September 18, 2012 regular Land Board meeting.