



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 D. Woolf, State Controller  
Tom Luna, Superintendent of Public Instruction

Tom Schultz, Secretary to the Board

Final Minutes  
State Board of Land Commissioners' Regular Meeting  
January 15, 2013

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, January 15, 2013 in the second floor courtroom of the Borah Building, 304 North 8th Street, Boise. The meeting began at 9:01 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 State Controller Brandon Woolf  
Honorable Superintendent of Public Instruction Tom Luna

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

**1. Director's Report**

- A. Interest Rate on Department Transactions – January 2013
- B. Timber Sale Activity and Information Report – December 2012
- C. Division of Lands, Minerals, Range Official Transactions – December 2012
- D. Legal Matter Summary – December 2012

*DISCUSSION:* Director Schultz noted, from the Timber Sale Activity Report, the Department had one sale last month that sold at a 53% upbid over the advertised value. The Department's current volume under contract is about \$88.6 million and 437 MMBF. Director Schultz remarked that timber harvest receipts to date are approximately \$34.5 million; the Department foresees roughly \$50 million in gross receipts for timber sales in FY2013. Most housing forecasts call for continued growth in 2013. Director Schultz stated the Department's timber sale target for FY2013 is just under 242 MMBF; to date sales are about 70% of target with just over 169 MMBF sold. Additionally, approximately 20,000 poles have sold, which is about 80% of the cedar pole target. Director Schultz reported harvest volume is tracking roughly with FY2011 harvest volume; the Department anticipates 280-300 MMBF harvested this year. Director Schultz commented that Department stumpage rates have been fairly static since March 2012, with a slight dip in the last quarter, but with the forecast of increased housing starts the Department expects to see an uptick in stumpage prices over the next year.

From the LMR Transaction Report, which lists transactions that occurred in the prior month, Director Schultz commented a substantial number of grazing leases were renewed. Director Schultz pointed out two residential cottage site leases that were reinstated after being cancelled for late payment; the Department received payment and those leases have been reconciled. Director Schultz noted that of 12 cottage site leases having cancellations due to late payments over the past year, all have been renewed with the exception of one; the Department did terminate that one.

Director Schultz asked Deputy Attorney General Edith Pacillo to brief the Land Board on the Cottage Site, LLC v. State litigation as listed in the Legal Matter Summary. Ms. Pacillo stated Cottage Site, LLC is an entity that is controlled by Frederick Bagley who has a miscellaneous lease on the north end of the west side of Payette Lake. This lease of endowment land is because Mr. Bagley has built encroachments onto the endowment land that is adjacent to his cottage. The rent under that lease is based on the assessed value of 0.22 acres (+/-). Cottage Site, LLC has sued the Land Board and the Department alleging the State included more land in the area to be leased than it should have which caused the rent to exceed what it should have. The State has moved to dismiss on the pleadings. Cottage Site, LLC filed affidavits in response to the State's motion to dismiss which the State does not think was an appropriate procedure. The State moved to strike those affidavits; that motion will be heard on Friday of this week. Following that hearing, the State will get a hearing on the motion to dismiss.

Attorney General Wasden asked about the lease term on this encroachment. Ms. Pacillo responded the lease is effective until 2014. Attorney General stated his understanding of the facts: Encroachments were built on an endowment parcel next to Cottage Site, LLC's holdings and as a resolution of that problem the Land Board and the Department allowed Cottage Site, LLC to lease that portion upon which encroachments were built. What has generated the litigation is the fact that Cottage Site, LLC is not satisfied with the leasing provisions based upon its encroachments on land that Cottage Site, LLC does not have, own or control. Ms. Pacillo noted that is also her understanding.

Governor Otter asked if Cottage Site, LLC would be obligated to remove the improvements when the lease term expires. Ms. Pacillo stated her understanding that if the Land Board and the Department did not renew the lease then Cottage Site, LLC would have to remove those encroachments. Governor Otter further inquired that if the Board decided to lease the subject endowment land to another party, the Board or the new lessee would not have to pay Cottage Site, LLC for those improvements. Ms. Pacillo replied she believes that to be true, but because this is a miscellaneous lease it doesn't have exactly the same terms as the cottage site leases. Ms. Pacillo added the option of leasing this endowment parcel to somebody else may not be feasible because it is just an odd sliver that abuts the Bagley's property. Ms. Pacillo offered to research further.

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

- A. Manager’s Report: Mr. Johnson stated earnings reserves are sound due to strong land revenue and investment returns; distributions are secure for the upcoming period. There are no significant actions by the Investment Board to report.
- B. Investment Report: Mr. Johnson remarked the fund was up 1.3% for the month of December. Fiscal year to date the fund is up 7.2% and for calendar year 2012 it shows a 13.8% return. The fund is averaging almost 10% return over the last three years. Mr. Johnson noted thus far in the month of January the fund is up slightly over 2%, demonstrating continued strong returns. Investment managers are performing as expected, with most exceeding their benchmark.

- **CONSENT**

**3. 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. Cherry Corral	CR-41-0063	11,235	MBF	Latah	Ponderosa (Deary)
<u>SOUTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
B. Sill Creek	CR-42-5060	6,045	MBF	Idaho	Maggie Creek (Kamiah)

*DISCUSSION:* Governor Otter inquired if there is a market for the oversized (28" +) mature logs and asked about the number of mills in Idaho with carriages to handle that size. Director Schultz replied the Department does see interest in those larger sales. Typically the timber sale purchaser will find the mill that can accept those oversized logs; the Department is not necessarily directly marketing those larger logs. Director Schultz added the Department has seen somewhat of a discount for those larger logs in terms of worth but there is still a market for them. Governor Otter asked if the trees larger than 28" – whether grand fir, hemlock, subalpine – are marketed at the same price. State Forester David Groeschl explained that when the Department sells a timber sale the purchasers bid on the species. Within a species there are various sizes; bidders look at the timber cruise break down and then weight their price based on the diameter break down within that cruise information. Mr. Groeschl mentioned Empire Lumber's mill and the IFG mill in Lewiston still take large logs.

**4. Approval of Minutes – December 18, 2012 Regular 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 5-0.

- **REGULAR**

**5. 2014 Cottage Site Lease Template – Presented by Sid Anderson, Program Manager-Public Trust/Residential**

*DEPARTMENT RECOMMENDATION:* Approve the 2014 Cottage Site Lease Template as proposed by the Department.

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

*BOARD ACTION:* A motion was made by Attorney General Wasden that the Board approve the 2014 Cottage Site Lease Template as proposed by the Department. Controller Woolf seconded the motion.

A substitute motion was made by Superintendent Luna that the Board accept the lease as proposed with the following changes: a 4% cap on the CPI with a bottom cap of 0%, and include language that would define the lessees' opportunity to appeal. Secretary of State Ysursa seconded the motion for purpose of discussion. Following several minutes of discussion, Attorney General Wasden called for the question. Secretary of State Ysursa then called for division of the question.

Division of the Question: First part of the amended motion, 4% cap and 0% down: 3 ayes (Governor Otter, Secretary of State Ysursa, Superintendent Luna) and 2 nays (Attorney General Wasden, Controller Woolf); second part of the amended motion, inclusion of an appeal process: 1 aye (Superintendent Luna) and 4 nays.

The Board then voted on the amended motion which included only the 4% cap, 0% down on CPI: 3 ayes (Governor Otter, Secretary of State Ysursa, Superintendent Luna) and 2 nays (Attorney General Wasden, Controller Woolf). The amended motion passed, making a vote on the primary motion unnecessary.

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

*DEPARTMENT RECOMMENDATION:*

1. Forego setting two regular Land Board meetings outside of Boise in calendar year 2013.
2. Rescind the May 8, 2007 Board action directing the Secretary to recommend to the Board early each year meeting sites outside of Boise for the June and October regular meetings. The Board may at its discretion elect to hold future meetings in locations outside of Boise as deemed appropriate (Idaho Code § 58-103).

*DISCUSSION:* Attorney General Wasden remarked that he is not opposed to rescinding the prior Board action, but there is value in occasionally conducting the Land Board meetings outside of Boise. Attorney General Wasden stated that there is a common perception by the public that the Land Board officials are just politicians from Boise who never venture out across the state. The Board needs to hold meetings throughout Idaho where local residents have an opportunity to be in the audience. The volume of attendance is not as important as demonstrating that the Land

Board does manage endowment lands on behalf of the entire state of Idaho. Attorney General Wasden commented that perhaps twice a year is too much for offsite meetings, due to associated costs, but there is value in being out and about where the lands are located.

Superintendent Luna voiced agreement with Attorney General Wasden and suggested the Board might limit offsite meetings to one this year. Superintendent Luna noted there are means to engage the community more, such as the Governor's staff does with Capital for a Day, to promote greater attendance. Superintendent Luna added it is a great opportunity to give high school kids an occasion to see government in action.

Secretary of State Yursa concurred with both Attorney General Wasden and Superintendent Luna and commended Governor Otter on Capital for a Day.

Governor Otter recalled that some of the sites previously chosen were selected because there was a specific problem. Governor Otter remembered Idaho State University and Lewiston in particular; the Board was there to show support for the local community because of a problem that the Land Board controlled.

**BOARD ACTION:** A motion was made by Secretary of State Yursa that the Board approve the Department recommendation with consensus of the members that the Board will hold some meetings outside of Boise; dates and locations to be decided at a future time, as appropriate. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

- **INFORMATION**

NONE

At 10:29 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 67-2345(1) subsection (f) to communicate 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. Superintendent Luna seconded the motion. Roll Call Vote: *Aye:* Yursa, Wasden, Woolf, 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: Priest Lake Cottage Site Valuations]

At 11:12 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 11:16 a.m. a motion was made by Attorney General Wasden to adjourn. Secretary of State Yursa seconded the motion. The motion carried on a vote of 5-0. Meeting adjourned.

