



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
November 19, 2013

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, November 19, 2013 in the State Capitol, Senate Hearing Room WW55, 700 West Jefferson, Boise, Idaho. The meeting began at 9:00 a.m. The Honorable Secretary of State Ben Yursa presided. The following members were present:

Honorable Attorney General Lawrence Wasden
Honorable State Controller Brandon Woolf
Honorable Superintendent of Public Instruction Tom Luna

For the record, Secretary of State Yursa recognized the presence of four Board members and the absence of Governor Otter. Governor Otter was not able to attend due to travel out of country (Russia) on official state business. Lieutenant Governor Little was not available to preside in the Governor's place, also due to travel for state business.

1. Director's Report

- A. Interest Rate on Department Transactions – November 2013
- B. Timber Sale Activity and Information Report – October 2013
- C. Division of Lands and Waterways Activity and Information Report – October 2013
- D. Legal Matter Summary – October 2013

DISCUSSION: Director Schultz stated the Department's interest rate on transactions is 4.0% for this month.

Director Schultz reported from the Timber Sale Activity Report that the Department had seven timber sales that sold at auction last month with an average 34% upbid over the advertised value. Timber volume under contract is just over 491 MMBF and the value is close to \$110 million. Director Schultz noted October was a very good month for timber harvest receipts as was the prior month. The Department had almost \$8 million in receipts in October; projections for November indicate receipts will be in excess of \$9 million. The Department harvested over 176 MMBF in the first four months of the year which is a 10 year high; that includes fire salvage

and some insect damaged timber. Director Schultz commented the Department has reached 70% of its target volume sold for sawlogs and 30% of its target on cedar pole sales for the FY2014 timber sales program. Cumulative harvest receipts are 147% of the five year average and cumulative harvest volume is just under 177 MMBF for the year; the Department is having a great first quarter into the second quarter of the year for receipts as well as harvest volume. Director Schultz again noted the Department is projecting approximately \$9.6 million for November harvest receipts. Stumpage prices are around \$250/MBF.

Director Schultz remarked that the Lands and Waterways Activity Report shows a substantial number of residential cottage site leases were signed in October: 10 at Priest Lake and 68 at Payette Lake. Director Schultz provided an update that as of today total signed leases at Priest Lake is 60. Director Schultz recalled that the Board took action to give lessees that were in an exchange, if they had signed a lease, an opportunity to choose the reappraisal process. Of those 60 leases at Priest Lake the Department anticipates a majority if not all of them may choose the reappraisal. At Payette Lake a total of 113 out of 151 leases have been signed. Of the 151 total, 10 cottage site lots were sold at auction in October. Secretary of State Ysursa asked about the process for those lessees who were in an exchange and now choose the option of requesting a reappraisal. Director Schultz replied those lessees will need to make a decision in advance as those reappraisals will not be final and released before mid-February. Lessees will be sent a letter early next week with two options. Within 30 days of the letters being mailed, lessees will need to submit their payment with an option, either that they choose the reappraisal method, with the lease extension that the Board approved previously (2013 appraised value which was the 2013 rates), or continue to accept the 2014 lease that they signed; the invoice would reflect that 2014 lease rate. Secretary of State requested further clarification: if lessees remain with the 2014 lease they signed, they are on those lease terms and not subject to a conflict auction until the end of the term; if lessees choose reappraisal with the one year lease extension, they could be subject to conflict at the end of the year. Director Schultz responded that is correct. The Department would advertise those leases for conflict auction applications in March and April of 2014. Those that choose the reappraisal method would be subject to a conflict lease auction potential. Secretary of State inquired if that scenario is being explained in the letter. Director Schultz replied that it is.

Attorney General Wasden remarked that this raises a significant issue that the Board has struggled with for quite some time. The split ownership of cottage sites has presented problems for decades. Attorney General Wasden noted the Board took wise action in attempting to unify title. The problems that arose under the split title are that the beneficiaries were not receiving the benefits of the property that they are constitutionally entitled to receive. In addition to that, folks who had made investments in these residential sites also had a tremendous amount of uncertainty with regard to their investment in those recreational properties. Unification of title was a prudent choice on this Board's behalf. But, implementation of a unification policy has presented its own set of challenges and difficulties. Recently the Board had a number of matters in front of it to choose whether it should or should not approve exchanges. Recognizing the history of exchanges and all of the things that go along with that, the Board has a fiduciary responsibility to properly serve the interests of the beneficiaries; that is a challenge when this kind of an event unfolds. The Board in October chose not to engage in a number of exchanges. That decision was based upon serious concerns about legal issues that arose concerning those exchanges. There were also managerial issues and factual issues some of which could be

resolved, others could not. Attorney General Wasden commented that since that time he has received numerous communications from lessees and others and perhaps other Board members have received similar kinds of communication, expressing anger and expressing frustration. Attorney General Wasden stated he understands those expressions of distress; understands the history of why they are there. Despite the fact that there is tremendous amount of frustration and distress over the last year's history, this Board still has the responsibility to exercise reasonable care, skill and caution in the investment and management of all the endowment lands, including these cottage sites. Based upon a complete consideration of the legal issues, the managerial issues and associated litigation risks the Board's decision was prudent. Attorney General Wasden remarked it is important, as is being discussed here this morning, to have a way forward. That way forward is within the constitutional confines of the public auction, which is the safest course of action for the Board to pursue. As a fiduciary the Board was and is faced with the responsibility of choosing between several different methodologies. The methodology for unification which has the least amount of legal risk and the most assured way of unifying title is public auction. Attorney General Wasden concluded by stating he wanted to make clear for everyone his view on the subject.

Director Schultz had no comments to add to the Legal Matter Summary.

2. Endowment Fund Investment Board Manager's Report – *Presented by Gavin Gee, EFIB Vice Chair, Tom Kealey, Audit Committee Chair, and Larry Johnson, EFIB Manager of Investments*

- A. Manager's Report
- B. Investment Report
- C. EFIB Annual Report

DISCUSSION: Gavin Gee, Vice Chair, Endowment Fund Investment Board (EFIB), expressed appreciation at the opportunity to meet with the Land Board regularly and noted that Dean Buffington, EFIB Chairman, was not able to attend today's meeting. Mr. Gee then introduced other EFIB members in attendance: Senator Chuck Winder; Representative Neil Anderson; Warren Bakes; Tom Kealey, EFIB Audit Committee Chair; Gary Mahn; Sue Simmons, Compensation Committee Chair; and Richelle Sugiyama. Mr. Gee also introduced several individuals who work with EFIB in a consultant or legal capacity: Deputy Attorney General Julie Weaver; asset consultants from Callan Associates, Janet Becker-Wold and Jay Kloepfer; and audit firm representative Bobby Lawrence with Eide Bailly Company. Mr. Gee mentioned EFIB has two brief reports; first Larry Johnson, EFIB Investment Manager, will cover the monthly report and EFIB's Annual Report and then Tom Kealey will summarize EFIB's FY2013 financial statements and review the findings of the latest EFIB independent audit. Attorney General Wasden thanked Mr. Gee and all Investment Board members for the tremendous professional skill and effort they put forward. Secretary of State Ysursa added his appreciation of the Investment Board.

Mr. Johnson reported reserves are in good shape. There are no actions of the Investment Board to report at this point. On page 2 of the monthly report Mr. Johnson referred to the first graph showing year to date land revenues as a percent of forecast, by endowment fund. The graph indicates revenues are for the most part above average. Usually through the first four months of the fiscal year about 39% of annual revenue is received and this year almost 50% of forecasted revenue has been received. The graph also illustrates the kind of variability the Department and

EFIB face because timber purchasers have the ability to accelerate or decelerate their harvest over a 3 year period. Revenue forecasts are way below expectations on Ag College and way above on University. Mr. Johnson explained that is the natural variation experienced with those endowments but there is also an amount of certainty that the contracts in place today will be harvested in the next three years. Mr. Johnson commented on the second graph showing the Endowment Fund's performance vs. peers as of September 2013, stating the results are very good. Idaho ranks 1st percentile for seven years, 4th percentile for 5 and 10 years. Mr. Johnson noted this comparison is to other public funds in the nation, mainly retirement funds, and low numbers are better.

Moving to the multicolored investment report Mr. Johnson stated for the month of October the Fund was up 3% and fiscal year to date returns through the end of October were 9.2%. Mr. Johnson added that through yesterday the Fund is up a bit more than 1% so fiscal year to date through yesterday it stands at 10.4%. Mr. Johnson had noted in January of this year that long term expected return for the portfolio is a little above 6%. These elevated returns up front gives pause that the future may be a little bit more muted. Mr. Johnson reported all investment managers are performing as expected; all returns are positive and on average managers are performing above the benchmark.

Mr. Johnson noted the Land Board's Asset Management Plan requires EFIB to present an annual report every year, to report on the status of compliance with investment policy. Mr. Johnson was pleased to state EFIB is in compliance with the policy. Mr. Johnson mentioned EFIB held five board meetings during the past year ended October 2013. Attendance by Investment Board members averaged 93% with six members having perfect attendance over that period, a reflection that Investment Board members are very engaged. Mr. Johnson called attention to the objectives page in the EFIB Annual Report; the third listed is Objectives Specific to the Judges' Retirement Fund, one of the mandates for which the Investment Board is responsible. Legislation was passed several years ago to allow that fund to transition both in terms of pension administration and in terms of investments to the responsibility of the PERSI Board. The Judges' Fund has met the qualifications set in statute and will be transitioning to PERSI on July 1, 2014. Previously Mr. Johnson had reported the possibility of EFIB obtaining a new client in the form of an endowment to support a wastewater treatment system in the Bunker Hill area. Mr. Johnson indicated that issue is still being negotiated between the federal government and several Indian tribes. The court has given the parties a new date of April 2014 to arrive at a resolution; it is still uncertain as to whether that endowment in fact will come to the State or not.

Mr. Kealey, an Investment Board member for 12 years, and Audit Committee Chairman, presented the financial results and audit results for FY2013. Representative Neil Anderson and Gary Mahn are also members of the Audit Committee. Mr. Kealey began with the financial results, putting the funds in perspective: at the end FY2013 the Endowment Fund balance was approximately \$1.5 billion, an increase of \$180 million over the prior year. Earnings Reserves balances were \$250 million, up \$52 million from the prior year. Receipts from Department of Lands were \$74 million, up from \$63 million the prior year, and distributions to beneficiaries were \$48 million, up slightly from \$46 million the prior year. As mentioned earlier by Secretary Ysursa, returns were 14.4% for FY2013, up from an average 12.9% for the past three years. EFIB expenses have remained fairly small at less than 0.5% on year end net assets.

Mr. Kealey then commented on the Audit Summary, the most important result being that the auditor's report gave EFIB an unqualified opinion on all the assets and the returns. The Land Board should feel confident that the money is there based on this outside audit performed by Eide Bailly. Mr. Kealey stated other items on the audit report have to do with the compliance on the internal controls; there were no instances of non compliance with laws and regulations nor any material weaknesses or significant deficiencies in EFIB internal controls. The audit included an examination of the Department of Lands accounting processes and there were no items of exception to report. Mr. Kealey thanked Mr. Johnson and the EFIB team for doing a great job preparing accurate financial statements and having a smooth audit for this past year. Controller Woolf thanked Mr. Kealey, Mr. Johnson, EFIB staff and all Investment Board members for their work and for their timeliness in getting EFIB's audit and report to the Controller's Office for the statewide report.

Mr. Johnson introduced members on the EFIB staff: Judy Shock, administration and accounting; Chris Halvorson, investment management; and Laurel Fritz, fiscal officer. Ms. Fritz replaced Andy Potter, who retired after 42 years with EFIB. Mr. Johnson also recognized the presence of Michael Ray, an investment manager with TimesSquare Capital Management.

Superintendent Luna thanked Mr. Johnson and the Investment Board for stellar work in their year after year management of this endowment. Superintendent Luna remarked EFIB must be the envy of any other endowment or effort like this across the country, again expressing appreciation and hoping sooner rather than later it will lead to higher distributions. Secretary of State Yursa, on behalf of school children and all beneficiaries as well as the Land Board, also stated his appreciation to the entire Investment Board and EFIB staff for the professionalism that they exhibit and the many hours of volunteer work done by Investment Board members who are lending their expertise.

- **CONSENT**

3. Timber Sales for Approval – Staffed by Eric Besaw, Regional Operations Chief-North, and Kurt Houston, Regional Operations Chief-South

<u>NORTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
A. Lower Packy	CR-20-0306	2,000	MBF	Bonner	Pend Oreille (Sandpoint)
B. Scramble OSR	CR-30-0597	5,500	MBF	Shoshone/ Clearwater	St. Joe (St. Maries)
C. Quick Longer Meadow	CR-41-0092	5,370	MBF	Clearwater	Ponderosa (Deary)
<u>SOUTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
D. Pulps Last Stand	CR-42-5070	7,925	MBF	Clearwater	Maggie Creek (Kamiah)
E. Center Rail	CR-43-4030	2,480	MBF	Idaho	Maggie Creek (Craigmont)

DISCUSSION: Attorney General Wasden asked what the average age is of Department timber that is being harvested. Director Schultz deferred to State Forester Groeschl. Mr. Groeschl replied that since the Department is trying to work down some of the excess inventory in the older, larger size classes the average age being harvested tends to be 100+ years old right now. The Department is managing some of the younger age class as well because that will quickly grow into larger and older, but is focusing on the 100+ year old age class.

4. Disclaimer of Interest for the former bed of the Salmon River, Idaho County, Idaho (Clark, Hoogendyk) – Staffed by Sid Anderson, Program Manager-Public Trust

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one parcel totaling 0.104 acres of the former bed of the Salmon River, and to require Jennifer Clark and Ronald Hoogendyk to pay the remaining processing fee of \$300 to the Department of Lands for this transaction.

DISCUSSION: None.

5. Disclaimer of Interest for the former bed of the Salmon River, Idaho County, Idaho (Clay) – Staffed by Sid Anderson, Program Manager-Public Trust

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one parcel totaling 0.429 acres of the former bed of the Salmon River and to require Justin T. Clay to pay the remaining processing fee of \$300 to the Department of Lands for this transaction.

DISCUSSION: None.

6. Disclaimer of Interest for the former bed of the Snake River, Payette County, Idaho (Clarich) – Staffed by Sid Anderson, Program Manager-Public Trust

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one parcel totaling 0.38 acres of the former bed of the Payette River, and to require Betty Lee Clarich to pay the remaining processing fee of \$300 to the Department of Lands for this transaction.

DISCUSSION: None.

Editor's Note: Although the Recommendation paragraph refers to the parcel location on the Payette River, in fact it is located on the Snake River, in Payette County, as correctly identified in Attachments 1 – 3. This proofing error was not discovered until after the Land Board meeting when the minutes were being typed. Commissioners were notified.

7. Disclaimer of Interest for the former bed of the Snake River, Payette County, Idaho (Gyllenskog) – Staffed by Sid Anderson, Program Manager-Public Trust

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for two parcels totaling 1.37 acres of the former bed of the Snake River, and to require Jerry Read Gyllenskog and Kathryn Anne Gyllenskog to pay the remaining processing fee of \$300 to the Department of Lands for this transaction.

DISCUSSION: None.

8. Disclaimer of Interest for the former bed of the Snake River, Payette County, Idaho (Powers) –
Staffed by Sid Anderson, Program Manager-Public Trust

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for three parcels totaling 5.1 acres of the former bed of the Snake River, and to require Judith Morgan Powers to pay the remaining processing fee of \$300 to the Department of Lands for this transaction.

DISCUSSION: None.

9. Disclaimer of Interest for the former bed of the Snake River, Payette County, Idaho (Seward) –
Staffed by Sid Anderson, Program Manager-Public Trust

DEPARTMENT RECOMMENDATION: Direct the Department to issue a disclaimer of interest for one parcel totaling 1.63 acres of the former bed of the Snake River, and to require Kenneth Leroy and Helen L. Seward to pay the remaining processing fee of \$300 to the Department of Lands for this transaction.

DISCUSSION: None.

10. Approval of Minutes – October 15, 2013 Regular Meeting (Boise)

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

• **REGULAR**

11. Pending Rule for IDAPA 20.02.01 - Rules Pertaining to the Idaho Forest Practices Act – Presented
by Archie Gray, Program Manager-Forest Practices

DEPARTMENT RECOMMENDATION: After consideration and legal review of all suggested proposed-rule changes, it is the recommendation of FPAAC and the Department that all of the proposed Forest Practices administrative rules move forward as pending rules, as set forth in Attachment 1.

DISCUSSION: A verbatim transcript is available by request to the Department of Lands, Attn: Land Board Recording Secretary, 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 adopt the Department recommendation that is that the proposed Forest Practices administrative rules as set forth in Attachment 1 be adopted as pending rules to be submitted to the Legislature. Controller Woolf seconded the motion. Secretary of State Ysursa added his understanding that implicit in the motion is the monitoring process as described. Attorney General Wasden stated his absolute agreement. The motion carried on a vote of 4-0.

