



STATE BOARD OF LAND COMMISSIONERS

C. L. "Butch" Otter, Governor and President of the Board
Lawrence E. Denney, Secretary of State
Lawrence G. Wasden, Attorney General
Brandon D. Woolf, State Controller
Sherri Ybarra, Superintendent of Public Instruction

Tom Schultz, Secretary to the Board

Be it remembered, that the following proceedings were had and done by the State Board of Land Commissioners of the State of Idaho, created by Section Seven (7) of Article Nine (IX) of the Constitution.

FINAL Minutes
State Board of Land Commissioners Regular Meeting
April 19, 2016

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, April 19, 2016, in the State Capitol, Room WW55, Lower Level, West Wing, 700 W Jefferson St., 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 Lawrence Denney
Honorable Attorney General Lawrence Wasden
Honorable State Controller Brandon Woolf

For the record, Governor Otter recognized the presence of all Board members and noted the absence of Superintendent of Public Instruction Sherri Ybarra.

1. Director's Report

- A. Interest Rate on Department Transactions – April 2016
- B. Timber Sale Activity and Information Report – March 2016
DISCUSSION: Governor Otter asked if the Department is seeing any effects from the expiration of the North American Free Trade Agreement (NAFTA). Director Schultz replied the Department anticipates some increased imports but has not seen much at this point.
- C. Division of Lands and Waterways Activity and Information Report – March 2016
- D. Legislative Update – Final
DISCUSSION: Governor Otter asked if Director Schultz had any concerns regarding House Joint Resolution 5. Director Schultz responded that he did not. Governor Otter expressed support for the resolution. Director Schultz noted that the legislature is trying to amend the constitution to clarify authority that is currently in statute only. Attorney General Wasden mentioned that the legislature in Idaho having this power is unique among states and commented that it is an overreach by the legislature. Attorney General Wasden reflected

that this matter was presented to voters two years ago for a constitutional amendment and it failed. The voters have rejected the notion that it be embodied within Idaho's constitution. Secretary of State Denney expressed support for amending the constitution. Secretary Denney remarked that two years ago there was not any effort to inform voters as to the necessity of having that opportunity to review rules. Governor Otter asked the members if the Board should take a position. Controller Woolf commented that it did not seem necessary for the Land Board as a whole to state a perspective.

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

A. Manager's Report

DISCUSSION: Mr. Johnson stated that distributions are well-secured and reserves are strong. Mr. Johnson commented that three Investment Board members were reappointed on April 11, 2016 to four-year terms and expressed appreciation for their service: Gavin Gee, Gary Mahn and Warren Bakes. Mr. Johnson noted that the Investment Board will attend the May Land Board meeting to present its semi-annual report. Following their presentation at the Land Board meeting, the Investment Board will meet to conduct the annual review of the Land Board's distribution policy. The Investment Board will provide a report to the Land Board in June; staff does not anticipate recommending any changes to that policy.

B. Investment Report

DISCUSSION: Mr. Johnson reported that the Fund was up 5.4% in March; a very good month. Mr. Johnson commented that through yesterday the positive trend is continuing; the Fund is up another 1.4%. Fiscal year-to-date loss has reduced from -2% to 0.6%.

C. Expected Endowment Fund Returns

DISCUSSION: Mr. Johnson reviewed the rate of return expectations that the Investment Board is using. In January, the Investment Board's asset consultant, Callan Associates, issued revised 10-year assumptions. The Fund's expected mix of assets is 66% equity, 8% real estate and 26% fixed income. With a weighted average expected return of 6.6%, inflation deduction of 2.2% and the costs of managing the Fund at 0.4%, there is an expected real return to the Fund of 4%. That is the rate of return expectation for the next 10 years. Mr. Johnson noted that there is substantial uncertainty associated with any of these types of estimates. The Investment Board compared Callan's numbers with forecasts of several other consulting firms and investment experts and determined that Callan's estimation is reasonable. Mr. Johnson discussed reasonable range of returns expected from the Fund given the natural variation of stock, bond, and real estate values. There is a 10% probability that the Fund might earn 17% per year over three years; there is a 10% probability that the Fund might earn -3.7% per year over three years. Mr. Johnson reminded the Board of the potential volatility of the Fund based on the investment assets mix. The Investment Board anticipates that over time the Fund will earn between 6% and 7%.

Governor Otter asked if the -3.7% possibility would negatively impact distributions to the beneficiaries. Mr. Johnson replied that there is five to seven years of earnings reserves for each beneficiary fund which are sufficient and intended to withstand a downturn such as that.

Controller Woolf noted that the manager's report lists that estimated reserves as of February are an average of 4.8 years and wondered if there are any concerns on that number being below five years. Mr. Johnson indicated confidence with the reserves, noting the numbers would need to fall below two or three years before there would be concern.

- **CONSENT**

3. Revised Land Advisor List – *Staffed by Tom Schultz, Director*

DISCUSSION: Controller Woolf asked about the process as it continues; is the list a living document and will companies have opportunity to be added or removed. Director Schultz responded that it is a living document. The Department anticipates, on an annual basis, reaching out to the consultants and either adding or deleting from this list as appropriate.

Governor Otter inquired if the advisor list is just for the purpose of divesting ownership. Director Schultz stated the advisor process could be used for any type of transaction: a land exchange, an acquisition, or a sale. It also could be used for studies or other analyses. Governor Otter remarked that his interest is related to the Canyonlands exchange with the Bureau of Land Management (BLM), 35,000 acres; the Department of the Interior has said there is no funding for the appraisal. Director Schultz commented that the Canyonlands exchange is rather complicated because it involves the federal government. The Department of Lands has agreed to pay for the appraisals on those lands, which have been reduced to approximately 28,000 acres on both sides; the appraisal contracts will be let within the next 30-45 days. Governor Otter asked if the Department is exchanging into consolidated lands. Director Schultz replied that it is consolidating into a large area of crested wheatgrass.

RECOMMENDATION: Approve updates to the Land Board's list of prequalified land advisors as described above and in Attachment 2.

4. Forest Practices Bond Required – *Staffed by Gary Hess, Program Manager-Forest Practices Act*

DISCUSSION: Governor Otter asked if the Department will have a requirement to inform the Board of action taken. Director Schultz stated the Department will report to the Board routine instances where bond requirements are occurring. Governor Otter noted the Department previously had mentioned that those contractors with violations generally are not part of the Idaho Associated Logging Contractors and wondered about the reason for that. Director Schultz responded that the Associated Logging Contractors (ALC) has required training for its member operators. Typically when logging operators have been through that training the Department does not see issues, but not all operators are members of ALC. Governor Otter asked if the Department would contemplate relief to the offender(s) if they agreed to go through the ALC's

training course. Director Schultz indicated that would be considered as an option as the Department works through remediation issues.

RECOMMENDATION: Authorize the Department to require an operating bond from forest practices operators, as needed, who act in non-compliance with the Forest Practices Act rules as described in Idaho Code § 38-1306B.

5. Bonner Lake West Conservation Easement – Staffed by Karen Sjoquist, Program Specialist-Forest Legacy, and David Groeschl, Deputy Director-Forestry and Fire

DISCUSSION: Governor Otter remarked that the appraisal price of \$12,800 for seven acres is more than \$1,800 per acre to appraise and wondered if that is an accurate cost. State Forester David Groeschl responded that forest legacy projects require very detailed and in-depth appraisals, as well as review appraisals, and \$12,800 is the correct cost.

RECOMMENDATION: Authorize the Department to acquire Bonner Lake West conservation easement, comprising 7 acres.

6. Approval of Minutes – March 15, 2016 Regular Meeting (Boise)

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

- **REGULAR**

7. Commercial Real Estate Broker – Presented by Michael Finch, Principal/Vice President, CenturyPacific, and Ryan Montoya, Program Manager-Real Estate

RECOMMENDATION: Approve Thornton Oliver Keller as the Land Board's Commercial Real Estate Broker according to the terms of the contract attached hereto.

DISCUSSION: Attorney General Wasden noted that the fee schedule proffered by Colliers was slightly more advantageous than the fee schedule by Thornton Oliver Keller and asked about the differences. Mr. Michael Finch of CenturyPacific responded that the fee structure in the TOK contract represents a 12 basis point premium over the total fee structure in the Collier's proposal. Collier's addressed the fees on an asset by asset basis so different percentage commissions for different assets. The TOK contract reflects a 2 1/2 percent listing commission for each asset. Attorney General Wasden asked why the interview panel believes that Thornton Oliver Keller (TOK) is the preferable entity given those differences. Mr. Finch responded that TOK represented a superior knowledge of the assets on the whole. Their understanding of the process for divestiture was also superior to that of Colliers. Both firms have deep experience with the assets, TOK more recently in their leasing of the Department's commercial portfolio; they added a 22% increase in the overall occupancy of the portfolio. In general TOK has a stronger understanding of the process as well as the assets. Attorney General Wasden noted that the fee structure with Colliers may be marginally better, or may even be even; it really

depends on how those assets are ultimately marketed and sold. Mr. Finch said that is correct. Attorney General Wasden observed that the overall ability of one of these entities to market and ultimately transact these parcels is the basis of the Department making the determination of a recommendation for Thornton Oliver. Mr. Finch stated yes; in sum the interview panel and the Department think that the overall outcome of this process will yield more net proceeds for the beneficiaries. Attorney General Wasden inquired why Thornton Oliver Keller would be best at representing the Land Board as stated during the presentation of this item. Mr. Finch replied that TOK has superior knowledge of the assets on a portfolio basis and an asset by asset basis; they have strong representation in both the Eastern Idaho markets as well as the Central Boise market and they understand the process for divestiture. Mr. Finch made a final comment to clarify that all brokerage commissions are paid for by the buyers.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board approve the Department recommendation to approve Thornton Oliver Keller as the Land Board's Commercial Real Estate Broker according to the terms of the contract attached to the agenda. Controller Woolf seconded the motion. The motion carried on a vote of 4-0.

8. Big Creek Land Exchange – *Presented by Ryan Montoya, Program Manager-Real Estate*

RECOMMENDATION: Direct the Department to complete the exchange as proposed.

DISCUSSION: Attorney General Wasden asked if the Department had any concerns about how either appraisal was done. Mr. Montoya replied there were no concerns and stated that by statute the Department is required to have an MAI appraiser and also an MAI review appraiser, outside of any review by Department staff. The appraiser and review appraiser were both selected through a request for proposal, competitive bidding process.

Attorney General Wasden requested a summary of the benefits of consolidating holdings and the detriments of not consolidating ownership. Mr. Montoya explained that the Endowment parcel in Section 36 is surrounded by private ownership which limits access for the Department and makes harvesting more difficult and operations more costly. In turn, when the Department is able to consolidate and have other surrounding Endowment ownership, as with the Hollibaugh property, staff is able to use the existing adjacent Endowment ownership for access; the Department receives economies of scale and is able to maximize the management. Attorney General Wasden asked about the differences in access between the Big Creek (Endowment) property and the Hollibaugh property and why it is better to have the consolidated piece with better access. Mr. Montoya responded that the Department does not now have access to the Big Creek parcel. It would require negotiating with the private owners for an easement that the Department would purchase, increasing the cost for accessing the property. Mr. Montoya further explained that the Department has not had the ability to access the property since the early '90s when there was some logging done, which was more of a management and a maintenance type environment whereas the Hollibaugh parcel already has access for Department staff through the south; there are already road systems established in blocked up Endowment land and the Department does not have any access problems moving into the Hollibaugh parcel.

Controller Woolf commented that this transaction was the first using a land advisor, a timberland advisor, and asked for feedback on that advisor's review of the Department's due diligence process. Director Schultz replied that it succeeded in assuring that the Department's due diligence process is adequate; the advisor did point out a few items for the Department to consider in future transactions. Director Schultz noted that this was a test case and if the Department were to do another \$200,000 transaction, the Board may choose to not use an advisor, but if it was a million or multi-million dollar transaction, it would be worth the effort to retain an advisor.

Mr. Mitch Sanchotena provided testimony in support of the land exchange. Mr. Sanchotena described one of his frustrations has been public ground locked up in private ownership and remarked that anytime there is opportunity to exchange a piece of landlocked ground for a piece of ground that the public can access, that makes it available to hunters and recreationists and others, there is an added merit to this land exchange beyond just the school endowment fund values. Mr. Sanchotena commented that these types of opportunities need to be considered by the Land Board a little bit further even, in many instances, than just the dollar and cents value because there is a big value in dollars in Idaho's recreation economy. Mr. Sanchotena again noted that as a member of the public he is wholeheartedly in support of the Board doing this land exchange.

Governor Otter noticed that the Department did not retain any of the subsurface wealth rights on the trade and asked if the state does not normally retain the subsurface – the mineral rights, gas rights, oil rights. Director Schultz replied that if the Department sells the surface, the mineral rights would be retained. With an exchange of land, the Department will trade for like minerals; the minerals are included as part of the trade. Governor Otter asked if during the due diligence process there was any analysis of potential subsurface wealth on the Big Creek parcel. Mr. Montoya responded that Department staff did perform an analysis of the subsurface of the Big Creek parcel and found that there would be potential for limestone; no other valuable minerals were identified on that property. Governor Otter remarked that with limestone there may be a pretty good chance for gold. Director Schultz noted that given the vicinity of the two parcels the Department did not anticipate any greater mineral wealth on the one versus the other and is trading full estate for full estate.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board direct the Department to complete the Big Creek Land Exchange as proposed. Controller Woolf seconded the motion. The motion carried on a vote of 4-0.

9. Maggie Butte Acquisition – *Presented by Ryan Montoya, Program Manager-Real Estate*

RECOMMENDATION:

1. Direct the Department to pursue the due diligence phase for the acquisition of Maggie Butte.
2. Approve the draft Letter of Intent and direct the Department to execute, by its Director, the Letter of Intent in substantially the form attached hereto.
3. Approve use of the appraisal method outlined in Exhibit B of the Letter of Intent.
4. Retain a Timberland Advisor to provide an independent review of the due diligence and proposed transaction.

DISCUSSION: Attorney General Wasden stated, for clarification, this is not approval of a purchase acquisition; rather this is simply approval of performing the due diligence to make that determination at some point in the future. Mr. Montoya affirmed the Attorney General's statement. The Department would come back to the Land Board with its analysis and provide a complete outline of due diligence findings. At that time the Department would ask for approval to enter into the purchase and sale agreement to complete the transaction.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board adopt the Department recommendation as outlined on items 1, 2, 3, and 4, on page 5 of 5 under Recommendations. Controller Woolf seconded the motion. The motion carried on a vote of 4-0.

10. FY2017 Timber Sales Plan – Presented by Archie Gray, Program Manager-Sale Administration and Scaling, and David Groeschl, Deputy Director-Forestry and Fire

RECOMMENDATION: Direct the Department of Lands to proceed with implementation of the FY17 Timber Sales Plan.

DISCUSSION: Governor Otter recalled that in 2007 the Department was 2 billion board feet behind in its sustainable yield program and noted that it does not appear much progress has been made. Mr. Gray replied that the Department is improving the methodology it uses to measure timber and staff is finding that the timber is growing faster than anticipated. The Department is gaining slower than estimated but is still gaining on that surplus.

Controller Woolf asked Mr. Gray to share the numbers again – current inventory versus annual target – and asked how long it will take to get down to 5 billion board feet. How probable is the 50-year plan to reduce the standing timber. Mr. Gray responded that in 2008 the Department had 7.7 billion board feet of standing timber. The current inventory is just over 7 billion board feet. The Department annually collects forest inventory data to improve its data set and with improved methodology staff is finding that the timber grows back faster than initially thought. Governor Otter stated a concern about oversized logs; in Idaho there are about four mills that can take those really large logs over 28 inches and beyond. Governor Otter also mentioned that with older trees there is less carbon sequestration. Director Schultz noted that the Department will be rerunning the sustained yield study over the next several years, looking at rotation ages, and the size of the diameter class to be harvested to capture the ideal diameter class. Governor Otter asked if the Department's harvest projection encourages capital investment. Director Schultz replied that the Department routinely has requests from bankers asking about supply and sale plans. The fact that the Land Board adopts an annual plan and also looks at three years of planning provides some certainty to the industry based on past performance.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board adopt the Department recommendation and direct the Department of Lands to proceed with implementation of the FY17 Timber Sales Plan. Controller Woolf seconded the motion. The motion carried on a vote of 4-0.

11. Negotiated Rulemaking IDAPA 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Lands – Presented by Archie Gray, Program Manager-Sale Administration and Scaling, and David Groeschl, Deputy Director-Forestry and Fire

RECOMMENDATION: Authorize the Department to enter into negotiated rulemaking to revise IDAPA 20.02.14 – Rules for Selling Forest Products on State-Owned Endowment Lands.

DISCUSSION: None.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board adopt the Department recommendation and authorize the Department to enter into negotiated rulemaking to revise IDAPA 20.02.14 and the associated Rules for Selling Forest Products on State-Owned Endowment Lands. Controller Woolf seconded the motion. The motion carried on a vote of 4-0.

- **INFORMATION**

NONE

At 10:33 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 74-206 to consider the evaluation of officer as authorized by Idaho Code § 74-206(1)(b). Attorney General Wasden requested that a roll call vote be taken and that the Secretary record the vote in the minutes of the meeting and let the minutes reflect that the topic of the Executive Session is the evaluation of Director Tom Schultz. Controller Woolf seconded the motion. Roll Call Vote: Aye: Denney, Wasden, Woolf, Otter; Nay: None; Absent: Ybarra.

- **EXECUTIVE SESSION**

A. Idaho Code 74-206(1)(b) – to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student. [TOPIC: Performance Evaluation – Director, Department of Lands]

At 11:02 a.m. the Board resolved out of Executive Session by unanimous consent. No action was taken by the Board during the Executive Session.

- **REGULAR**

12. Personnel Matter

DISCUSSION: Attorney General Wasden thanked Director Schultz for his tremendous effort on behalf of the Board. Attorney General Wasden mentioned that the Director's skill as an administrator and as a leader is widely recognized by the members of this Board. Attorney General Wasden expressed appreciation that Land Board meetings are efficient, straightforward, and well-briefed and commended Director Schultz on all of the effort put forward to see that the Department functions as it should. Controller Woolf noted that the work done by Director

