



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
September 20, 2016

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, September 20, 2016, in the State Capitol, Room WW55, Lower Level, West Wing, 700 W Jefferson St., Boise, Idaho. The meeting began at 9:00 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
Honorable Superintendent of Public Instruction Sherri Ybarra

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

1. Director's Report

A. Interest Rate on Department Transactions – September 2016

B. Timber Sale Activity and Information – August 2016

DISCUSSION: Governor Otter mentioned that Senators Feinstein and Boxer [California] wanted to relax the export of sawlogs off the west coast and asked if that effort was successful. Director Schultz indicated he would check on that and provide information after the meeting.

C. Division of Lands and Waterways Activity and Information – August 2016

D. Cottage Site Auctions

DISCUSSION: Governor Otter wondered if the low up-bids on leased lots occur because the purchasers have to buy the improvements. Director Schultz noted that it is also a common occurrence with grazing leases that competitive bidding averages about 5-6%. There is an inherent difficulty in having competition when somebody owns the improvements, whether the improvement is a house, a fence or other.

E. Land Bank Fund

F. Fire Season

DISCUSSION: Governor Otter commented that during his tour of the Pioneer Fire, county commissioners were very concerned about the situation of their water works and inquired if the Department has made an assessment on water works for both Lowman and Idaho City. Director Schultz responded that the Forest Service has deployed a Burned Area Recovery Evaluation (BARE) team to analyze the impacts from the fire. The BARE team has looked at watershed impacts as part of its analysis of the fire. Director Schultz has had discussions with the Forest Service urging rehabilitation and salvage potential. Director Schultz has also had conversations with BLM and Fish and Game, both of whom are willing to help. Secretary of State Denney asked if any of the Fish and Game land that burned was timberland and if so do they have a salvage program. Director Schultz replied he has not specifically discussed Fish and Game's intention for their timberland, but noted that the Department will follow up and assist as needed. Controller Woolf asked if the Department has any salvage timber from the Clear Creek 2 and John Doe fires. Director Schultz responded that those fires did not include endowment land. The Department had only 80 acres of timberland that burned, and that was due to a fire in the Maggie Creek Supervisory Area. That particular timber had been previously harvested and the Department has no plans for salvage operations this fall.

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 are expected to stay that way given results about state endowment land income as earlier reported by Director Schultz. Mr. Johnson noted there were no significant actions of the Investment Board since the last Land Board meeting. Mr. Johnson commented that copies of the audited 2016 Financial Statements for the Endowment Fund were distributed to each of the Land Board members. The Investment Board will attend the November Land Board meeting and report on those audited statements at that time.

B. Investment Report

DISCUSSION: Mr. Johnson remarked that Fund results for August were a positive 0.3%; however, the Fund has lost 0.6% to date in September, causing fiscal year-to-date return to fall to 2.7%.

• **CONSENT**

3. Approval of Minutes – August 16, 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 5-0.

- **REGULAR**

4. Request to Surplus Idaho Department of Fish and Game Property - St. Maries – Presented by Gregg Servheen, Idaho Department of Fish and Game

RECOMMENDATION: Direct the Idaho Department of Fish and Game to solicit interest in purchase of the property pursuant to Idaho Code §§ 58-331 and 58-332.

DISCUSSION: Attorney General Wasden asked for assurance that given the Department of Lands' interest in purchasing this property, the decision by the Department of Fish and Game to surplus this property was made based on the needs and best interest of the Department of Fish and Game, not due to any interest expressed by Department of Lands. Attorney General Wasden noted that upon first reading the Board memo, it seemed to him that the Department of Lands would have a natural interest in this property. Therefore, the Attorney General wants to clarify that the Department of Fish and Game's decision to surplus this property is based on Fish and Game's needs and not due to any "back room" discussions with the Department of Lands. Mr. Servheen affirmed that the Fish and Game Commission has had this property on their surplus list for many years, as stated in the Board memo; first approved for surplus in 1990 and again in 2007. Mr. Servheen remarked that the Fish and Game Commission pursued an exchange on this property, but that exchange did not proceed. Mr. Servheen assured the Land Board that Idaho Code § 58-332 will be adhered to for disposition. Governor Otter inquired about the Department of Lands' interest in the property even though it is not contiguous. Director Schultz replied yes, this acreage has productive timber; the Department has been trying to acquire timberland on Lindstrom Peak and as such is interested in this property. Director Schultz asserted that the Department of Lands would conduct due diligence and abide by the disposition process as would any other state agency. Governor Otter asked if the inholdings are federal, state, or private ownership. Mr. Servheen explained that the map in Attachment 2 shows ownership. Governor Otter asked if this surplus property were to be purchased by Department of Lands, which beneficiary would become owner. Director Schultz replied that based on aging in the Land Bank Fund, it would be the Public School Endowment.

BOARD ACTION: A motion was made by Controller Woolf that the Board adopt the Department of Fish and Game's recommendation to solicit interest in purchase of the property pursuant to Idaho Code §§ 58-331 and 58-332. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

5. Proposed Legislation, Oil and Gas Leasing, Title 47, Chapter 8 – Presented by Mike Murphy, Bureau Chief-Endowment Leasing

RECOMMENDATION: Direct the Department to proceed with the submittal of proposed statute language to the Legislative Services Office that amends Idaho Code Title 47, Chapter 8, Section 801 to allow for "up to" 10 years for oil and gas leases.

DISCUSSION: Governor Otter inquired how the Department envisions this process, to keep it very transparent and above-board. Mr. Murphy explained that the Department will consider the existing layout for the state and will look at five years as a starting point for those areas that are in production and likely ten years for those areas that are more frontier-like, such as eastern Idaho. Mr. Murphy stated that oil and gas lease auctions are published and the lease length is

identified up front. Any interested party would know when they go to an auction whether the lease is for five years, ten years, or other. Governor Otter asked if that is how other states operate. Mr. Murphy said that is correct. Governor Otter inquired how the Department determines if the lease warrants a 3-, 5- or 10-year term. Director Schultz noted that much of it is looking at a particular area; for instance, in Payette County private leases tend to be 3-5 years in length and the Department would take into consideration what are common private lease terms. Director Schultz elaborated that it is a primary term on that lease; the idea is to lease it, drill a well and get into production. Revenue is typically made in royalty payments; beginning production soon is most beneficial. It is better to avoid tying up a lease indefinitely to someone who is speculating. Governor Otter wondered if there is an appeal process. Director Schultz stated there is not typically an appeal process; leases are advertised, terms of the leases are known, including any stipulations, and interested parties come to the auction and bid. Governor Otter asked about extensions of the leases. Director Schultz remarked that oil and gas rules allow for some extension opportunities, and there are force majeure clauses in the Department's leases as well. If there is an act of nature or potential legislative change, the Department's contracts allow for an extension of those leases. Director Schultz stated that operators may shut in wells for a period of time with Department approval, which is another opportunity for lease extension. Governor Otter asked if the shut-in process is market driven. Director Schultz replied that it can be market driven and it can also be based on complications in the well production.

BOARD ACTION: A motion was made by Attorney General Wasden that the Board approve the Department recommendation, that is direct the Department to proceed with the submittal of the proposed statute language to the Legislative Services Office that amends Idaho Code Title 47, Chapter 8, Section 801 to allow for "up to" 10 years for oil and gas leases. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

6. FY2018 Department of Lands Budget – Presented by Debbie Buck, Financial Officer

RECOMMENDATION: Approve the Agency FY 2018 Budget Request as submitted to the Division of Financial Management and the Legislative Services Office on September 1, 2016.

DISCUSSION: Controller Woolf requested clarification on the additional FTP and funding for that position as approved by the Oil and Gas Conservation Commission on September 15th. Was that included in the budget submission to DFM and LSO or is that an additional addendum that was added after the budget submittal. Ms. Buck responded that the FTP and funding was included in the Department's budget submission to DFM and LSO on September 1st. Ms. Buck volunteered that the position is for a program specialist (inspector) and Director Schultz added that it will be funded by the Oil and Gas Conservation Commission Fund, a dedicated fund from severance tax income. Governor Otter asked if there is sufficient money in that fund. Ms. Buck replied that the current cash balance is \$125,000 and the Department anticipates that severance tax collections will be about \$40,000 per quarter, minimum.

BOARD ACTION: For the record, Governor Otter stated that the Chair will not vote on this item.

A motion was made by Attorney General Wasden that the Board approve the Department recommendation, that is approve the agency FY 2018 budget request as submitted to DFM and LSO on September 1, 2016. Controller Woolf seconded the motion. The motion carried on a vote of 4-0, with Governor Otter abstaining from this vote.

7. Commercial Disposition – Presented by Ryan Montoya, Program Manager-Real Estate

RECOMMENDATION: Direct the Department to offer the ten properties for sale at auction.

DISCUSSION: Secretary of State Denney inquired that if the Board were to pull one property from the list, would it adversely affect the value of that property in any way. Mr. Michael Finch, CenturyPacific, replied that it is tough to know. When CenturyPacific looked at the commercial portfolio in 2015 and early 2016 the recommendation was the sale of this slate for 2016 based on the strength of the real estate market and values. Mr. Finch repeated that it is tough to know if it would hinder the value a great deal on that property but the market is very strong right now. Secretary of State Denney articulated that members of the Land Board are well aware of their fiduciary obligation to the beneficiaries of the endowment trusts that are overseen by the Board. In any transaction, a prudent fiduciary of the endowments must examine the options available to ensure the maximum long-term financial return to each of the endowment beneficiaries. In the case of 590 W. Washington, its location renders it potentially advantageous as a Capitol Building Endowment property, consistent with Title 67, Chapter 16, Idaho Code and Section 6 of the Idaho Admission Bill. Conversely, there may be lands that are currently held by the Capitol Building Endowment that would be particularly suitable for the University and the State Hospital South Endowments, the current owners of 590 W. Washington. Secretary of State Denney conveyed that it is important that the Board fully evaluate whether the long-term financial returns to the Capitol Building Endowment, the University Endowment and the State Hospital South Endowment might best be served by an exchange of 590 W. Washington for lands currently held by the Capitol Building Endowment.

BOARD ACTION: A motion was made by Secretary of State Denney that the Board approve the disposition of all the properties with the exception of the commercial property located at 590 W. Washington Street, Boise and that it be deferred to allow the Department of Lands to examine the possibility of an exchange of lands between the Capitol Building Endowment Fund and the University and State Hospital South Funds. Controller Woolf seconded the motion.

FURTHER DISCUSSION: Attorney General Wasden, addressing Mr. Finch and Mr. Montoya, remarked that the Board has had several discussions about the sale of these properties and each time he has asked whether this is in the best interest to produce the maximum long-term financial return and he has been assured each time that it is the position of the Department and CenturyPacific that sale of these properties is the best course. Attorney General Wasden noted with regard to Secretary Denney's motion, there are nine properties the Board agrees on; one may need some potential discussion. Attorney General Wasden asked what, in Mr. Finch's professional view, is the proper thing to do with regard to obtaining the maximum long-term financial return on this one property. How can the Board fulfill its fiduciary duty? Mr. Finch related that when CenturyPacific looked at the portfolio in general, they looked at a sale versus a hold scenario and recommended the sale of a total of 16 assets as opposed to a hold. CenturyPacific took a narrow scope when addressing those assets. Mr. Finch explained that on a relative value basis, this is not a high-value asset; it is valued under \$1 million. Mr. Finch continued that from a risk/reward standpoint, the minute the asset is sold, it cannot be taken back. If it has future development potential for the state, if it has immediate re-use potential

when the current lease expires for the state, those potential values are lost as soon as the property is sold. Mr. Finch commented that those other options need to be studied, whether it is an exchange or development potential, before a solid opinion can be provided.

Attorney General Wasden noted that at the point when the Board makes a determination to sell this property, and the recommendation up to this point is to do that, then the question is whether doing something different with this property will enhance, decrease, or remain the same in terms of the risk. Attorney General Wasden imparted that at this point the Board does not have sufficient information to know which of those three answers will prevail. Additional time may answer that question and if in fact it devalues that property then the Board made the wrong decision; if the value is the same, it does not make any difference; if it is enhanced then the Board made the right decision by delaying. That is the dilemma in which the Board finds itself. Mr. Finch agreed with Attorney General Wasden's assessment and added that because this is a relatively low-value asset, barring a significant exogenous shock to the overall commercial real estate market, there is not substantial risk in hitting pause for the moment and making a broader evaluation. Attorney General Wasden stated satisfaction with that opinion.

Governor Otter reflected that Article IX, Section 8 of the Constitution requires the Board to be diligent to the best of its ability in making long-term financial best interest decisions. It does not ask the Board to be infallible. Governor Otter remarked that with due diligence the Board can be more certain of the correctness of following Article IX, Section 8 of the Constitution as these other opportunities are investigated. Mr. Finch concurred.

Controller Woolf inquired that if 590 W. Washington was put on hold for a time, would it cause any type of impact to the other nine properties, in Mr. Finch's professional determination. Mr. Finch indicated that from a marketing standpoint taking ten, or nine, properties to the market does not have a meaningful impact on the schedule. Mr. Finch mentioned that the Department anticipates an auction in 2017 for a number of the surface lots; there is opportunity to pursue at auction in 2017 should the Board elect to take 590 W. Washington to sale.

With no further discussion, Governor Otter restated the motion given by Secretary of State Denney and seconded by Controller Woolf. The motion carried on a vote of 5-0.

The Land Board having voted to defer the sale of 590 W. Washington, a motion was made by Secretary of State Denney that the Board direct the Department to conduct due diligence necessary to determine whether the Capitol Building Endowment Fund currently owns any lands that might be appropriate for the University of Idaho Endowment and the State Hospital South Endowment, and if so, whether an exchange of 590 W. Washington for lands currently owned by the Capitol Building Endowment would be consistent with the fiduciary obligations the Board owes to the beneficiaries of each endowment. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

- **INFORMATION**

NONE

