



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
February 21, 2017

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, February 21, 2017, in Boise City Hall, Boise City Council Chambers, 150 N. Capitol Blvd., Boise, Idaho. The meeting began at 9:09 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 – February 2017

B. Timber Sale Activity and Information Report – January 2017

DISCUSSION: Governor Otter wondered about the price of cedar shown in the report, with \$187/MBF being off the normal average by about \$60/MBF. Governor Otter commented that Canada likely has consternation regarding President Trump's actions on NAFTA [North American Free Trade Agreement]. Director Schultz noted that the report states that Canadian traders anticipate countervailing and anti-dumping duties could be up to 30% and retroactive 90 days. Director Schultz indicated that cedar prices are expected to go up in the short term. Governor Otter asked what price the Department received on the 150,000 board feet of cedar saw logs, and also inquired if Good Neighbor Authority (GNA) sales have cedar on them. State Forester David Groeschl stated that the two sales sold in January had low-quality cedar, which is normally in the \$100-\$150/MBF range. High-quality cedar saw logs are currently around \$1,300/MBF. Mr. Groeschl noted that the Wapiti GNA timber sale had approximately 25% cedar volume, much of it high-quality cedar; that sale had high competition with three active bidders participating.

C. Lands and Waterways Activity and Information Report – December 2016/January 2017

D. Disposition Cycle Update

DISCUSSION: Attorney General Wasden stated his understanding that the numbers regarding commercial properties show that the Department purchased the properties, leased them for a period of time, sold the properties and throughout that process earned revenue for the endowment beneficiaries. Director Schultz replied that is correct.

E. Land Bank Fund

DISCUSSION: Governor Otter noted that the figures in the report indicate that the "drop-dead date" is only for \$2.5 million by 2020. Director Schultz replied that is correct; the Department has until 2020 to use those funds for acquisition or they will be transferred to the Permanent Fund.

F. Legislative Update

DISCUSSION: Governor Otter inquired about the price tag on S1099, that would create an oil and gas division within the Department and would provide for an administrator and two additional staff positions. Director Schultz responded that the total is \$375,000.

Director Schultz explained that S1065 is a bill that has to do with land ownership; it limits state agencies' acquisition of lands unless a like amount of land is sold within a county. It provides county commissioners authority to have a say - a very strong say - on whether or not state agencies could acquire lands within their counties. Governor Otter asked for clarification. Director Schultz stated it basically means that if county commissioners did not want to see land acquired in their county, they could vote no. Director Schultz commented that there are some constitutional concerns and asked Angela Kaufmann, Deputy Attorney General, to speak about that concern. Governor Otter asked about highway rights-of-way. Director Schultz replied that is a question for Ms. Kaufmann to address and added the bill would apply to any state agency acquisition of lands; it is not restricted to endowment lands.

Ms. Kaufmann remarked that the first constitutional issue is with subparagraph two of the bill, which requires state agencies, before they acquire land, to first try to acquire it from other government entities and then, essentially, to try very hard not to acquire private lands and also potentially to sell into private ownership lands that they hold. The effect would be no net loss of private lands. This raises a constitutional concern for the Land Board which is the epitome of a public trustee for the endowments as set up in the Idaho Admissions Bill. To require the Land Board to take into consideration private land and private land owners could run afoul of the Board's fiduciary obligations to consider the endowments and to have their interests at heart. Board members may recall, a few years ago, the Idaho Supreme Court talked about fiduciary obligation in the context of the Idaho Watersheds Project grazing decision; the Court said that the Land Board needs to consider the endowment beneficiaries and the endowment beneficiaries only, not the interest of other entities.

Ms. Kaufmann stated that the second potential constitutional concern is with subparagraph three that requires, in certain circumstances, that a state agency acquiring private lands within a county would receive approval from the county commissioners in order to proceed with the transaction. The problem with that, particularly as to the Land Board, is that under the authority of several Supreme Court decisions, the Land Board is sole arbiter of what is appropriate for the endowment beneficiaries, so long as it does not run contrary to constitutional and statutory provisions.

Governor Otter asked Ms. Kaufmann to cite the applicable sections of the Constitution. Ms. Kaufmann cited Article IX, Sections 4, 5, and 8 of the Constitution and Sections 4 through 12 of the Idaho Admissions Bill.

Attorney General Wasden noted that Ms. Kaufmann said this statutory mechanism could run afoul of the constitutional provisions. Attorney General Wasden expressed his perspective that it not only could but is in fact quite likely that there would be occasions when an action by a local body would run afoul - the statutory framework as drafted would run afoul - of the Board's constitutional duty, fiduciary duty, to the beneficiaries. If the Board made a determination to acquire a piece of land or not, whatever that decision was, if that is negated or vetoed by some other operation of law, it really intersects and interferes with the Land Board's fiduciary responsibility. Ms. Kaufmann stated that it is fair to say that the draft legislation would run afoul of the Constitution, the Idaho Admission Bill and Land Board obligations.

Governor Otter asked Attorney General Wasden if, in his estimation, this would include some of the infrastructure being put in place right now for aquifer recharge. Attorney General Wasden noted that it certainly could if there is an acquisition of those lands. Governor Otter remarked that Idaho is having a pretty good water year and said he had noticed with four of the infrastructures that are in place some 44,000 acre-feet of water are already recharged into the aquifer. Governor Otter wondered how the Constitution can be overridden with a statute. Attorney General Wasden responded that the Constitution cannot be overwritten by a statute. That would result in an appearance by the Attorney General before the Supreme Court, and then the Court would make a determination that the statute violates the Constitution.

For the record, Attorney General Wasden voiced a matter of personal privilege to thank Governor Otter, on behalf of the Land Board, for his effort in visiting Payette and those locales that have been inundated with water and for recognizing the needs of Idaho citizens. Attorney General Wasden noted that Jerome has had significant problems as well as other areas around the state. Attorney General Wasden remarked that the profusion of water is something to be grateful for, but the very serious consequences that come from an overabundance of water need to be recognized, and Governor Otter has made special effort to take care of Idaho's citizens. Governor Otter thanked Attorney General Wasden for his comments.

2. Endowment Fund Investment Board Manager's Report – Presented by Chris Halvorson, EFIB Investment Officer

A. Manager's Report

B. Investment Report

DISCUSSION: Mr. Halvorson announced that January was a good month for the Fund, up about 2%, making fiscal-year-to-date return around 6.3%. February is also showing positive returns so far, up another 2%, putting fiscal-year-to-date returns at 8.6%. Mr. Halvorson stated earnings reserves are solid due to great financial market returns and good timber revenue. Mr. Halvorson noted that the Investment Board met in the week prior and there were no significant actions taken. Mr. Halvorson mentioned that EFIB has welcomed a new office manager [Liz Wieneke] and commented that the Investment Board has two vacancies and is in the process of nominating individuals for consideration. Mr. Halvorson remarked that the Fund has exceeded \$2 billion (\$2,040,000,000) as of yesterday, which is a point to celebrate.

For the record, on behalf of the Board, Controller Woolf expressed best wishes and prayers for recovery to Gavin Gee, Vice Chairman, Endowment Fund Investment Board. Attorney General Wasden made a motion that the Board members sign and send a letter to Mr. Gee conveying the Board's warm thoughts as he continues to recover, with unanimous consent by all members.

• **CONSENT**

3. Pine Flats Surplus Sale – Staffed by Ryan Montoya, Bureau Chief-Real Estate Services

RECOMMENDATION: Direct the Department to complete the surplus land sale as proposed.

DISCUSSION: Governor Otter noticed that the appraised value is \$60,000 and asked if that is what the property will sell for. Mr. Montoya replied yes, \$60,000 is the sale price.

4. Results of December 14, 2016 Conflicted Grazing Lease Auction for Unleased Parcel – Staffed by Jason Laney, Program Manager-Grazing, Ag, Conservation

RECOMMENDATION: Direct the Department to award the grazing lease to Thomas Cattle Company, LLC (G600237).

DISCUSSION: None.

5. Dredge/Placer Permit No. P310334-LeDuc – Staffed by Todd Drage, Program Manager-Minerals

RECOMMENDATION: Approve issuance of the attached permit subject to the plan submitted in the application, submission of the required reclamation bonding and compliance with the Rules and Regulations Governing Dredge and Placer Mining Operations in Idaho.

DISCUSSION: None.

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

7. **Approval of Minutes** – December 20, 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**

NONE

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

- **INFORMATION**

8. **Greater Sage-grouse Conservation Plan** – Presented by Diane French, Division Administrator-Lands & Waterways, and Dustin Miller, Administrator, Office of Species Conservation

9. **Strategic Reinvestment Update** – Presented by David Groeschl, Deputy Director

10. **I-Minerals Bovill Kaolin Project Update** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance, and I-Minerals, Inc.

At 10:57 a.m. a motion was made by Attorney General Wasden that the Board resolve into Executive Session pursuant to Idaho Code § 74-206(1)(d) to consider records that are exempt from disclosure under Idaho Code § 74-104(1). Attorney General Wasden requested that a roll call vote be taken and that the Secretary record the vote in the minutes of the meeting. Controller Woolf seconded the motion. Roll Call Vote: Aye: Denney, Wasden, Woolf, Ybarra, Otter; Nay: None; Absent: None.

- **EXECUTIVE SESSION**

A. Idaho Code 74-206(1)(d) – to consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code. [TOPIC: Bovill Kaolin Project]

At 11:45 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 11:46 a.m. a motion to adjourn was made by Attorney General Wasden. Controller Woolf seconded the motion. The motion carried on a vote of 5-0. 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/ Lawrence E. Denney

Lawrence E. Denney
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 March 21, 2017 regular Land Board meeting.