

D. Endowment Land Management in Idaho

Idaho has nearly 2.5 million surface acres of trust lands and approximately 3 million acres of subsurface lands (Idaho's trust lands are generally referred to as "endowment lands").¹ Although many of these lands are spread throughout the central and southern portions of the state in a checkerboard fashion, the state also owns a large number of substantial, consolidated trust parcels. These lands cover environments that vary from the Snake River Plain in southern Idaho, with hardened lava flows and sagebrush grasslands, agriculture, and rapidly growing municipalities; to the heavy coniferous forests and meadowlands that dominate central and northern Idaho. Approximately 994,000 acres of Idaho's endowment lands are forested, with about half representing high or medium productivity lands that are managed for sustained yields of timber products.²

1. Idaho's Land Grant

Idaho's road to statehood was delayed by a lack of citizens. Although railroads and a state gold rush brought enough settlers to qualify the state as a territory in 1863, Idaho did not achieve statehood until 1890 when it entered the Union as the forty-third state. Prior to statehood, the territory of Idaho received approximately 240,000 acres of lands under the Morrill Acts of 1862 and 1890 for the support of the University of Idaho. At statehood, Idaho received sections sixteen and thirty-six in every township "for the support of common schools."³ In addition to this common school grant, the state also received specific grants for a variety of other public institutions, including: 90,000 acres for an agricultural college; 100,000 acres for a scientific school; 50,000 acres for penitentiaries; 50,000 acres for insane asylums; 50,000 acres for the support of the state university; 100,000 acres for "normal schools"; 150,000 acres for charitable, educational, penal, and reformatory institutions; 150,000 acres for agricultural and mechanical colleges; and fifty sections for erecting public buildings.⁴ Idaho currently retains approximately 68 percent of its original land grant of 3.7 million acres.⁵

2. Enabling Act and Constitutional Requirements

The original Idaho Enabling Act is not particularly restrictive when compared to later enabling acts and does not refer to the granted lands as a "trust." However, it does place some restrictions on the use of the land and the proceeds from such uses – endowment lands must be sold at public sale, lands must be sold for not less than \$10 per acre, and the proceeds must be deposited in a permanent fund to be used exclusively for the support of the public schools or they must be "banked" and used to acquire additional school lands.⁶ The Act provides for only a few exceptions to the public sale requirement, including a provision allowing for leases of five years or less.⁷ A 1998 amendment to the Enabling Act altered the sale and lease provisions to allow the exchange of endowment lands where the lands are of equal value or equalization payments are made.

Idaho's Constitution requires the legislature to hold the lands in trust and imposes additional restrictions by requiring the trust manager to "secure the maximum long-term financial return" to the beneficiary, and by prohibiting the sale of lands for less than the "appraised price." It also requires public auction for the disposal of lands, prohibits the sale of more than "one hundred sections per year," limits the size of the tract sold to any one individual or entity to three hundred twenty acres, and specifically authorizes the exchange of lands.⁸

¹ IDAHO DEPARTMENT OF LANDS FY 2004 ANNUAL REPORT (2005).

² O'Laughlin & Cook, *supra* note 376.

³ Act of Admission of Idaho, 26 Stat. 215 § 4.

⁴ *Id.* at §§ 10, 11.

⁵ 2004 ANNUAL REPORT, *supra* note 510, at 8.

⁶ Act of Admission of Idaho, 26 Stat. 215 § 5.

⁷ *Id.*

⁸ IDAHO CONST. Art. IX § 8.

3. Idaho's Trust Responsibility

The courts have found that Idaho's Enabling Act and Constitution operate to create a binding trust responsibility. Based on this trust responsibility, the courts have held that:

- On matters of policy, the Idaho State Board of Land Commissioners (SBLC), as “trustee or business manager acting on behalf of the state in handling the grant lands” are the “sole and exclusive judges so long as they do not run counter to the provisions of the Constitution or statute.”⁹
- Local governments cannot plan or zone land in a manner that prohibits the state's permitted use of the land unless the state agrees otherwise, and state endowment lands are generally exempt from compliance with state land use planning statutes.¹⁰
- School children, parents of school children, and environmental groups lack standing to challenge school trust management decisions; schools, and school districts of which they are part, are the only beneficiaries which have a legally protected interest sufficient to give rise to a claim.¹¹
- The state is required to award grazing leases on a competitive basis, and cannot award a lease to a current grazing lessee without competition;¹² similarly, the state may not limit grazing lease applications to certain parties to the detriment of other potential bidders who would provide larger benefits to the trust.¹³
- The SBLC may exercise discretion in carrying out its trust obligations by accepting a bid for timber less than the high bid where the bidder proposes to construct improvements or conduct other work that would enhance the value of the land in excess of the monetary difference between the two bids.¹⁴

4. Governance of Endowment Lands in Idaho

The Idaho State Board of Land Commissioners (SBLC) manages Idaho's endowment lands through the Idaho Department of Lands (IDL), and is responsible for determining the best uses of those lands.¹⁵ The SBLC, created by the Idaho Constitution section seven, consists of the Governor, Superintendent of Public Instruction, Secretary of State, Attorney General, and the State Controller. The SBLC is charged with managing the endowment lands “in such manner as will secure the maximum long term financial return to the institution to which granted.”¹⁶ The legislature is directed to provide by law that the lands will be held in trust.¹⁷

The IDL Director, who is appointed by the SBLC, is responsible for administration of the endowment lands.¹⁸ The Director's decisions are reviewed by the SBLC in any contested matters.¹⁹ The Director acts as both the Secretary of the SBLC and the Idaho State Forester.²⁰

The IDL is divided into two geographic divisions (Northern and Southern), and is further separated into two operational areas. The Lands, Minerals and Range Division consists of the Real

⁹ Pike v. State Board of Land Commissioners, 113 Pac. 447 (Idaho 1912).

¹⁰ State ex rel. Kempthorne v. Blaine County, 79 P.3d 707 (Idaho 2003).

¹¹ Selkirk-Priest Basin Ass'n. v. State ex rel. Batt, 919 P.2d 1032 (Idaho 1996); Selkirk-Priest Basin Ass'n, Inc. v. State ex rel. Andrus, 899 P.2d 949 (Idaho 1995).

¹² Idaho Watershed Project v. State Board of Land Commissioners (IWP I), 918 P.2d 1206 (Idaho 1996).

¹³ Idaho Watershed Project v. State Board of Land Commissioners (IWP II), 982 P.2d 371 (Idaho 1999).

¹⁴ Barber Lumber Co. v. Gifford, 139 P. 557 (Idaho 1914).

¹⁵ IDAHO CODE § 58-133(1).

¹⁶ IDAHO CONST. Art. IX § 8.

¹⁷ *Id.*

¹⁸ IDAHO CODE § 58-104.

¹⁹ *Id.*

²⁰ *Id.*

Estate and Surface and Mineral Resources Bureaus.²¹ The Forestry and Fire Division consists of the Forest Management, Forestry Assistance, and Fire Management Bureaus.²² The Northern division, with 523,000 acres of mostly forested lands, covers the area north of the Clearwater River through seven field offices overseen by the Northern Operations Chief.²³ The Southern division consists of seven field offices and covers 1.9 million acres in the area south of the Clearwater River.²⁴ Both the Northern and Southern Operations are responsible for regulating forest protection on private, state, and federal lands, and for regulating forest practices on all private forest lands.²⁵

Until 2001, the IDL took 10 percent of the total trust revenues to cover the costs of administering the trust. However, under recent reform legislation,²⁶ the Department now receives its funding through the appropriation process, with funds derived from the “Endowment Earning Reserve,” comprised of all revenues from endowment lands except land sales and mining revenues.

5. Endowment Land Management in Idaho

The mission of the Idaho Department of Lands is to manage the endowment lands to “maximize long-term financial returns to the beneficiary institutions [and] provide protection to Idaho’s natural resources.”²⁷

Idaho’s endowment lands are divided into three categories: primary forest land (841,234 acres), secondary forest land (190,896 acres) that is not managed for timber production, and non-forested land (1,430,188), which is comprised primarily of rangeland but also includes 13,406 acres of cropland.²⁸ The sale of timber products dominates Idaho’s endowment fund income. In 2003, timber sales generated \$31.6 million in net revenues for the state endowment fund. In 2004, timber sales generated \$47.1 million in net revenues, constituting approximately 90 percent of all the net revenues from state endowment lands in Idaho.²⁹

The state’s management activities on the endowment lands can be divided into three general categories: surface uses, subsurface uses, and land sales and other uses.

a. Surface Uses

The majority of Idaho’s endowment land surface acreage is dedicated to timber, rangeland, and cropland leasing.³⁰ Surface leases are also issued for commercial property, minerals, cottage sites, and in a limited number of cases, navigable water/submerged lands;³¹ however, the sale of timber products is by far the most significant source of revenue for the endowment fund. The SBLC approves an annual timber sale plan prepared by the IDL and also decides how endowment lands are to be leased and the rate of the lease.³²

Non-mineral, non-commercial surface leases of public school endowment lands are restricted to no more than ten years unless the lessee is a federal or state agency, the federal government, county, city, school district, or political subdivision;³³ these “public purpose” leases are issued for up to twenty-five years. All rentals on leases must be for no less than fair market value;³⁴ however, a

²¹ 2004 ANNUAL REPORT, *supra* note 510, at 4.

²² *Id.* at 11.

²³ *Id.* at 12.

²⁴ *Id.* at 13.

²⁵ See Idaho Forest Practices Act, IDAHO CODE § 38-1301.

²⁶ See O’Laughlin & Cook, *supra* note 376, at 8.

²⁷ Idaho Department of Lands, *Overview*, available at: <http://www2.state.id.us/lands/overview.htm>.

²⁸ 2004 ANNUAL REPORT, *supra* note 510, at 27; O’Laughlin and Cook, *supra* note 376, at 8.

²⁹ 2004 ANNUAL REPORT, *supra* note 510, at 19.

³⁰ *Id.* at 17.

³¹ *Id.*

³² IDAHO CODE § 58-304.

³³ *Id.* at § 58-307(2).

³⁴ *Id.*

public auction is not required unless two or more lessees apply to lease the same land.³⁵ The Director may reject lease bids only for “justified reasons,”³⁶ and competing lessees are required to pay the existing lessee for any improvements.³⁷

Timber sales may take place without advertisement if the sale is for one hundred thousand board feet or less,³⁸ and although the statutes permit timber sales at public auction, there is no requirement that it be sold in this manner. Timber sales over one million board feet or worth \$150,000 as well as salvage sales over ten thousand board feet or worth \$15,000 must be sold at oral auction. Timber sale contracts provide for the term of the contract (usually from two to four years) with the statutes providing a rarely used maximum term of fifteen years.³⁹

Grazing and cropland leases are issued for ten-year terms. As with other leases, competitive bidding is required only when two or more persons apply to lease the same land, known as a conflict lease.⁴⁰ Until recently, where competition between lessees occurred, Idaho allowed the Director to consider the economic impacts of losing a lease on the existing lessee, and the implications of managing the leased lands separately from adjoining private lands.⁴¹ However, this statute was declared unconstitutional in *Idaho Watersheds Project v. State Board of Land Commissioners*.⁴² Pursuant to this decision, the SBLC is required to auction leases to the highest bidder unless a bid is rejected for a “justified” reason. This effectively ended Idaho’s policy of preferential bidding for existing lessees.

Although the grazing and cropland lease program covers the bulk of the state’s acreage, the program operated at a loss in fiscal year 2004, generating \$1.6 million,⁴³ with expenses of approximately \$1.8 million⁴⁴ (a net loss). In fiscal year 2003, the Department generated \$1.7 million on grazing leases of 1.8 million acres,⁴⁵ with expenses of approximately \$1.5 million⁴⁶ (netting \$0.10 per acre).

Commercial leases are issued for up to forty-nine years with any leases over ten years requiring the SBLC to consult with the county commissioner to ensure the use of the land is consistent with local zoning and planning ordinances.⁴⁷ Commercial leases longer than ten years additionally require a hearing in the county where the leased land is located. Commercial lessees may exercise a preferential right to renew their lease and the SBLC may reject any conflicting lease applications,⁴⁸ although the validity of this statute may be in question based on the decision in *Idaho Watersheds*. Commercial leases include uses for industrial purposes, retail, office buildings, commercial recreation, and residential development.⁴⁹

Although cottage leases have been subject of conflicting lease applications in the past, the Idaho legislature recently conferred a preferential right to renew on cottage site lessees as well.⁵⁰ The legislature determined that maximum long-term benefits to the beneficiaries would be best obtained through the long-term lease, at market rent, of these sites.⁵¹ As with the commercial leasing statute, this provision may be in question in light of the *Idaho Watersheds* decision.

³⁵ *Id.* at § 58-310.

³⁶ *Id.*

³⁷ *Id.* at § 58-308.

³⁸ *Id.* at § 58-406(5).

³⁹ *Id.* at § 58-413.

⁴⁰ *Id.* at § 58-310.

⁴¹ *Id.* at § 58-310(B).

⁴² 982 P.2d 371 (Idaho 1999).

⁴³ 2004 ANNUAL REPORT, *supra* note 510, at 24.

⁴⁴ *Id.* at 21.

⁴⁵ IDAHO DEPARTMENT OF LANDS FY 2003 ANNUAL REPORT, at 13.

⁴⁶ *Id.* at 14.

⁴⁷ IDAHO CODE § 580-307(3).

⁴⁸ *Id.* at § 580-307(7).

⁴⁹ *Id.* at § 580-307(4).

⁵⁰ *Id.* at § 58-210A.

⁵¹ *Id.* at § 58-210A.

b. Subsurface Uses

Overall, subsurface leasing, with revenues of approximately \$1.3 million in 2004 (2 percent of total revenue), constitutes a relatively minor component of Idaho's trust portfolio. For Idaho's minimal oil and gas resources, leasing occurs through a competitive bidding process when more than one party is interested in the lease. Leases run for an initial ten-year term, with a provision for continuation thereafter as oil and gas is being produced in paying quantities or if the lessee is conducting operations in good faith.⁵²

Mineral leases, which include leases for sand and gravel, phosphates, building stone, gemstones, and miscellaneous mineral commodities are similarly issued on a competitive basis (if there is more than one interested party), except that a lessee who discovers any mineral resource has a right of first refusal for a state lease covering the minerals.⁵³ Sand and gravel leases currently account for 60 percent of the revenue generated by mineral leases.⁵⁴ Idaho also issues geothermal and mineral springs leases, which may be leased simultaneously for grazing or agricultural purposes,⁵⁵ and which are leased in terms of up to fifty years.⁵⁶ However, Idaho recognizes a public right to the free use of any leased mineral springs or waters.

c. Land Sales and Other

Although both the Idaho Enabling Act and Constitution authorize the sale of endowment lands in the best interest of the state,⁵⁷ land sales are rarely used as part of the state's trust management strategy. When they do take place, proceeds from land sales are earmarked for the permanent fund unless the transaction falls under the state's land banking program. In 2004 land sales generated approximately \$181,900, or only 0.3 percent of the total revenue generated.

The SBLC is authorized to sell state lands as they deem in the best interest of the state.⁵⁸ SBLC is required to give notice of the sale through advertising,⁵⁹ and must sell lands for no less than the appraised value.⁶⁰ Land sales are constitutionally limited to one hundred sections, or sixty-four thousand acres per year, and of that acreage no entity may purchase more than three hundred twenty acres.⁶¹ In 1998, the Idaho legislature adopted a "land bank fund" program which allows the SBLC to place proceeds from the sales of lands into a segregated fund earmarked for the purpose of purchasing other lands. If after five years the funds are not used to purchase additional lands, the proceeds revert to the permanent fund of the respective institution.⁶²

Easements on state owned lands may be granted for various uses. If the use requires exclusive or near exclusive use of the land, up to 100 percent of the land value plus payment for any damage or impairment of rights for the remaining property may be required.⁶³ If the value of the easement is expected to exceed \$250, an appraisal will be required.⁶⁴ In addition being able to grant limited term easements ranging from ten to fifty-five years the state can also grant perpetual easements. Compensation depends on the type, terms, and exclusivity of the easement.⁶⁵

⁵² IDAHO CODE § 47-801.

⁵³ IDAHO ADMIN. CODE § 20.03.16.085.

⁵⁴ 2004 ANNUAL REPORT, *supra* note 510, at 24.

⁵⁵ IDAHO CODE § 47-1611.

⁵⁶ *Id.* at § 58-311.

⁵⁷ *Id.* at § 58-313.

⁵⁸ *Id.* at § 58-313.

⁵⁹ *Id.*

⁶⁰ IDAHO CONST. Art. IX § 8.

⁶¹ *Id.*

⁶² IDAHO CODE § 58-133; Idaho Atty. Gen. Op. 02-01.

⁶³ IDAHO ADMIN. CODE § 20.03.08.020.02.

⁶⁴ *Id.* at § 20.03.08.020.03.

⁶⁵ *Id.* at § 20.03.08.020.06.

The SBLC has statutory authority to exchange full surface and mineral rights for lands of equal value to consolidate or aid in the control and management of state lands.⁶⁶ Leased lands may be exchanged if the current lessee agrees in writing. In fiscal year 2004, the SBLC acquired 705 acres and deeded 3,210 acres in two land exchanges that totaled more than \$5.9 million dollars.⁶⁷

Table V(D): FY 2004 Endowment Lands Revenues – Idaho Department of Lands

Source	% of Revenue	Receipts
Surface Uses		
Timber	86.4%	\$56,619,500
Grazing/cropland	2.5%	\$1,627,900
Cottage sites and other	4.8%	\$3,133,200
Commercial and Misc	4.0%	\$2,608,500
Total Surface	97.6%	\$63,989,100
Subsurface Uses		
Subsurface leases and other	2.0%	\$1,280,400
Total Subsurface	2.0%	\$1,280,400
Sales and Other		
Land Sales	0.3%	\$181,900
Easements	0.2%	\$112,500
Total Sales and Other	0.4%	\$294,400
Grand Total	100%	\$65,563,900
Agency Expenditures		\$12,978,400

Source: Idaho Department of Lands FY 2004 Annual Report

6. Trust Revenue Distribution in Idaho

There are thirteen beneficiaries that receive revenues from endowment land management activities in Idaho. These beneficiaries include:(1) public schools; (2) the agricultural college; (3-7) charitable institutions (Idaho State University, Industrial Training School, State Hospital North, Idaho Veterans Homes, and the School for the Deaf and Blind); (8, 9) the state normal schools (Idaho State University, Department of Education, and Lewis-Clark State College); (10) the state penitentiary; (11) the school of science (University of Idaho); (12) the State Hospital South; and (13) the University of

⁶⁶ IDAHO CODE § 58-138.

⁶⁷ 2004 ANNUAL REPORT, *supra* note 510, at 24.

Idaho.⁶⁸ Of these beneficiaries, the common schools are by far the largest, credited with approximately 2.1 million acres of the 2.4 million acres in the trust.⁶⁹

The Idaho Enabling Act created a permanent fund to hold the proceeds from the sales of school lands.⁷⁰ The public school funds are kept separate from all other funds and are invested as a separate fund.⁷¹ All other funds are pooled and invested as a block. The funds are managed by the Endowment Fund Investment Board. The Investment Board is composed of nine members appointed by the Governor with Senate confirmation.⁷² The Board consists of one citizen with at least ten years experience in the field of public educational administration, one member of the Idaho Senate, one member from the House, and six members who are citizens-at-large with experience in financial matters and investments. The mission of the Board is to manage the trust funds of the endowments with a long-term, inter-generational approach.⁷³ The primary concern is the preservation of the corpus of the trust.⁷⁴ The Endowment Fund Investment Board has allowed a fairly dynamic investment policy, with a current asset allocation of 70 percent equity and 30 percent fixed income securities.⁷⁵ This policy has been fairly successful, resulting in the increase of the Fund from \$77 million in 1968 to the current level of \$600 million.

Earnings on the permanent fund are deposited into an earnings reserve fund and are periodically distributed for the support of the public schools into the state's Public School Income Fund.⁷⁶ A 1998 amendment to the Enabling Act also allows the funds to be deposited into the land bank fund⁷⁷ from which additional endowment lands may be purchased within five years.⁷⁸ The Public School Income Fund also receives monies from:

- The proceeds of all state taxes levied for public school purposes;
- Federal grants for public school purposes;
- Ninety percent of sales, royalties, bonuses, or rentals of oil, gas, and mineral lands paid by the federal government to any state agency; and
- State legislative appropriations, earnings on investment of the Public School Income Fund.⁷⁹

Administrative costs incurred in the management of the trust assets, including real estate and monetary assets, are generally appropriated from the permanent fund earnings.⁸⁰ The earnings from the funds, minus administrative costs, are distributed to the beneficiaries or deposited in the permanent fund annually.⁸¹

The state endowment lands generated over \$65 million in endowment revenue in fiscal year 2004,⁸² while expenses totaled almost \$13 million.⁸³ These revenues translated into a distribution of approximately \$37 million for public schools,⁸⁴ or just over 2 percent of the state's \$1.6 billion public school budget.

⁶⁸ Idaho Department of Lands, *Overview*, available at: <http://www2.state.id.us/lands/overview.htm>.

⁶⁹ *Id.*

⁷⁰ Act of Admission of Idaho, 26 Stat. 215 § 5.

⁷¹ IDAHO CONST. Art. IX § 3.

⁷² IDAHO CODE § 57-718.

⁷³ *State of Idaho Endowment Fund Investment Board*, Endowment Fund Investment Board, available at: <http://www.efib.state.id.us/index.htm>.

⁷⁴ *Id.*

⁷⁵ *History of Endowment Fund*, Endowment Fund Investment Board, available at: <http://www.efib.state.id.us/history.htm>.

⁷⁶ IDAHO CODE § 33-903.

⁷⁷ Act of Admission of Idaho, 26 Stat. 215 §5 (amended 1998).

⁷⁸ IDAHO CODE § 58-133.

⁷⁹ *Id.*

⁸⁰ IDAHO CONST. Art. IX § 3.

⁸¹ IDAHO CODE § 33-902(A)(2).

⁸² 2004 ANNUAL REPORT, *supra* note 510, at 20.

⁸³ *Id.* at 14.

⁸⁴ *Id.* at 20-21. Due to poor market returns and a change in spending rules, the Endowment Fund Investment Board was unable to make the targeted distribution to public schools of \$43,313,000. The actual distribution was \$37,056,500, or \$6,256,500 short. *Endowment Distributions*, IDAHO FISCAL FACTS 2004, 31 (2004).

7. Recent Developments and Emerging Issues in Idaho

a. Western Watersheds Project (“Idaho Watersheds Project”)

As noted above, Idaho’s grazing lease preference system was recently overturned as a result of litigation.⁸⁵ The conservation group that brought this challenge, now called the Western Watersheds Project (WWP), is engaged in an aggressive campaign to acquire grazing leases as a method of protecting streams and riparian areas, to allow “overgrazed” lands to rest. This program has generated intense controversy, with WWP claiming that the grazing industry is the “state’s biggest welfare recipient,” and ranching groups claiming that they are good stewards of the land, turning a profit on much of Idaho’s arid endowment lands to generate revenues for the trust and local economies that support public schools.⁸⁶

Net revenues produced for the endowment fund by the grazing program averaged approximately \$280,000 in the three-year period from 1999 to 2001,⁸⁷ and around \$193,000 in 2003. In 2004, the expenses of the grazing program exceeded revenues by \$185,600.⁸⁸

b. Educational Funding

According to the recently released U.S. Census Report, Idaho is ranked forty-eighth in the nation for per-pupil spending; this fact, combined with market losses, declining timber markets, and the negative returns on grazing and cropland leases is generating pressure on trust managers to increase revenue generation on the state endowment lands.⁸⁹ In fiscal year 2003, net timber revenues plummeted to \$31 million from an average of \$60 million per year from 1999-2001 due to low stumpage market values.

Although a citizens initiative that would have required Idaho to significantly increase per-pupil expenditures failed to make it onto the November 2004 ballot, there are indications that funding pressures will only increase further. The Idaho Legislature continues to struggle with educational funding issues that were exacerbated by the recent economic recession.

c. Citizens Review Committee

In 2001, Governor Dirk Kempthorne, the chair of the SBLC, convened a Citizens Ad Hoc Evaluation Committee to “recommend efficiency/effectiveness changes” to the Department of Lands, the Endowment Funds Investment, the Land Board, and the interrelationships between and management practices of these agencies. The committee, made up of eight interested citizens, was charged with making specific recommendations to the Land Board regarding organizational processes, fiscal management, investment policy, reporting metrics and monitoring indicators, strategic areas management (e.g. human resources management, change management, etc.) and a framework for resolving conflicts.

In July 2001, the committee released its report, the full text of which is available on the SBLC’s website.⁹⁰ The committee developed a list of recommendations intended to improve Idaho’s endowment lands administration by emphasizing integrated asset management (lands and funds), increasing organizational efficiency, and diversifying revenue streams. The committee suggested that the Land Board adopt a formal investment policy that includes a statement of investment objectives, an annual investment plan, and commercial real estate policies. The investment policies should

⁸⁵ Idaho Watersheds Project v. State Board of Land Commissioners, 982 P.2d 371 (Idaho 1999).

⁸⁶ Drew Lindsay, *Idaho grazing lands eyed as cash cows for schools*, 14 EDUCATION WEEK 35 (May 24, 1995).

⁸⁷ See O’Laughlin and Cook, *supra* note 376.

⁸⁸ 2004 ANNUAL REPORT, *supra* note 510.

⁸⁹ *Public Elementary –Secondary Education Finances: 2002-2003*, U.S. Census Bureau, available at: <http://www.census.gov/govs/www/school.html>.

⁹⁰ *Report and Recommendations of the Governor’s Citizens Ad-Hoc Evaluation Committee on Lands/Endowment*, Idaho Department of Lands, available at: <http://www2.state.id.us/lands/LandBoard/CitizenComm/CitizensReportPrelim.pdf> (hereafter, “Citizens Committee Report”).

include a target return rate and regular benchmark performance reporting to the Land Board. At the same time, the committee recommended that the agency as a whole develop a real estate business plan that should, (a) maximize financial return, (b) maintain the property in productive condition on a long-term basis, and (c) enhance the capital appreciation of the real estate that is owned. They recommended that the Land Board and agency work closely together on mutually established goals and review and consider the research organizational and governance models from other states with more established real estate programs.

The report made it clear that Idaho state endowment lands are to be managed to provide “maximum long term financial return” in accordance with the requirements of the Constitution, although it recognized the importance of economic benefits (not just financial benefits) as well as environmental principles and values:

Maximizing the long-term economic benefits to the Endowment is the primary objective in managing the trust lands. The management of trust lands shall incorporate sound environmental principles with consideration of impacts on wildlife, water and air quality, and soil conservation. Respecting the desire to maintain environmental quality, the department of lands shall strive to use the best and highest standards commercially and economically feasible while meeting or exceeding the performance objective.⁹¹

Relative to this concern, the position of IDL, as stated by Director Winston Wiggins, is that non-economic values of endowment lands are important because they contribute to sustaining the maximum income for trust beneficiaries.⁹²

However, the committee report was critical of both SBLC and IDL, noting that the returns provided to the endowment and its beneficiaries were significantly below the benchmark rates of return obtained by other investments. The report indicated that part of this shortfall is a result of a “mindset,” common to both the SBLC and IDL, that the endowment lands are the “crown jewels of Idaho” and therefore should be protected and preserved for the benefit of the state and its citizens. The report recommended that the agencies undergo a “paradigm shift” by viewing the lands as owned by the various beneficiary endowments, not as public assets that are owned for the state or its citizens. With this shift the agencies could actively and intensively manage the lands as valuable real estate assets “to provide the maximum possible financial return to the endowments on a long-term basis.”⁹³

d. Increased Timber Harvest

An increase in the annual sustainable yield of timber will be phased in beginning in fiscal year 2006. With the approval of the Land Board and the legislature, in 2004 authority and funding was provided to increase the harvest of timber from endowment lands by 30 million board feet per year.⁹⁴ This is an approximately 15 percent increase from the 186 million board feet per year the IDL had previously identified as the long-term sustained-yield timber harvest from its lands.⁹⁵

At issue is protecting endangered species habitat and old-growth values that exist on some of these timberlands. The IDL has created a new staff position to work with the U.S. Fish and Wildlife Service to develop a Habitat Conservation Plan that would reduce some of the uncertainties about managing timber in the presence of federally protected species such as grizzly bears, woodland caribou, and bull trout. The IDL has undertaken a cooperative research project with the University of Idaho to identify potential old-growth forests and management strategies that can preserve these values while also providing benefits for public schools and other beneficiaries of endowment lands.

⁹¹ *Id.*

⁹² O’Laughlin and Cook, *supra* note 376, at 26.

⁹³ Citizens Committee Report, *supra* note 599; see also O’Laughlin and Cook, *supra* note 376, at 29.

⁹⁴ 2004 ANNUAL REPORT, *supra* note 510, at 1.

⁹⁵ O’Laughlin and Cook, *supra* note 376, at 52.