

John Y. Ferry, Chairman  
Kevin S. Carter, Director

MINUTES OF THE MEETING OF THE  
SCHOOL & INSTITUTIONAL TRUST LANDS ADMINISTRATION  
BOARD OF TRUSTEES

DATE: AUGUST 13, 2009

PLACE: SALT LAKE CITY, UTAH

ATTENDING: BOARD

John Y. Ferry  
Mike Brown  
Steve Ostler  
Dan Lofgren  
Amanda Smith

STAFF

Kevin S. Carter  
Dave Hebertson  
Lisa Schneider  
Ron Carlson  
LaVonne Garrison  
Bryan Torgerson  
Rick Wilcox  
Tom Faddies  
Kay Burton  
Doug Buchi  
Ron Barton  
John Andrews  
Elise Erler  
Rodger Mitchell  
Kenny Wintch  
Michelle McConkie  
Kurt Higgins  
Eric Baim  
Randy Harden  
Michael Babinsky  
Lynda Belnap

OTHERS IN ATTENDANCE

Margaret Bird, State Office of Education  
Tim Donaldson, State Office of Education  
Paul Foy, Associated Press  
McKay Edwards  
Ivan Djambov, Legislative Fiscal Analyst's Office

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Chairman Ferry called the meeting to order and welcomed Board members, Staff, and guests. He noted that Vice-Chairman Scales had a heart attack yesterday and won't be with us today. He does seem to be doing very well, however.

1. Approval of Minutes

The Board approved the Board minutes of June 4, 2009.

Lofgren / Smith. Unanimously approved.

“I move we approve the Board minutes of June 4, 2009.”

Roll Call:

Mr. Brown - - yes	Mr. Ostler - - Yes
Mr. Lofgren - - yes	Ms. Smith - - yes
Mr. Ferry - - yes	

Chairman Ferry discussed some follow-up items from the June meeting, including incentive objectives follow-up, five-year plan, Section 29, etc. He also noted that Vice-Chairman Scales has now sold his home in Salt Lake City and will be moving to Washington in late November. The Nominating Committee will meet soon to discuss names to be sent to the Governor for his replacement. November will be his last meeting. The Board will also elect a new vice-chairman at that meeting.

2. Confirmation of Upcoming Meeting Dates

The Board, without motion, confirmed the following upcoming meeting dates:

September 10 - - Salt Lake City  
October 14 and 15 - - changed from October 7 and 8. Board will tour the St. George area on  
October 14, and the meeting will be October 15 in Salt Lake City  
November 12 - - Salt Lake City  
December - - No meeting

2-A. Initial Consideration of Petition for the Appeal of Final Agency Action on Oil, Gas and Hydrocarbon Lease Applications for Leases 5, 6, and 8 of the April 2009 Competitive Bid Offering and Consideration of Voluntary Dismissal With Prejudice - - Southern Utah Wilderness Alliance, et al

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Mr. Andrews reviewed the background of this issue with the Board. SUWA, et al., appealed some oil and gas leases. They contend that the issuance of the leases constitute an “undertaking”. Mr. Andrews feels we need to better clarify our archaeological rules and regulations to make sure they are in total compliance with current law on this matter. Therefore, the petitioner has withdrawn its petition; and we will rewrite our archaeological rules. This should make us safer from legal challenges.

Ms. Bird asked that, since we withdrew those parcels, is it our intention to re-lease these lands when the rules are finished? Mr. Andrews stated it is our intention, even though there are no leases signed at this time on this area.

3. Chairman’s Report

a. Beneficiary Report

The beneficiaries did not give a report this month due to time constraints.

b. Audit Committee Report

In the absence of Mr. Scales, the audit committee did not meet earlier today. The Chairman did sign the audit letter from the State Auditor’s Office detailing what they will do in their audit.

4. Director’s Report

a. Discussion of FY 10 Incentive Objectives

Director Carter reviewed what Staff has been doing on the five-year plan since our last discussion with the Board. He gave the Board a draft copy of the FY 10 objectives. We intend that the objective committee will review these, recommend any needed changes, and then bring them back to the Board for formal adoption of the objectives. The framework has already been laid out in the five-year plan. The first two pages of this are the executive summary that the Board asked for last month. The committee probably can report on its review at the September Board meeting. Chairman Ferry and Director Carter will convene the incentive committee.

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4. Director's Report (cont'd)

b. Director's Update on Issues

I. Section 29 Update

Director Carter updated the Board on the Section 29 issue. We have executed an agreement with outside counsel to review this. The agency's material has been delivered to counsel, and we are now waiting for any feedback from counsel.

II. Hunter Access Agreement

Director Carter briefed the Board on the hunter access agreement. Several years ago we entered into a MOU with the Department of Natural Resources and the Division of Wildlife Resources to provide access for hunting, fishing, etc. to trust lands. It provided for a \$500,000 payment, plus an escalation clause each year. During the last legislative session, the money to pay for this was not appropriated. They are now looking at how to make the payment. Staff has met with them several times. One of those meetings also included the co-chairs of our legislative appropriations committee. Representatives of the Governor's Office of Planning and Budget have also been involved. About a month ago, Director Carter met with Director Karpowitz; and Mr. Karpowitz made an offer of what to do to solve this situation. Director Carter asked that the Board go into closed session for the discussion of strategic issues for real estate.

Brown / Ostler. Unanimously approved.

"I move that we go into closed session for the discussion of land strategy."

Roll Call:

Mr. Brown - - yes

Mr. Ostler - - Yes

Mr. Lofgren - - yes

Ms. Smith - - yes

Mr. Ferry - - yes

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4. Director's Report (cont'd)

b. Director's Update on Issues (cont'd)

II. Hunter Access Agreement (cont'd)

The Board went into closed session at 9:32 a.m. Those in attendance were Board members, Director Carter, and Margaret Bird. The Board returned to open session at 10:01 a.m.

Lofgren / Smith. Unanimously approved.

“I move we return to open session.”

Roll Call:

Mr. Brown - - yes	Mr. Ostler - - Yes
Mr. Lofgren - - yes	Ms. Smith - - yes
Mr. Ferry - - yes	

III. Interface With Beneficiary (Schools)

Director Carter stated we have had an opportunity to engage with the State Office of Education and the new superintendent, Dr. Larry Shumway. Superintendent Shumway came to our office to visit with Director Carter and discussed several things. He expressed considerable interest in making an investment in an office building to house Trust Lands Administration and the State Office of Education. Director Carter and Superintendent Shumway visited with the State Treasurer on this matter. The State Treasurer was less than enthusiastic about making that kind of investment. This would also take considerable legislative input. It does make sense to have a building where the rent the State Office of Education pays goes back into the School Fund.

Director Carter noted he has been invited to make a presentation to the State Board of Education in a few months.

4. Director's Report (cont'd)

c. Associate Director's Report

I. Update on Land Exchange

Mr. Andrews gave the Board an update on the land exchange through a Power Point as follows:

- \* Recreation Exchange
  - \* Senate passes HR 1275 on August 5 in identical form to House bill; allows bill to go directly to President Obama
  - \* Land Package
    - \* 46,000 acres SITLA land and minerals
    - \* 35,700 acres BLM lands and minerals
- \* Next Steps
  - \* Goal: Cost-effective, timely valuation process that achieves fair value for trophy SITLA lands; don't overpay for minerals; receive fair value for SITLA minerals
  - \* Areas of concern:
    - \* BLM attitude to NEPA (exempt or not?)
    - \* Cultural resource clearances
    - \* Relationship with Appraisal Services Directorate
  - \* Exchange initiated by State offer to convey
  - \* Parties will jointly hire independent appraisers; each party reviews and approves or disapproves final product.
  - \* Plan consulting team to ensure accuracy and non-bias of independent appraisals (appraisal instructions and technical appraisal issues; mineral reports; cultural resource values; "trophy" property issues; appraisal review, etc.)
  - \* Political outreach to DOI/BLM
- \* Other Exchanges
  - \* Administrative Land Exchanges With Public Entities
    - \* St. George Airport - BLM - - in reappraisal
    - \* Lakeside - -early stage BLM in West Desert
    - \* Range Creek - - acquire Wilcox Ranch for U of U beneficiary
    - \* 5600 West - - early stage UDWR exchange
    - \* Parowan - -UDWR
    - \* UDOT assembled
  - \* Development Exchanges
    - \* Lions Back/Cozzens

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4. Director's Report (cont'd)

c. Associate Director's Report (cont'd)

I. Update on Land Exchange (cont'd)

- \* Alternative Energy Update
  - \* EV Solar 1 (utility scale solar)
  - \* NextLight Solar
  - \* Raser geothermal expansion
  - \* SCE Carbon sequestration (on hold)
  - \* EnXco/ENEL wind leases
  - \* Magnum/Western Energy Hub

II. Litigation Update

Mr. Andrews gave the Board an update on current litigation through a Power Point presentation:

- \* Public Land Litigation
  - \* SUWA v. Allred (BLM Resource Management Plans)
  - \* SUWA v. BLM (Arch Canyon access)
  - \* NPCA v. SITLA (challenge to Burr Trail exchange)
- \* Other Litigation
  - \* SITLA v. Mathis (historic coal title dispute)
  - \* Cook v. SITLA 1 (lease termination)
  - \* Cook v. SITLA 2 (post-lease issues)
  - \* McCausland v. SITLA ( challenge to Kanab sale)
  - \* Marion Energy/SITLA v. KFJ Ranch (access to minerals)
- \* Bankruptcy
  - \* IDR Investment Plan (Hurricane East Bench sale)
  - \* Lisbon Valley Copper Mine
  - \* James Doyle/ELT - District of D.C. - - tortoise land
  - \* Majestic Homes (surface sale)
- \* Potential Litigation
  - \* Wasatch landfill audit
  - \* The Canyons/ASC
  - \* Rosenberg Indemnification Claim

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4. Director's Report (cont'd)

d. Surface Group Report

I. Proposed Negotiated Sale - - Recapture Reservoir - PS 8422 - -  
The Guymon Family - - San Juan County, UT

Mr. Bryan Torgerson reviewed this item with the Board. He noted we typically sell our property through public auction, but do sell negotiated sales when it is in the best interest of the agency and the beneficiaries. He showed the Board a map of the area involved in this sale.

The Director noted that the rules allow the Director to approve the sale if the value is less than \$250,000, it is less than 320 acres, and if the public advertising doesn't bring forth any other bids. This advertising did bring forth some other bids. Therefore, the Board needs to approve this.

Mr. Brown asked about the comment from the appraiser regarding no value difference in the last two years. Mr. Torgerson stated we wanted to make sure we were selling this at the right time, and the appraiser stated there had not been any change in the market during that time.

Mr. Lofgren asked about what the easement covers. It was asked if that easement could give us access into the Section 36 nearby? Mr. Torgerson stated we would have to see if that could be added at closing because the proposal only includes access for the minerals near the reservoir and to this Section 2. There were questions of how Mr. Chamberlain would get access to this property if he received the land? Mr. Torgerson stated he doesn't know how he would get access because he has no other land in the area. He would have to access from further up the canyon with his cattle.

Smith / Brown. Unanimously approved.

"I move we approve this sale."

Roll Call:

Mr. Brown - - yes	Mr. Ostler - - Yes
Mr. Lofgren - - yes	Ms. Smith - - yes
Mr. Ferry - - yes	

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4. Director's Report (cont'd)

e. Mining Group Report

I. Update on Coal Program

Mr. Faddies gave the Board an update on the coal program in Utah through a Power Point presentation. He showed the Board a map showing where the coal fields are located and the ownership of the coal. He noted that Trust Lands is currently a major player in Utah coal production. Ms. Bird noted she feels we should send the federal government a bill every year for what they owe us on the Cottonwood tract. Mr. Andrews stated he sends a letter to them every year regarding this tract.

Mr. Faddies noted our cash flow will probably continue to go down in the upcoming years because we do not control the market and the timing of the production. Director Carter asked if there is an opportunity to raise the royalty because the federal government will now only allow the bonus to be paid in one year in lieu of five? Mr. Andrews stated that, in the exchange agreement of 1998, there is a prohibition on our doing this.

f. Development Group Report

I. Southern Parkway Update

This item was postponed until next month.

II. FY 09 Capital Investment Expenditure Summary Report

Mr. Buchi reviewed the capital investment summary with the Board through a Power Point presentation. He showed them each project on which we spent money, the amount of money spent, and the percentage of the total amount. This was for information to the Board.

4. Director's Report (cont'd)

f. Development Group Report (cont'd)

III. Eagle Mountain Mid-Valley Project Acquisition of Two Water Rights

Ms. Elise Erler discussed this issue with the Board through a Power Point presentation.

- \* Separate acquisition proposals
  1. Purchase water rights and
  2. Contract for CUWCD water
- \* Proposal 1 - - purchase water rights
  - \* 260 AF (banked with the City of Eagle Mountain)
  - \* \$4,500/AF
  - \* Due diligence - positive
  - \* \$1.17 million - - cash
  - \* Great deal
- \* Proposal 2 - - Contract for CUWCD Water
  - \* 500 AF (takedown in FY 2020)
  - \* \$4,725/AF
  - \* \$1089/AF O&M Fee (five years)
  - \* 2.5 percent discount for early payment
  - \* \$2.9 million - cash
  - \* Good deal
- \* Summary

	Proposal 1	Proposal 2	Proposals 1 & 2
	<u>Purchase Water Rights</u>	<u>Acquire CUWCD Water</u>	<u>Total</u>
Water Quantity	260 AF	500 AF	760 AF
Capital	\$1.17 M	\$2.9 M	\$4.07 M
Time Frame	By Aug. 31	By Sept. 30	

4. Director's Report (cont'd)

f. Development Group Report (cont'd)

III. Eagle Mountain Mid-Valley Project Acquisition of Two Water Rights (cont'd)

Water Needs:

(Acre feet)	<u>2010-2014</u>	<u>2015-2019</u>	<u>2020-2024</u>	<u>2025 &amp; After</u>
Mid-Valley parcel	55	610	910	1,710
Less banked water	(55)	(445)	-	-
Total Needs	-	165	910	1,710
Less Proposal 1	-	(165)	(95)	-
Less Proposal 2	-	-	(500)	-
Balance needed	-	-	315	1,170
Cumulative Balance				2,025

Staff is asking for the Board to approve:

1. Purchase water rights (260 AF; \$1.17 M)
2. Acquire CUWCD water (500 AF; \$2.9M)

The Board discussed this issue at some length. Ms. Bird asked if it would be wise to buy more water at this time due to the discounted prices. Director Carter stated Staff will look at our budget priorities and see if purchasing more water would be beneficial and possibly ask the Board to approve a supplemental budget request. Mr. Buchi asked if there was an opportunity to reserve the purchase of more water rights based on the approval of getting more money to purchase more water? It was noted we don't know if we can get any more water rights at this price.

Lofgren / Ostler. Motion approved.

"I move that approve requests 1 and 2 for water purchases."

Roll Call:

Mr. Brown - - yes                      Mr. Ostler - - Yes  
 Mr. Lofgren - - yes                  Ms. Smith - - absent at vote  
 Mr. Ferry - - yes

The Board asked the Development Group to keep looking for water at this good price.

5. Concurrence in Rules for Process for Handling Statutory Easements - - R850-40-250 - Determination of the Status of Temporary Easements and Rights of Entry

Mr. Andrews discussed how the agency handles statutory easements with the Board. In 1992 the Legislature passed a statute grandfathering in all roads and granting an indefinite “temporary” public easement across all trust lands for any “highway” in place on trust lands as of January 1, 1992, and directed the agency to make rules to legitimize those roads to make them legal. The environmental community argued that even RS 2477 roads stopped when they entered trust lands.

Some time ago, the Surface Group sold some land in San Juan County. There was a historical road that had been in place in 1992. The purchasers were surprised when others came through on the road to their property. In the aftermath of this situation, we created a rule that allows the agency at the time of sale to have someone apply for an easement. In some cases, we have development lands that will crisscross with user-created roads that were in place in 1992.

Staff is asking the Board to concur in the proposed rule that will allow the agency in some instances to eliminate some of these user-created roads. This is not a RS 2477 road, but only deals with this sub-set of roads. Mr. Andrews noted we have run this by the rural counties and received no negative comments and a comment from the legal representative of the Utah Association of Counties stating they support this action. The rule will help support legal challenges.

Lofgren / Smith. Unanimously approved.

“I move that we concur in this rule.”

Roll Call:

Mr. Brown - - yes	Mr. Ostler - - yes
Mr. Lofgren - - yes	Ms. Smith - - yes
Mr. Ferry - - yes	

6. Concurrence in Development Rules - - R850-140

Mr. Andrews noted that one of the goals for FY 09 was to work through a revision of the development rules. He gave the Board some history on these rules and the Development Group.

The Board enacted a policy in 2008 as to how the Development Group should do business. The purpose of this rulemaking is to incorporate the policy into the rule. We have worked over the year with a subcommittee of Mr. Lofgren and Mr. Ostler and the beneficiaries. The version the Board now has contains several changes which addresses some concerns of the beneficiaries. These changes incorporated all changes by the Board committee, the Director, and the beneficiaries. Mr. Andrews reviewed the rule with the Board.

Mr. Lofgren asked if there were another phrase that could be substituted for “foreseeable alternatives (page 6-4, 3-e). After some discussion, it was generally felt this language was o.k.

John stated that maybe there should be the addition of the word “material” in R850-140-700(3) after the word “proposed”. Mr. Lofgren stated he would agree with that if the word “material” means an impact to the economics of the transaction as approved by the Board.

Ostler / Brown. Motion approved.

“I move we concur in the proposed rule subject to the change that the Director will make on R850-140(3) where the word “material” will be added.”

Roll Call:

Mr. Brown - - yes

Mr. Ostler - - Yes

Mr. Lofgren - - yes

Ms. Smith - - absent at vote

Mr. Ferry - - yes

7. Consent Calendar

a. Negotiated Sale to The Nature Conservancy - PS 7905 - Washington County, UT

Ms. Bird inquired as to what would happen to the land if the species of plants all die off? Could we put a reversionary clause that we would get the land back? Mr. Buchi and Director Carter explained that this land is not located in a place where it would be useable for us. There is no point in putting a reversionary clause in it, but we could possibly think about this on future transactions of this type.

There were no comments by the Board on this, so it is approved.

Notification:

b. Fee Waiver Report.

This was for information to the Board. There were no comments.

Upon motion by Mr. Ostler, the meeting adjourned at 12:18 p.m.