

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

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

DATE: OCTOBER 15, 2009

PLACE: SALT LAKE CITY, UTAH

ATTENDING:

BOARD

John Y. Ferry  
John Scales  
Mike Brown  
Dan Lofgren  
Steve Ostler

STAFF

Kevin S. Carter  
LaVonne Garrison  
Tom Faddies  
Dave Hebertson  
Doug Buchi  
Eric Baim  
Ron Carlson  
Rick Wilcox  
Kim Christy  
NormaLee McMichael  
Rodger Mitchell  
Lisa Schneider  
Chris Fausett  
John Andrews  
Nancy Koeber  
Kate Staley  
Jessica Kirby  
Lina Haggard  
Lynda Belnap

OTHERS IN ATTENDANCE

Martel Menlove, State Office of Education  
Paula Plant, State Office of Education  
Karen Rupp, State Office of Education  
Margaret Bird, State Office of Education  
Cliff Strachen, Governor's Office of Planning & Budget

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Chairman Ferry welcomed Board members, Staff, and guests to the meeting. He noted the name of David Ure has been submitted to the Senate for approval as a representative on our Board. He also welcomed Dr. Martell Menlove, Deputy Superintendent of the State Office of Education

1. Approval of Minutes

The Board approved the Board minutes of September 10, 2009.

Brown / Scales. Unanimously approved.

“I move we approve the Board minutes of September 10, 2009.”

Roll Call:

Mr. Scales - - yes

Mr. Brown - - yes

Mr. Lofgren - - yes

Mr. Ostler - - yes

Mr. Ferry - - yes

2. Confirmation of Upcoming Meeting Dates

The Board confirmed the following meeting dates:

November 12 - - Salt Lake City

December - - No meeting

Chairman Ferry expressed appreciation to the Staff for a great tour yesterday of the Washington County trust properties. Director Carter noted that we will be going again on October 30 for a tour for some of the members of the State Office of Education. Anyone who missed the tour yesterday is welcome to go on October 30.

3. Consideration/Approval of 2010 Meeting Dates

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

January 7	Salt Lake City
February	No Meeting
March 11	Salt Lake City
April 8	Salt Lake City
May 12, 13	Delta
June 10	Salt Lake City
July	No meeting
August 12	Salt Lake City
September 9	Salt Lake City
October 13, 14	St. George
November 18	Salt Lake city
December	No Meeting

It was noted we will tour the Graymont plant on May 12. There may be some complications on the August date, but the Board will deal with it later. Director Carter noted the Western States Land Commissioners Association Meeting is in Little Rock, Arkansas, next year. It is the second week in January. If any Board members would like to attend, please let us know.

4. Chairman's Report

a. Beneficiary Report

Ms. Margaret Bird thanked the staff for the great tour of Washington County trust lands yesterday for the Board members and beneficiaries.

Ms. Bird discussed HR 1925 - America's Red Rock Wilderness Act of 2009 - with the Board. She handed out the language in Section 203 of this bill pertaining to trust lands. She noted many people think the school trust lands are taken care of in this bill. She pointed out three things that this section does not address:

- \* By when - We have had lands in Arches National Park for over 75 years. This is very important.
- \* What lands will be offered - - we have spent much time getting rid of lands that don't make us money. We don't want lands offered to us that will not be productive.

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4. Chairman's Report (cont'd)

a. Beneficiary Report (cont'd)

- \* Who is going to pay for the land exchange - - when we did the last massive land exchange out of the Monument, it was the largest land exchange the U.S. had ever done. The wilderness exchange would be many times that exchange. It will cost much more than the last one. They need to provide the money since they are creating the problem.

Ms. Bird noted that the beneficiaries are taking the message of "not one captured acre" to the education committees. She also has the State Board of Education's comments that were read into the record during the hearing on the bill.

Ms. Bird noted that, several years ago, the Nevada Education Association pushed for a resolution through the NEA regarding supporting wilderness issues. This has allowed the National NEA to take a position in opposition because it doesn't have the proper trust land language.

There were questions regarding how to decide on what lands. Ms. Bird stated her preference would be for the Trust Lands Staff to be able to look at lands they would like to give up and to get and designate those lands in the bill. She thinks we need to wait and see how this will move forward. The Board may want to consider a resolution that will put forth its message on getting trust lands out of these areas.

Chairman Ferry stated we need to be proactive because we need to control the momentum.

5. Director's Report

a. Director's Update on Issues

Director Carter reviewed some issues with the Board as follows:

- \* The Great Hunt Panel and the great work our staff has done to make it more viewable - - He showed the Board a letter from a resident of the county thanking us for that work on the panel.

5. Director's Report (cont'd)

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

- \* Director Carter briefed the Board on a conference he had attended on knowledge retention. He showed the breakdown of employees in the agency according to age and years of service. About 30 percent of our agency has 20 years or more service. He has been spending some time trying to figure out how to capture this knowledge. He will keep working on this over the upcoming year. Mr. Brown noted that they are finding that the "younger generation" doesn't want to stay in an organization very long. Director Carter noted that he is looking at an "emeritus" status or coming back on a part-time basis. If the state continues to explore changing the retirement system, it may force more employees to retire. Chairman Ferry stated this issue has been one of the Board's concerns, and they appreciate the Director looking into it further.
  
- \* Director Carter distributed to the Board a report that the agency receives periodically from Ivory Homes regarding lot values, foreclosure, etc.

Chairman Ferry noted that there has been conversation that possibly it would be well for the code to be changed to allow a retired Board member to continue to serve until a replacement is made. Mr. Ferry asked Ms. Bird how to do this. Ms. Bird suggested that we look at this further to see how the legislative climate will be. The beneficiaries will look into this further and report back next month.

Director Carter noted that he has a matter for discussion with the Board that has the potential for litigation and asks that it be done in closed session.

Lofgren / Ostler. Unanimously approved.

"I move we go into closed session for the discussion of potential litigation."

Roll Call:

Mr. Scales - - yes	Mr. Brown - - yes
Mr. Lofgren - - yes	Mr. Ostler - - yes
Mr. Ferry - - yes	

5. Director's Report (cont'd)

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

The Board went into closed session at 9:41 a.m. Those in attendance were Board members, Director Carter, John Andrews, and Kim Christy. The Board returned to open session at 9:45 a.m.

Lofgren / Brown. Unanimously approved.

"I move we return to open session."

Roll Call:

Mr. Scales - - yes	Mr. Brown - - yes
Mr. Lofgren - - yes	Mr. Ostler - - yes
Mr. Ferry - - yes	

b. Associate Director's Report

I. Land Exchange Implementation

There was no information presented on this item this month.

II. Public Lands Issues Update

Mr. Andrews gave the Board a briefing on Utah wilderness issues through a power point presentation summarized as follows:

- \* Wilderness Study on BLM Lands - Statutory Framework
  - \* Wilderness Act of 1964, 16 U.S.C. § 1131 et seq., requires review of Forest Service, National Park Service, and U.S. Fish & Wildlife Service lands for wilderness characteristics and report findings and recommendations to Congress for action. No wilderness review authority granted for BLM lands.
  - \* Federal Land Policy & Management Act, 43 U.S.C. §§ 1701 et seq (1976) ("FLPMA") provided authority for wilderness review of BLM lands.

5. Director's Report (cont'd)

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

II. Public Lands Issues Update (cont'd)

- \* Wilderness designation is a prerogative of Congress - - any recommendation of the President for designation of a particular area as wilderness becomes effective only by Act of Congress.
- \* Pending congressional action, lands identified in the Secretarial review as having wilderness characteristics are managed for non-impairment. 43 U.S.C. § 1782(c).
- \* The authority granted by Section 603 of FLPMA for the creation of WSAs expired as of the end of the 15-year Secretarial review period on October 21, 1991. State of Utah vs. Babbitt, 137 F. 3d 1193, 1206 n. 17 (10<sup>th</sup> Cir. 1998).
- \* BLM's FLPMA Wilderness Review - - the First 15 Years
  - \* BLM began FLPMA wilderness inventories in the late 1970's. After intensive inventory of BLM lands and a lengthy public comment and appeal process, BLM identified 3.2 million acres in Utah as having wilderness characteristics.
  - \* Pending congressional action to designate or release lands, the entire 3.2 million are managed as WSAs. In the absence of congressional consensus, these lands are effectively wilderness indefinitely into the future.
  - \* With reviews completed in all states, FLPMA Section 603 wilderness review authority expired in 1993.
- \* Be Careful What You Ask For - - the Babbitt Re-inventory
  - \* Early 1990's: environmental groups claimed that the FLPMA § 603 inventory missed wilderness quality lands and introduced legislation (HR 1500) to designate 5.7 million acres in Utah as wilderness.
  - \* In a heated 1996 hearing, Congressman Jim Hansen (R-Utah) bets DOI Secretary Babbitt that he can't find 5.7 million acres of wilderness-quality land in Utah.

5. Director's Report (cont'd)

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

II. Public Lands Issues Update (cont'd)

- \* In response Babbitt launches internal DOI re-inventory of HR 1500 lands with DOI team (Bob Abbey); no public input.

Mr. Andrews reviewed other issues with the Board, including Re-Inventory Litigation, Multiple Uses, Utah wilderness settlement overview, the Bush era BLM Resource Management Plan Revisions, other land-related bills and issues in the Congress, and county land bill discussions.

c. Surface Group Report

I. Easement Review - Implementation of Policy 2006-01

Mr. Christy and Staff discussed this issue with the Board through a power point presentation summarized as follows:

- \* Issues leading to adoption of Board policy
  - \* Contention between counties and federal government regarding road claims on federal lands.
  - \* Pole Canyon Sale in 2003 spawned lawsuit over public access rights after trust lands were sold
  - \* Clarification on dealing with road claim on trust lands was needed
  - \* Board policy adopted on January 19, 2006
- \* Important Statutes - - RS 2477
  - \* Revised Statute 2477 (R.S. 2477)
    - \* Part of Mining Act of 1866
    - \* “. . . and be it further enacted, that the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.”
    - \* Repealed by FLPMA on October 21, 1976. Existing RS 2477 rights of way were not extinguished
    - \* Only pertains to federal lands or lands that were once federally owned, as most trust lands once were
    - \* Qualification of some road claims under RS 2477 has been a source of contention and legal battles for many years.

5. Director's Report (cont'd)

c. Surface Group Report (cont'd)

I. Easement Review - Implementation of Policy 2006-01 (cont'd)

- \* Utah Code (Sections 72-5-301 & 72-5-302) sets forth elements under Utah law for the assertion of the federal right granted by RS 2477. It requires one of the following to have occurred prior to October 21, 1976.
  - \* Construction or maintenance of the road
  - \* Inclusion of the road in a state, county, or municipal road system
  - \* Expenditure of public funds for the road
  - \* Road used by the public for a period of at least 10 years
- \* Title is held by the state and its political subdivisions
- \* 1992 Grant of temporary easement
  - \* Utah Code Section 72-5-203 creates a temporary public easement or right of entry for roads traversing state lands, including trust lands
  - \* Who is a "responsible authority"?
  - \* The grant is indefinite until the entity with the responsibility for the lands promulgates rules providing a means for determination of the validity or non-validity of the temporary easement, which, if valid, is made permanent
  - \* Agency initially adopted a rule in October 2004 addressing temporary easements with respect to lands proposed for sale.
  - \* Rule is being amended to apply to all trust lands, not just parcels proposed for sale.

Mr. Christy and Staff reviewed the Board policy on roads, showing each category of roads and how Staff is dealing with road claims and compensation.

- \* Summary of current status:
  - \* Strategic Plan - - work with at least five counties per year to resolve Class B road claims
  - \* Counties completed to date: Beaver, Kane, Millard, San Juan, Sevier, Uintah
  - \* Nearly finalized (working on documentation): Box Elder
  - \* Some roads have been completed in the following: Daggett, Emery, Garfield, Iron, Piute, Wasatch, Washington, Wayne
  - \* To be completed by the end of the fiscal year: Carbon, Garfield, Iron, Juab, Sanpete and likely others.

5. Director's Report (cont'd)

c. Surface Group Report (cont'd)

I. Easement Review - Implementation of Policy 2006-01 (cont'd)

\* Mileage Summary

\* Total mileage of claims resolved to date:

\* 603 total miles

\* 343 miles converted to a permanent easement

\* 260 miles qualified as valid existing rights

\* Easement revenue: \$1.04 million

Director Carter expressed his appreciation to Mr. Christy and his staff for the work they have done on roads. This has helped us very much in our relationship with the counties. Chairman Ferry noted that we have dealt in good faith with the counties, and it has worked out well.

Ms. Bird expressed, on behalf of the beneficiaries, appreciation to the Director, Mr. Christy, and Staff for all they have done on the road issue.

d. IT Group Report

Director Carter had asked the IT Group to give the Board a demonstration on how our electronic web mapping on our plats works. Lina Haggard gave the Board a very good demonstration on the electronic plat project. She introduced Jessica Kirby and Kate Staley, who are in the GIS group and have been working on this project also. This project has basically been a spacial audit of the Business System.

Chairman Ferry stated this was very impressive and thanked the Staff for this demonstration.

6. Policy 2009-01 - - Amendments to OBA's

Ms. Garrison noted that she had chaired a committee that worked on this policy. The committee consisted of John Andrews, Kim Christy, Tom Faddies, and her. The policy is as follows:

*The Board of Trustees  
of the  
School and Institutional Trust Lands Administration*

*New Policy*

*Amends Policy No.*

*Repeals Policy*

*Policy Statement No. 2009-01*

*Subject: Amendments to Other Business  
Arrangements (OBA) for Surface and Mineral  
Groups*

*The Board of Trustees of the School and Institutional Trust Lands Administration met in open, public session on October 15, 2009, and by majority vote declared the following to be an official policy of the Board.*

WHEREAS, pursuant to 53C-1-303(4)(e) and 53C-2-401(1)(d)(ii), the Board of Trustees (“Board”) must approve joint ventures and other business arrangements (collectively “OBAs”) entered into by the School and Institutional Trust Lands Administration; and

WHEREAS, agency rule R850-140-700 governs amendments to OBAs undertaken by the agency’s planning and development group; and

WHEREAS, the Board believes it is desirable and prudent to establish a policy governing the amendment of OBAs undertaken by the agency’s surface and minerals groups that have already received approval by the Board, in a manner consistent with statutory authority, administrative rule, and other Trust purposes; and

WHEREAS, the Board acknowledges that the Director is: (i) vested with broad authority, subject to Board approval, to enter into joint venture transactions and other business arrangements pursuant to 53C-1-303(4)(e) and 53C-2-401(1)(d)(ii); and (ii) required to inform the Board of the Administration’s activities pursuant to 53C-1-303(1)(k) of the Act.

NOW, THEREFORE, in order to assist the Director in fulfilling his/her obligations under the foregoing, the Board adopts the following policy regarding amendments to surface and mineral OBA’s which have already been approved by the Board:

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6. Policy 2009-01 - - Amendments to OBA's (cont'd)

1. The Administration may amend an OBA subject to the conditions in subsections 2-4.
2. No amendment to an OBA shall result in the Trust receiving less than fair-market value for the sale, use, or exchange of the property in question.
3. The Director shall provide the Board with notice of the amendment by delivering a summary description of the terms of the proposed amendments to the OBA to the Board with sufficient detail to permit the Board to review the proposed amendment consistent with its statutory duties.
4. All amendments that will materially modify the ~~financial~~ terms of an OBA must be approved by the Board. Amendments that do not materially modify the ~~financial~~ terms of an OBA may be approved by the Director after notice to the Board pursuant to Subsection 3.
5. Nothing in this policy shall preclude the Director from making de minimis or technical amendments to OBAs (for example, corrections to legal descriptions, changes in party names, or minor clarifications or modifications) without further notice or approval.

Director Carter noted we take action based on rules that are based on Board policy. This is the first step in that process to get rules in place for amending OBA's. We have a policy in place for dealing with amendment on OBA's on development projects. This is consistent with that for surface and minerals. We will bring back the rules for the Board's concurrence after the policy is approved.

Mr. Scales asked about this including more than financial information. Director Carter stated that the rule will include more things; i.e., change in the partner, etc. Mr. Scales stated that amending an OBA is a big change, and he doesn't think the Board should give up much oversight.

Brown / Ostler.

"I move we adopt this policy."

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6. Policy 2009-01 - - Amendments to OBA's (cont'd)

Amended motion:

Ostler / Scales. Unanimously approved.

“I move that we amend #4 to have ‘financial’ in the first and second sentences crossed out and adopt this policy as amended.”

Roll Call:

Mr. Scales - - yes

Mr. Brown - - yes

Mr. Lofgren - - yes

Mr. Ostler - - yes

Mr. Ferry - - yes

7. Consent Calendar

a. Negotiated Sale to The Nature Conservancy Group - Pre. Sale 8459

There were no comments on this item, so it is approved as recommended.