STATE OF IDAHO
OUTFITTERS AND GUIDES LICENSING BOARD
BOARD MEETING

MINUTES

February 23-27, 2004

(KEY: MSC = MOTION MADE, SECOND, CARRIED)
(MSF = MOTION MADE, SECOND, FAILED)

THE REGULAR MEETING OF THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD WAS CALLED TO ORDER AT 8:35 AM, MONDAY, FEBRUARY 23, 2004, IN THE BOARD ROOM, 1365 NORTH ORCHARD, ROOM 172, BOISE, IDAHO. VICE CHAIRMAN SCOTT FARR AND MEMBERS BILL BERNT, WILL JUDGE, AND RAY LYON WERE IN ATTENDANCE. ALSO PRESENT WERE EXECUTIVE DIRECTOR JAKE HOWARD, BOARD ATTORNEY STEVE SCANLIN, AND SECRETARY KIM WALLETT. BOARD CHAIRMAN WAYNE HUNSUCKER WAS NOT IN ATTENDANCE FOR THIS MEETING.

Review of Agenda: Director Howard noted that the draft agenda had been changed. Many of the hearings were continued to a later date or settled prior to this meeting. Other items previously scheduled were moved to accommodate the changes.

MSC (MOTION BY LYON, SECONDED BY BERNT – UNANIMOUS) TO ACCEPT DECEMBER BOARD MEETING MINUTES WITH NO CHANGES MADE.

STAFF REPORTS – Technical Records Specialist I – Leanne Reincke: Ms. Reincke presented reports detailing the current status of new applications, amendment requests, and buy/sell areas, that were completed since the December 2003 Board meeting. The allocation report will be discussed at a later time in the meeting.

MSC (MOTION BY JUDGE, SECONDED BY LYON – UNANIMOUS) DURING THE PROCESS OF EVALUATION AND THE SUBSEQUENT TRIAL PERIOD IN UNIT 45, THE BOARD WILL NOT APPROVE ANY APPLICATIONS FOR ONE-TIME CONTROLLED HUNT AMENDMENTS.

BJ SNOOKS – DENIAL HEARING – ERIC MITTON: Mr. Mitton appeared before the board via teleconference. Mr. Mitton submitted an application and a statement with regard to his Fish & Game violations from 1996. Mr. Snooks presented documents and recommended that Mr. Mitton be issued a guide license with a probationary period. Mr. Snooks reported that the costs of investigation and prosecution are $164.00.

MSC (MOTION BY LYON, SECONDED BY JUDGE – UNANIMOUS) TO ISSUE MR. MITTON A PROBATIONARY LICENSE FOR ONE LICENSE YEAR, THROUGH MARCH 31, 2005, WITH NO AMENDMENTS TO BE MADE DURING THE TIME OF PROBATION. ALSO, COST RECOVERY IN THE AMOUNT OF $164.00 TO BE PAID PRIOR TO ISSUANCE OF LICENSE.

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MSC (MOTION BY BERNT, SECONDED BY LYON – UNANIMOUS) TO MOVE BOARD ATTORNEY REPORT TO 11:20 AM.

STAFF REPORTS – Steve Scanlin – Legislature & Rules Update: The legislation and rules were approved by the Senate and are awaiting final approval. Mr. Scanlin mentioned that there were some pending litigation matters that will be discussed in executive session. Mr. Scanlin stated a proposed rules draft will be addressed for the 2005 legislature and will be ready for Board review at their April meeting,

***Recessed for lunch** @ 12:00 PM and reconvened at 1:30 PM with Vice Chairman Scott Farr, and members Bill Bernt, Will Judge and Ray Lyon present. Also present were Executive Director Jake Howard, Board Attorney Steve Scanlin, and Secretary Kim Wallett.*

Executive Session: In accordance with the provisions of Sec. 67-2345, Idaho Code, MSC (MOTION BY JUDGE, SECOND BY BERNT – FARR, JUDGE, BERNT, LYON - YEA) TO MOVE THE BOARD INTO EXECUTIVE SESSION AT 1:30 PM TO DISCUSS POTENTIAL LITIGATION ISSUES. MSC (MOTION BY LYON, SECOND BY BERNT – FARR, JUDGE, BERNT, LYON - YEA) AT 3:22 PM TO COME OUT OF EXECUTIVE SESSION WITH NO DECISIONS MADE.

GIS DEMO – BART BUTTERFIELD, IDFG: Mr. Butterfield presented the database and the programs as they are being developed for this system. He stated that he anticipates there being a review involving the permit administrator and the outfitters beginning later this year. The system should be totally complete by summer 2005.

Meeting recessed at 4:35 PM and reconvened at 8:31 AM, Tuesday, February 24, 2004, with Vice Chairman Scott Farr, and members Bill Bernt, Will Judge, and Ray Lyon present. Also present were Executive Director Jake Howard, and Secretary Kim Wallett.

DIRECTOR'S REPORT – Executive Director, Jake Howard: Director Howard reviewed the financial report, the licensing report and the probationary licenses report with the Board. He presented a breakdown of the outfitter license renewals that have come into the office that shows that approximately 46% of the outfitters have renewed at this point in time. Director Howard expressed to the Board that the financial status of the IOGLB is staying on track. He also stated that the Enforcement staff is working within their budget.

Board Counsel Scanlin arrived at 9:00 am.

STAFF REPORTS – Technical Records Specialist I – Leanne Reincke: Allocation Report. The Board directed the staff to include the allocation recap form with the annual renewal packet to be sent to the outfitters beginning with the 2005 renewals. The Board further directed IOGLB staff that when outfitters are reporting use and allocation recap information, a notice will be sent if the deadline assigned by the Board is missed. If the information is not submitted within 14 days of the notice, a late fee may be assessed. Director Howard said that this would require a rule change, which will be prepared and submitted with the other proposed rule at the April meeting.

The Board determined that they would consider reviewing existing outfitter controlled hunt units every 5 years to determine if there is a need for recalculation of outfitter allocated tags.

Recalculation may occur if: 1) there has been a change in the overall number of tags within a specific unit by IDFG; or 2) all of the outfitter allocated tags, within a specific unit are not being used, a redistribution within that unit may occur. The first review will be done later this year and will begin with outfitter controlled hunts allocated five years ago.

The Board reviewed the information received for Lolo recalculation and determined that the first year of information was inaccurate and incomplete and therefore will not be used in the recalculation. The Board will follow current policy in using the last 5 years of information.

BJ SNOOKS – DENIAL HEARING – LYNN SCOTT: Mr. Scott appeared before the Board on violations of IDFG Regulation in 1996. Mr. Scott asked the Board to review the statement that he had originally supplied with his application, and he also supplied a personal history statement. Mr. Scott stated that he had not had any violations since that time and he felt that this was a mistake that he has learned from. Mr. Snooks presented documents and recommended that Mr. Scott be issued a guide license without a probationary period. Mr. Snooks reported that the costs of investigation and prosecution are $128.00.

MSC (MOTION BY BERNT, SECONDED BY JUDGE – UNANIMOUS) TO ISSUE MR. SCOTT A LICENSE NON-PROBATIONARY UPON SATISFACTORY COMPLETION OF THE APPLICATION.

***Recessed for lunch** @ 11:40 AM and reconvened at 1:08 PM with Vice Chairman Scott Farr, and members Bill Bernt, Will Judge and Ray Lyon present. Also present were Executive Director Jake Howard, Board Attorney Steve Scanlin, Enforcement Supervisor BJ Snooks, and Secretary Kim Wallett.*

STAFF REPORTS – Enforcement Report – BJ Snooks – Enforcement Supervisor: Mr. Snooks presented a report showing the fines that were assessed and paid to the Board. He presented the 2003 year end total of cases that were opened, closed, and are still active. He also presented reports of the current cases being worked by him and the field officers throughout the state. The Board directed Mr. Snooks to include the summary, the list of founded cases and statistical analysis of enforcement actions on the website. **COAST GUARD REPORT**: Mr. Snooks stated that the responsibility of the Coast Guard licensing program has been moved to the Washington DC office due to the 9/11 terrorist attacks. Testing will still be given locally. Mr. Snooks explained that the MOU with the Coast Guard is still in the legal office of the Coast Guard. The MOU has previously been discussed with the Board and addresses the definition of a drift boat to include a small motor, joint licensing, the required written test and drug test to be performED locally. The Seattle Office has some disagreement but the Portland Office believes that the MOU will be approved for their region.

STEVE TOBIASON – DENIAL HEARING – JAMES T. REILLY Also present for this hearing were IDFG Conservation Officers Matt Erickson and Marshall Haynes. Mr. Reilly appeared before the Board on IDFG violations, not disclosing one of the F&G violations, and not reporting a previous guide license denial on his application. Mr. Reilly presented information with regard to the counts. He stated that he did not understand the terminology on the application and therefore did not select the correct answer. He also explained that he had the understanding that since the case was dismissed, even though the bond forfeiture was issued, that he did not

actually have a conviction on his record. The terminology on the application was explained to him for future knowledge. Mr. Tobiason reported the cost of the investigation was $170.17 and the cost of the prosecution has not been determined.

MSF (MOTION BY BERNT, SECONDED BY JUDGE – LYON, FARR – NO; JUDGE, BERNT - YES) ISSUE A MINIMUM THREE YEAR PROBATIONARY LICENSE WITH THE STANDARD TERMS OF NO AMENDMENTS TO BE MADE. AS ADDITIONAL TERMS OF PROBATION, MR. REILLY MUST COMPLETE AND PASS THE OUTFITTER EXAM AND COST RECOVERY TO BE ASSESSED IN THE AMOUNT OF $170.17 PLUS ADDITIONAL COSTS FROM THE PROSECUTING ATTORNEY. (Motion failed due to majority vote)

MSC (MOTION BY LYON, SECONDED BY BERNT – FARR, BERNT, LYON – YES; JUDGE – NO) TO SUPPORT THE STAFF'S DECISION TO DENY THE LICENSE.

MSC (MOTION BY JUDGE, SECOND BY BERNT – UNANIMOUS) TO MOVE RICHARD LINDSEY SHOW CAUSE HEARING, FROM WEDNESDAY AT 3:30 TO TUESDAY AT 3:35PM IN ORDER TO REVIEW THE STIPULATED AGREEMENT IN THAT MATTER.

STEVE TOBIASON – STIPULATION – RICHARD LINDSEY: Mr. Lindsey was charged with unethical or unprofessional conduct and/or violation of a lawful rule. Mr. Lindsey entered an Alford plea meaning that he did not admit to the charges but felt that there was enough evidence to convict him. He agreed to a $300 fine to be paid in three equal payments by June 1, 2004, a period of one-year probation and during which he must be in compliance with local, state, federal rules and laws related to its outfitting license. The Board shall also issue a letter of reprimand to Mr. Lindsey.

MSC (MOTION BY BERNT, SECOND BY JUDGE– UNANIMOUS) TO ACCEPT THE STIPULATION AS PRESENTED BY MR. TOBIASON.

Executive Session: In accordance with the provisions of Sec. 67-2345, Idaho Code, MSC (MOTION BY JUDGE, SECOND BY LYON – FARR, JUDGE, BERNT, LYON - YEA) TO MOVE THE BOARD INTO EXECUTIVE SESSION AT 4:30 PM TO DISCUSS PERSONNEL ISSUES. MSC (MOTION BY JUDGE, SECOND BY LYON – FARR, JUDGE, BERNT, LYON - YEA) AT 5:45 PM TO COME OUT OF EXECUTIVE SESSION WITH NO DECISIONS MADE.

Meeting recessed at 5:45 PM and reconvened at 8:35 AM, Wednesday, February 25, 2004, with Vice Chairman Scott Farr, and members Bill Bernt, Will Judge, and Ray Lyon present. Also present were Executive Director Jake Howard, Board Counsel Steve Scanlin, and Secretary Kim Wallett.

WORK SESSION – INSTRUCTION MANUALS: Director Howard presented the instruction manuals and requested that the Board approve them at this meeting for training that is scheduled for April throughout the state. He stated that the only substantive changes since the December Board meeting had to do with non-use. The non-use standards were reviewed and discussed and changes were made to better explain non-use for outfitters.

BJ SNOOKS, LEANNE REINCKE – DENIAL HEARING – ESCAPE ADVENTURES, HEATHER & JARED FISCHER: Escape Adventures, Mr. & Mrs. Fisher submitted an application for outfitting in 2002 and failed the outfitter's exam two consecutive times. Based on those failures, the Outfitter application was denied for the license year in 2003. Mrs. Fisher explained that not all of the questions on the exam were clear and that they could be answered either way. Per Board Rule 020, Mr. & Mrs. Fisher were informed that they would be welcome to reapply and retake the exam after March 31, 2004. The Board further stated that they would direct the staff to review the exam and clarify those questions that need to be reworded.

MSC (MOTION BY LYON, SECONDED BY JUDGE – UNANIMOUS) TO AFFIRM THE IOGLB STAFF'S DENIAL OF THE INITIAL APPLICATION.

DIRECTOR HOWARD – TERRITORIAL CONFLICT HEARING – IDAHO OUTDOOR WILDERNESS, DARWIN VANDER ESCH & BIGFOOT OUTFITTERS, RAY RALLS: Also present for this hearing were Leanne Reincke, Harvey Whitten, Carolyn Ralls, and Don Sorenson, USFS. Mr. Vander Esch and Mr. Ralls are disputing an overlap that has occurred in their operating areas. The Board expressed concern that this matter could be resolved without Board intervention. Mr. Ralls and Mr. Vander Esch agreed to divide the area and activities. The Board requested that the Forest Service prepare a recommendation on how to modify the Mr. Ralls' and Mr. Vander Esch's operating areas reflecting the agreement to the stipulations in the Findings of Fact. The Board stated they will not allow the overlap to continue and if the agreement between Mr. Ralls and Mr. Vander Esch does not satisfy this matter to the Board's satisfaction, then the Board will separate the overlapped areas at their discretion. The Board directed Director Howard to work with the Forest Service to establish the operating areas and to write a letter to Mr. Vander Esch and Mr. Ralls to get concurrence on the new area descriptions.

Mr. Vander Esch had also contested the historical calculation of the mule deer tag allocations in unit 18 stating that his outfitter business should have been considered in the original calculations. Staff reported that after reviewing the record, that Mr. Vander Esch had shown adequate use that should have been considered. They were unable to find any evidence of a reason why Mr. Vander Esch's deer hunting use was not included. The Board ordered that Unit 18 be recalculated based on historic use, including use for Idaho Outdoor Wilderness, Bigfoot Outfitters, and Boulder Creek Outfitters, the other outfitter in this area.

***Recessed for lunch** @ 12:20 PM and reconvened at 1:15 PM with Vice Chairman Scott Farr, and members Bill Bernt, Will Judge and Ray Lyon present. Also present were Executive Director Jake Howard, Board Attorney Steve Scanlin, and Secretary Kim Wallett.*

Senate Confirmation Hearing – Will Judge: Board member Judge attended his Senate confirmation hearing at 1:15 PM at the Idaho State House.

Executive Session: In accordance with the provisions of Sec. 67-2345, Idaho Code, MSC (MOTION BY JUDGE, SECOND BY LYON – FARR, JUDGE, BERNT, LYON - YEA) TO MOVE THE BOARD INTO EXECUTIVE SESSION AT 2:29 PM TO DISCUSS PERSONNEL ISSUES. MSC (MOTION BY JUDGE, SECOND BY LYON – FARR, JUDGE, BERNT, LYON - YEA) AT 2:55 PM TO COME OUT OF EXECUTIVE SESSION WITH NO DECISIONS MADE.

Clearwater District discussion. After discussing the matter the Board asked Director Howard to write a letter in response to the Clearwater National Forest Service voicing their concerns and to participate in a focus group meeting on March 2.

Meeting recessed at 5:00 PM and reconvened at 8:40 AM, Thursday, February 26, 2004, with Vice Chairman Scott Farr, and members Bill Bernt, Will Judge, and Ray Lyon present. Also present were Executive Director Jake Howard, and Secretary Kim Wallett.

INSTRUCTION MANUALS CONT: Further discussion was made with regard to the manuals and the description of non-use. The Board made changes to the exiting nonuse language in draft form. The Board asked Director Howard to draft a revised rule based on the discussion for the April Board meeting. It was agreed that non-use criteria must be clarified and reflected in Board Rule. It was discussed that there be a small section in each handbook that will refer to non-use.

MSC (MOTION BY JUDGE, SECONDED BY BERNT – UNANIMOUS) TO APPROVE THE HANDBOOKS WITH THE CHANGES MADE AS DISCUSSED.

NON-USE REVIEW DISCUSSION: The Board directed Mr. Howard to review use records for all outfitters and determine which of those are in total non-use or in non-use in the primary areas of operation for the last two out of three years. This will not apply to outfitters that have Board approved non-use waivers within that time. The Director was asked to provide a non-use report to the Board at their April meeting. The biggest concern is that outfitters may be holding on to activities or areas in order to increase the value of their business in order to sell to another person; in essence selling the license. The Board will determine the appropriate action regarding these businesses in non-use at their April meeting

AUDIENCE – MR. BRENT FITCHETT: Mr. Fitchett appeared before the Board to discuss his possible foreclosure on Northern Idaho High Country Outfitters. Mr. Fitchett was the previous owner of the business and claims that he has not been paid in full for the purchase. He stated that his intent is to resell the business upon foreclosure. He also requested that the Board consider either re-licensing him or allowing him to sell the business without re-licensing.

Recessed for lunch *@ 12:00 PM and reconvened at 1:35 PM with Vice Chairman Scott Farr, and members Bill Bernt, Will Judge and Ray Lyon present. Also present were Executive Director Jake Howard, Board Attorney Steve Scanlin, and Secretary Kim Wallett.*

Executive Session: In accordance with the provisions of Sec. 67-2345, Idaho Code, MSC (MOTION BY JUDGE, SECOND BY LYON – FARR, JUDGE, BERNT, LYON - YEA) TO MOVE THE BOARD INTO EXECUTIVE SESSION AT 2:13 PM TO DISCUSS LITIGATION MATTERS. MSC (MOTION BY JUDGE, SECOND BY BERNT – FARR, JUDGE, BERNT, LYON - YEA) AT 3:10 PM TO COME OUT OF EXECUTIVE SESSION WITH NO DECISIONS MADE.

DIRECTOR HOWARD – APPEAL HEARING – IDAHO GUIDE SERVICE, OLIN GARDNER, DESIGNATED AGENT – SA7B REVOCATION: Also present for this hearing was Mr. Gardner's attorney, Thomas Kershaw. Idaho Guide Service appeared before the Board to request that the Board reconsider their previous decision to remove SA7B from the outfitter license. Mr. Kershaw presented documentation from the BLM that he had obtained from the

BLM website with regard to the Management Plan that determined the total boat numbers that the Board was using for their decision. He also presented a copy of the Lower Salmon River Visitor Use Report for 2002, also from the BLM website. After reviewing the documentation, the Board discussed with Mr. Gardner, his inability to comply with Board order as directed in September 2003. Mr. Gardner stated that he did not receive the order in a timely manner and felt that the information was not needed since the time frame had passed.

MSC (MOTION BY BERNT, SECONDED BY LYON – UNANIMOUS) TO DENY MR. GARDNER'S MOTION TO RECONSIDER.

The Board directed Director Howard and staff to research the alleged inconsistencies in the testimony and the evidence presented by Mr. Olin Gardner for the purpose of determining if further action is necessary.

BOBCAT HUNTING: The Board discussed how the impact of bobcat as an incidental species is affecting the industry. The Board considered requesting that the IDFG relax the restrictions on hunting Bobcat to make it an major activity instead of incidental to other species.

Meeting recessed at 5:00 PM and reconvened at 8:40 AM, Friday, February 27, 2004, with Vice Chairman Scott Farr, and members Bill Bernt, Will Judge, and Ray Lyon present. Also present were Executive Director Jake Howard, Board Counsel Steve Scanlin, and Secretary Kim Wallett.

STEVE TOBIASON – SHOW CAUSE HEARING – JEANETTE RICHARDSON: Also present for this hearing were Mr. Brent Fitchett, previous outfitter and owner of the business, and as witnesses for this hearing Ms. Dorothy Morilli, Ms. Peggy Morris, and Mr. Darren Barfield, all via teleconference. Ms. Richardson also appeared via teleconference. This matter is being brought before the Board on three counts of unprofessional or unethical conduct. Ms. Morilli and Ms. Morris both provided services or leased property/equipment to Northern Idaho High Country Outfitters. They maintain that almost no payments were made although judgments were placed in Small Claims Court. Mr. Barfield testified that he entered into an agreement, that included an eight-month buyout (cancel) window, with Northern Idaho High Country Outfitters and based on the window of time, he chose to back out of the agreement. The contract outlined repayment of Mr. Barfield's investment with installment payments being made to Mr. Barfield. Mr. Barfield also alleged that he has not been paid wages in the amount of $52,800.00. Ms. Richardson stated that with regard to Ms. Morilli and Mr. Barfield, she is attempting to secure monies to satisfy those judgments. However, Ms. Richardson felt that the dollar amount of the claim by Ms. Morris was untrue as per the agreement they had made at the time of service. Mr. Tobiason reported that the cost of the investigation and prosecution has not yet been determined.

MSC (MOTION BY LYON, SECONDED BY BERNT – UNANIMOUS) THAT THE LICENSE OF NORTHERN IDAHO HIGH COUNTRY OUTFITTERS SHOULD BE REVOKED. COST RECOVERY WILL BE ASSESSED IN AN AMOUNT TO BE DETERMINED AT A LATER TIME.

The Board asked Board Counsel Scanlin to further look into the matter and determine what, if any, action can or should be taken against Northern Idaho High Country Outfitters.

Executive Session: In accordance with the provisions of Sec. 67-2345, Idaho Code, MSC (MOTION BY LYON, SECOND BY BERNT – FARR, JUDGE, BERNT, LYON - YEA) TO MOVE THE BOARD INTO EXECUTIVE SESSION AT 9:28 AM TO DISCUSS LITIGATION MATTERS. MSC (MOTION BY LYON, SECOND BY JUDGE – FARR, JUDGE, BERNT, LYON - YEA) AT 10:04 AM TO COME OUT OF EXECUTIVE SESSION WITH NO DECISIONS MADE.

With no further business to come before the Board, the meeting was adjourned at 12:00 PM, February 27, 2004.

WAYNE HUNSUCKER, CHAIRMAN

ATTEST:

JAKE HOWARD, EXECUTIVE DIRECTOR

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