



## **Idaho State Board of Land Commissioners**

C. L. "Butch" Otter, Governor and President of the Board

Lawrence E. Denney, Secretary of State

Lawrence G. Wasden, Attorney General

Brandon D Woolf, State Controller

Sherri Ybarra, Superintendent of Public Instruction

Dustin T. Miller, Secretary to the Board

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*Be it remembered, that the following proceedings were had and done by the State Board of Land Commissioners of the State of Idaho, created by Section Seven (7) of Article Nine (IX) of the Constitution.*

### **Final Minutes**

State Board of Land Commissioners Regular Meeting

October 16, 2018

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, October 16, 2018, in the Capitol, Lincoln Auditorium, Lower Level, West Wing, 700 W. Jefferson St., Boise, Idaho. The meeting began at 9:03 a.m. The Honorable Governor C. L. "Butch" Otter presided. The following members were present:

Honorable Secretary of State Lawrence Denney

Honorable State Controller Brandon Woolf

Honorable Superintendent of Public Instruction Sherri Ybarra

For the record, Governor Otter recognized the presence of four Board members and noted the absence of Attorney General Wasden who was attending to out-of-state business.

Director Dustin Miller commented that this was his first Land Board meeting as the new director for Idaho Department of Lands and he is excited to be here. Director Miller thanked the previous director, Tom Schultz, for his leadership and guidance, and for his encouragement. Director Miller expressed appreciation to Deputy Director David Groeschl for his leadership and guidance, and for keeping the Department moving forward this year while the Land Board was in search of a new director. Director Miller also recognized the Department's executive staff and others for their phenomenal help and guidance during his first couple of weeks at the agency.

#### **1. Director's Report**

##### **Endowment Transactions**

A. Timber Sales – September 2018

**Discussion:** None.

B. Leases and Permits – September 2018

**Discussion:** None.

## Status Updates

### C. Fire Season-Final

**Discussion:** Governor Otter asked if there is any money left in the fire fund, recalling that there was a plus-balance last year. Deputy Director Groeschl stated that at the 2018 legislative session, JFAC [Joint Finance-Appropriations Committee] appropriated an additional \$20 million into the deficiency warrant account in anticipation of the 2018 fire season; the amount was based on a three-year average. Mr. Groeschl noted that expenses for this year's fire season will be very near the amount appropriated; all the funds are obligated. The money that was in the deficiency warrant account prior to the 2018 appropriation is committed for expenses from previous fire season billings. Governor Otter inquired if the Department has anything in its budget for next year. Mr. Groeschl replied no; JFAC will review the deficiency account during the next legislative session, and if there are general funds available, they may choose to pre-fund the account again, based on a three-year average. Governor Otter remarked it could be a good way to set aside surplus, too.

### D. Land Bank Fund

**Discussion:** Governor Otter mentioned that the Board has had prior discussions about potentially extending the five-year hold to ten years or someplace in between, and asked if the Department is prepared to offer anything to the legislature this year. Deputy Director Groeschl indicated that the Department always keeps that on its radar but at this time given the pipeline of acquisitions the Department has under consideration, it is feasible to continue to operate under the five-year window. If staff was to see the five-year window becoming an issue with transactions and negotiations, the Department would bring that concern forward. Right now, staff is comfortable operating within the five-year timeframe and believes those acquisitions that meet or exceed the Land Board's objectives can be negotiated and closed within that period.

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

### A. Manager's Report; and

### B. Investment Report

**Discussion:** Mr. Halvorson reported that the month of September was a pretty quiet month in the equity markets. There were slightly negative returns from bonds as inflation and higher interest talk filtered its way into the market. The U.S. is still very strong, with a robust GDP growth and a healthy economy. Looking out at the rest of the world, there are trade concerns, weather concerns, Brexit in England, negative interest rates in Japan, tariff talks and systemic risk in China; the United States for the most part is the best of the economies in the world. Mr. Halvorson noted the U.S. does have some forward-looking concerns, particularly with inflation. Effects of this inflation concern have been noticeable in October to date; last week the Dow Jones was down about 1,300 points. Mr. Halvorson stated that fiscal year-to-date return was 3.5% at the end of September. The market is down about 4.9% for the month of October so far, resulting in a slight fiscal year-to-date loss of 1.6% for the Fund. Mr. Halvorson mentioned that EFIB recently transitioned an equity manager—Aberdeen Asset Management was replaced by Wellington Global. On October 30th the Investment Board will meet to interview some core fixed-income managers.

### **Consent—Action Item(s)**

- 3. Bonners Ferry Armory Surplus Property (Idaho Military Division)** – *Staffed by Josh Purkiss, Program Manager-Real Estate*

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

**Discussion:** Governor Otter asked for the appraised amount of the property. Mr. Purkiss replied that the appraisal was for the armory and the land, for a total of \$675,000. Governor Otter inquired if an auction was required for this sale. Mr. Purkiss said that if a tax-supported agency declares interest, then an auction is not necessary. The county is a tax-supported agency.

- 4. Approval of Minutes** – September 18, 2018 Regular Meeting (Boise)

**Consent Agenda Board Action:** A motion was made by Controller Woolf that the Board adopt and approve the Consent Agenda as presented. Secretary of State Denney seconded the motion. The motion carried on a vote of 4-0.

### **Regular—Action Item(s)**

- 5. Pending Rule IDAPA 20.04.01, Rules Pertaining to Forest Fire Protection** – *Presented by Craig Foss, Division Administrator-Forestry and Fire*

**Recommendation:** Authorize the Department to adopt the pending rule to update IDAPA 20.04.01 *Rules Pertaining to Forest Fire Protection*.

**Discussion:** Controller Woolf mentioned the background of this negotiated rulemaking, which started following the 2015 fire season with the after-action report, and continued with follow-up meetings in 2016, 2017, and 2018. Controller Woolf noted that the Department has received comments and feedback from loggers and log haulers and asked if the Department feels that there is good consensus with the direction moving forward. Mr. Foss responded that the Department received extensive comments from both non-industrial private forest owners and from forest operators. One of the concerns heard from non-industrial private forest owners was whether this would apply to any activity that takes place in the woods. The Department clarified that it is only for Option 2 or greater activities, which means a significant amount of logging activity. For much of the day-to-day stuff that they tend to do, sanitation and normal clean-up, many of these rules would not apply. Mr. Foss noted that the Department also learned from industrial landowners that they put contract language in place after the 2015 fire season requiring water-handling equipment for operations on their lands. The Department made sure that the rule language being incorporated aligns with those requirements on industrial land so that industrial landowners would not have to retrofit to match this rule set. That adjustment really brought the industrial landowners and the larger operators on board; the Department does feel that there is support for this rule set.

**Board Action:** A motion was made by Controller Woolf that the Board authorize the Department to adopt the pending rule to update IDAPA 20.04.01 *Rules Pertaining to Forest Fire Protection*. Secretary of State Denney seconded the motion. The motion carried on a vote of 4-0.

**6. Pending Rule IDAPA 20.03.01, Dredge and Placer Mining Operations in Idaho** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

**Recommendation:** Authorize the Department to adopt the pending rule to update IDAPA 20.03.01 *Dredge and Placer Mining Operations in Idaho*.

**Discussion:** Governor Otter inquired if DEQ [Department of Environmental Quality] was involved in the negotiated meetings. Mr. Wilson answered that DEQ was not involved; however, the Department looked to DEQ's surface and groundwater quality standards and made sure those references are in this rule. Mr. Wilson emphasized that the Department specifically adopted the state water quality standards.

**Board Action:** A motion was made by Controller Woolf that the Board authorize the Department to adopt the pending rule to update IDAPA 20.03.01 Dredge and Placer Mining Operations in Idaho. Secretary of State Denney seconded the motion. The motion carried on a vote of 4-0.

**7. Pending Rule IDAPA 20.03.02, Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

**Recommendation:** Authorize the Department to adopt the pending rule to update IDAPA 20.03.02 *Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities*.

**Discussion:** None.

**Board Action:** A motion was made by Controller Woolf that the Board authorize the Department to adopt the pending rule to update IDAPA 20.03.02 Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities. Secretary of State Denney seconded the motion. The motion carried on a vote of 4-0.

**8. Pending Rule IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

**Recommendation:** Authorize the Department to adopt the pending rule to update IDAPA 20.03.04 *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho*.

**Discussion:** Controller Woolf asked if the Department is going to pursue further research regarding the dock rights issue. Mr. Wilson stated the Department's original proposal was simply to strike dock rights because they were not defined in the rule and it is very ambiguous as to what they mean. Ambiguity leads people into disagreements and then litigation occurs. One participant proposed a definition of dock rights, but the Department was not comfortable with that definition as it incorporated historical uses. There is no easy way to determine if those historical uses were in conformance with the rule or not; the Department does not want to allow people to continue historical uses that may not be in conformance with law. The Department determined its best path forward was to leave dock rights in for now and if that comes up in enforcement or litigation between parties as to what dock rights means then a court will decide at that time.

Governor Otter commented that does not seem to provide a solution for those people that believe they have dock rights, whether they are historical, or garages are too high, or the dock is too wide, or whatever the problem. Mr. Wilson remarked that in regard to dock rights, the term the Department uses and that most case law uses is actually littoral rights. If an individual lives adjacent to the lake then he has littoral rights—the right to wharf out, to protect banks from erosion and several other things. Dock rights could include a whole host of things, some of which the Department specifically prohibits—the use of easements to allow somebody to construct a dock on another person's property; that is specifically prohibited. Individuals could interpret dock rights to include easements; there is a multitude of real estate terms and real estate transactions that the Department cannot embrace. Real estate folks are very creative; they come up with new terms and new ways of granting rights that they believe are appropriate and they will outpace any effort of the Department to regulate those types of conveyances. Dock rights is a term that has been undefined for over ten years; it has not come up yet but when it does then the Department will have to address it.

Governor Otter asked how use rights are handled by other agencies such as Fish and Game which has docks placed in public waterways; people pay a certain fee to park and launch their boats. Mr. Wilson explained that public access points are typically on state, federal, county, or city-owned lands and they have littoral rights. They have the right to wharf out, they have the right to apply for encroachment permits, and those types of applications are greatly encouraged to provide access points to these publicly-owned lands. More access points means more public use out on the lakes and that is definitely something that the Department supports.

Secretary of State Denney asked if it would make sense to get people together and actually define what dock rights are so that the Department and the Board do not have to wait and let the courts define them. Secretary of State Denney wondered if the views are so divergent that it cannot be done. Mr. Wilson remarked that the views are pretty divergent. The Department had a similar discussion ten years ago when this term was first put into rules; the real estate folks were very emphatic at that point that the term be included. It is not a term that the Department uses; the Department uses the term littoral rights because that is defined in case law. The Department could work with real estate professionals and homeowner associations to try to come up with a definition of dock rights but the viewpoints are very divergent.

Governor Otter encouraged Mr. Wilson and Department staff to reach out and try to come to some resolve and not wait to go to court for every dock going out into the public waterways which would require hiring more attorneys general; the Board does not want to do that. Mr. Wilson said he also favored having as few people litigate as possible and again stated the term that the Department uses, and that is used in almost every application and every case that comes to the Department, is littoral rights.

Governor Otter asked what littoral rights means. Mr. Wilson clarified that littoral rights give individuals the ability to wharf out into the lake to access the lake. Sometimes people lease out their littoral rights and that is allowed as long as it is a long-term lease agreement. For instance, state cottage sites and federal cottage sites, those are long-term lease instruments; those folks have littoral rights to encroach out into the lake on their lots. Mr. Wilson stated that the Department does not want people who own 200 front-feet to lease out just 100 feet of their property; they already have their own dock out there on their property, so their littoral rights have already been exercised. The Department frequently sees attempts by people to try to chop

