

**Transcript for Public Hearing for Proposed Rulemaking IDAPA 20.02.14**

**August 11, 2016**

**Moscow Idaho**

**ARCHIE GRAY:** Good afternoon, my name is Archie Gray. I'm the sale administration and scaling program manager for the Idaho Department of Lands. I've been serving as the administrator for the current round of rule-making related to IDAPA 20.02.14 - Rules for selling forest products on state-owned endowment lands.

Before we start a little background for this hearing. The Idaho Department of Lands administers the sale of forest products from endowment lands, under the direction of the Board of Land Commissioners, Land Board, under the Idaho constitution article 9, subsection 8, the department has a fiduciary responsibility to provide the maximum long-term financial return to the endowment beneficiaries. Following discussions with the Callan group, industry representatives, and internal staff, revisions to IDAPA 20.02.14 were recommended to address changes to the timber sale approval process and the sale of cedar poles. The need to address these rule changes have been discussed for several years. In April, the department received permission from the Land Board to enter into negotiated rule-making. In order to facilitate an efficient comment period for the negotiated rule-making, the department held two pre-meetings in May to start the discussions early. Two formal negotiated rule-making meetings were then held in June. The comment period was extended from a deadline of June 21<sup>st</sup> until July 1<sup>st</sup>.

On August 3<sup>rd</sup>, the proposed rule developed from the negotiated rule-making meetings was published in the Idaho administrative bulletin volume 16-8 on pages 113 through 117. The rule in the bulletin is the official version, and all comments should be based on that version. A simple search on the internet for the Idaho Administrative Bulletin 16-8 will bring you to the correct place to view the changes, or you can visit our rule-making website. All comments must pertain to IDAPA 20.02.14 - Rules for selling forest products on state owned endowment lands. If your testimony appears to be straying away from the topic of this hearing, I will try to guide you back into the context of this hearing. Both written and oral comments are very important at this stage in the rule-making. Changes to the proposed rule can only be made based on written or oral comments received on or before August 24<sup>th</sup> 2016. The department will review these comments and evaluate whether or not additional rule changes are needed. We will then prepare the pending rule for review by the Land Board at their September 20<sup>th</sup> 2016 meeting. Based on their recommendation, we will then submit a pending rule for consideration by the 2017 Legislature. Please make sure the department receives your comments before August 24<sup>th</sup>. If you brought written comments with you this afternoon, please make sure to give us a copy. You may also send electronic copies to the website as before.

As a suggestion to help move things along, and give everyone who wishes an opportunity to speak, those who plan to submit typed written comments today, could best use their oral testimony to briefly summarize the written comments or to elaborate on specific points. Since the written and oral comments are treated the same, simply reading your submitted comments verbatim does not give them more weight. Regardless of whether or not you have comments to submit, please do not hesitate to testify today. This is your opportunity to give us feedback on the rules.

A few housekeeping matters, restrooms are right outside, down the hall to the left, then they're on the right hand side. There is coffee, tea, and water in the back. Please make sure you've signed in and have checked the boxes for either written testimony, oral testimony, or both; if you don't select either, we just won't look for written comments for you or expect oral comments. Everyone who wants to speak gets one turn at the microphone. There will be no responses from IDL to your comments today. There will be a time limit of 5 minutes for testimony. These proceedings will be recorded, at the beginning of your testimony, please state your name and organization if you represent one.

A second hearing will be held on August 18<sup>th</sup> at the Idaho Department of Lands office, Pend Oreille area office conference room at 2550 Highway 2 West, Sandpoint, ID also starting at 1:00 pm pacific. Are there any questions before we get started? Ok, I slated the meeting to go from 1 to 3 pm, if at around 2 pm or so it appears we're done, no one else is coming in, we'll go ahead and just end the meeting at that time, with that I will open the floor, if anyone would like to begin . . .

**HARRY GRANT:** Good afternoon, thank you for the opportunity to provide comments in this process. My name is Harry Grant. I'm outside attorney for McFarland Cascade Holdings Incorporated. McFarland Cascade Holdings, as you know Mr. Gray, and as others in the room know, has participated throughout this process and has not only participated in the negotiated rule-making process as far as it went, but we have also submitted lengthy written comments and have retained the firm of Moss Adams to provide written comments to supplement our comments on the rule from the standpoint of financial and economic analysis and to particularly look at assumptions that the Idaho Department of Lands used with respect to net present valuation and things of that nature. What I'd like to do is incorporate by reference in my comments today, Mr. Gray and others from the department, the comment memorandum that McFarland Cascade submitted to you on June 30<sup>th</sup> 2016. So we'd like to incorporate that by reference. I will say however, that we will likely submit additional written comments before this phase of the process ends. So, prior to the date that you mentioned a few moments ago Mr. Gray, I believe that McFarland Cascade Holdings Incorporated will put in additional comments. But, we do want to incorporate the ones that we've already submitted because they're lengthy, detailed, and we've put a great deal of thought and effort into those.

I think it is not a surprise to you to know that McFarland Cascade is concerned about this rule. We are concerned that the department is headed in the wrong direction. The reason that we are concerned about that is that we understand your point that you believe that you can cut your expenses in the operation of the rule, you'll be able to do the job that you're charged with doing at IDL less expensively, but what we think that you've failed to do is to completely grasp and understand the revenue implications of what you're doing by terminating the 1986 cedar pole policy and by essentially not treating cedar poles as the super valuable commodity, the super valuable product that they are.

We appreciated the negotiated rule-making process. And people that work hard together don't use a process like that to say it wasn't what it should have been, but in some ways we think it didn't go as long as it should have. You'll remember Mr. Gray, the final meeting of the formal negotiated rule-making process. Honestly we had a good turn out that day, but we really didn't end on anything that was even close to consensus. I think we were finally starting to hear from industry, from the Farm Bureau, but we just ended. And I think that is what's unfortunate about that, is that I don't think we achieved what

negotiated rule-making is intended to achieve in terms of really getting to an understanding - your understanding as agents of the state government, our understanding as representatives of one company that's part of the industry, and all the other people that were there too from industry, and from the Farm Bureau and so forth. So I don't think we got to the point that we really had completed the negotiated rule-making and gotten to a point that we did what negotiated rule-making is intended to do.

But we're still at it, so we're here today and one of the things that we want to do is identify for you a proposal that we have, that we want to put on the record. Which is the following: Basically what we want to suggest to you is that if you believe that the approach that you are taking is a good approach, if you think that it's something that has, for example as you have sometimes articulated Mr. Gray, silvicultural benefits, if you think that it has expense-reduction benefits, but we're saying to you, we think you've missed on the revenue side because we think that your revenue, your gross revenue, is going to fall off. And even if you do have an improved expense side, I think overall you're going to end up with less profit, less net revenue, going to the endowments. We think ultimately you're going to fail in your constitutional charge, which is to maximize revenues to the state endowments. We think that what you're doing here may be good in your view, from a silvicultural perspective, but I think you're going to hurt the endowments. We think that you're not going to generate the revenues that are necessary; we think that you're certainly not going to maximize revenues as you're required, as you're charged with doing under the constitution. So what we propose that you do is a pilot program. What we propose that you do for at least a year, for at least a year, is a pilot program in which you sell cedar on a board foot basis. Sell cedar poles on a board foot basis. Let people that have typically bid for cedar on a board foot basis compete for the cedar poles too, and test your hypothesis essentially of whether you're going to develop and extract increased revenues by selling cedar poles that way, on a board foot basis, opening those sales up to everyone, but at the same time, while you're doing that, for the rest of the state, essentially keep the 1986 cedar pole policy in place. And let's go test what IDL has come up with, let's test what you developed Mr. Gray, with your colleagues in the capstone project and let's see if it really worked. Because as you know, and I want to emphasize this, Moss Adams has looked at what your assumptions are from an economic and finance perspective, and they're not persuaded that what you did in the capstone project is going to lead to greater revenues.

So we're proposing the idea of a pilot, instead of jumping entirely into this rule change, let's go try a pilot for at least a year, and let's see if this idea that you came up with really works. Maybe you get the silvicultural benefits, maybe you actually get some expense reductions, but do you get that added revenue pop? Do you get that added amount of revenue that you, that I guess you believe, that you're going to get. Do you really get that in fact? So, I think a test is the way to do that. Phenomenology always beats theory. So let's go see if in practice it really works, before we do harm to the endowments. And I think in some ways the constitutional prescription here is very very clear. If you're going to do this, you have to do it so as to maximize revenues to the endowments. And we are skeptical that you're going to be able to do that, but we propose using a pilot to try to find out whether that will work or not.

I think that's the summary of our position. Mr. Gray, we are concerned about what this is going to do from a constitutional perspective, we're concerned that in some ways the IDL may be moving in a direction that will go down as being arbitrary and capricious because your assumptions on revenue are

untested. So we want to be a positive force in this process and rather than just sitting and taking shots at you, what we want to do is come up and say we disagree with you, but here's an idea, let's try this. We want to try to be a constructive part of this process. With that, I thank you again for the opportunity to participate on behalf of McFarland Cascade Holdings, I hope that you'll indulge McFarland Cascade Holdings in the event that one of my colleagues may have any other comments that I've overlooked. I will make sure that I haven't misstated the company's position. Again, thank you very much for your time and attention. We hope to continue to work constructively with you to make this process work.

**ARCHIE GRAY:** Thank you . . . is there anyone else?

**IAN STEWART:** Well I think, I just want to make sure you understand what we're proposing. Ok, so it's really just a question for you, or for you two, as far as understanding what Harry's proposed.

**ARCHIE GRAY:** OK, can you say your name first?

**IAN STEWART:** Ok, sure, yep. Ian Stewart with McFarland Cascade.

**HARRY GRANT:** And thank you very much Mr. Gray; I think that from the business and the forestry side it's useful to let Mr. Stewart amplify what I was explaining, so I thank you very much for that.

**ARCHIE GRAY:** You're welcome. Ok, I'm sorry Ian, now go ahead.

**IAN STEWART:** No problem, I just wanted to make sure that you understood what Harry's proposing. So, just to perhaps clarify. We are asking that the existing pole policy be kept in place, you already have the pole sales, essentially scheduled, they would go up on a board foot basis. That's our proposition. So we would take the table in comparison of it there, everything would be sold on an either board foot or cubic foot measure.

**ARCHIE GRAY:** OK, I will provide an opportunity for either one of you to clarify: So, what we're talking about here isn't necessarily the pole policy, but we're talking about pole rules.

**IAN STEWART:** Well, it's leaving the policy, it's essentially hitting pause on the process were in now.

**ARCHIE GRAY:** Right.

**IAN STEWART:** Just testing the assumptions, you know, the revenue assumptions I suppose.

**ARCHIE GRAY:** Right.

**IAN STEWART:** Seeing if there, you know you open it up to everybody, that was one of the issues that were identified as part of this process, that there's the table misrepresents the actual board foot volume.

**ARCHIE GRAY:** Right, and I understand that aspect of what you are asking us to do, and we will talk about that. We can't discuss it here.

**IAN STEWART:** No, no, not at all. I just wanted to make sure you were clear on what it is we're proposing.

**ARCHIE GRAY:** Yes, thank you. And I just want to make sure, and you can come back up, no problem there, to clarify we're not discussing the pole policy here, we're discussing the rules related to it. There are actually two different elements here.

**IAN STEWART:** Gotcha.

**ARCHIE GRAY:** Although they interact, the policy is set by the Land Board; we can't do anything about that at this time.

**IAN STEWART:** No, no exactly, and that's part of the proposition is that that's in place, and it's in place until this time, essentially this time next year anyway. Right, so we're not, it's really not, and perhaps you can clarify, the way that poles are sold, is that, well I'll leave it at that. That's, yeah. Ok.

**HARRY GRANT:** Thank you Mr. Gray, again Harry Grant, just trying to continue to be sure that the McFarland Cascade Holdings' position is properly articulated. I think that the key issue here, not to put too fine of point on it, is that what we're suggesting is that the status quo be maintained for at least another year while IDL, instead of implementing the proposed rule, in its entirety, for the entire state, forever, that we maintain the status quo and take that rule, and the idea that's in that rule, and give it a test drive in the form of a pilot program, and find out whether those revenue assumptions that you've made really work.

**ARCHIE GRAY:** OK, thank you for clarifying.

**HARRY GRANT:** Thank you.

**ARCHIE GRAY:** Anyone else have any comments at this time? We'll keep the microphone open for a little bit longer. Rather than recording silence, we're going to turn off the recorders, but if anybody still wants to come up and testify, we'll turn those back on.

Ok, are there any final comments? Anyone else wish to make any comments at this time? That closes the hearing for this afternoon. Thank you for participating in the rule-making process. It is currently approximately 1:45 pm. For clarity, something I thought of up there, persons providing oral testimony today are more than welcome to provide oral testimony again at the next hearing. I want to make that clear. That hearing again will be in Sandpoint, next Thursday, the 18<sup>th</sup>, again starting at 1 pm at our Pend Oreille area office, on Highway 2. With that, thank you very much for attending, and this hearing is closed.