

Transcript for Public Hearing for Proposed Rulemaking IDAPA 20.02.14

August 18, 2016

Sandpoint 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, I'll give 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, or 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 held in June. The comment period was extended from June 21st until July 1st.

On August 3rd, 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 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 the hearing. Both written and oral comments are very important at this stage in the rule-making. Changes to the proposed rules can only be made based on written or oral comments received on or before August 24th 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 20th 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 24th. If you brought written comments this afternoon, please make sure to give us a copy.

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 written comments verbatim does not give them more weight. Regardless of whether or not you have written 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 just outside the door, right there in the hall. We have water and coffee in the back of the room. Please make sure you've signed in and if you intend to testify, please check the box for either written or oral testimony, or both, if you're planning on doing both. Everyone who wants to speak gets one turn at the microphone up here. There will be no responses from IDL to your comments today. There will be a limit of 5 minutes for testimony. These proceedings are being recorded, because these, your comments will become a part of the official record. When you come up, please start by spelling, by stating, and if necessary spelling your name for the record.

This is the second and final hearing related to the proposed rule-making for IDAPA 20.02.14. Are there any questions before we begin? OK, Mike, you have a question?

MIKE BECK: For our written testimony, can you let us know if it meets your criteria before we leave here so we can enter it for written testimony.

ARCHIE GRAY: Sure, yeah, I'll take a look at it and give you an idea. Any other questions? With that, I'll open the floor to testimony. Who would like to go first? Thank you Tyler, brave soul.

TYLER BRYDEN: Tyler Bryden, I'm the representative for Bell Timber. I just wanted to further reinforce what we submitted, and I re-submitted again our comments yesterday, I don't know if they've been posted to the website yet.

ARCHIE GRAY: I didn't look this morning, I apologize.

TYLER BRYDEN: I just want to outline one of the changes we made to our submission. We retracted our position, 24.03 since it's been amended and struck through. So, please remove that from our testimony. And I'd like to just put some weight behind the three options that we proposed in our letter. To everyone here, please read our letter, and I want everybody to understand that Bell Timber's position is to gain primarily fair access to the IDL timber stumpage, and all of our positions are surrounded that goal of getting fair access to the timber supply. If you can keep that in the back of your mind when reading our comments, that is our main goal, to help not only Bell Timber get their access to supply, but also other entities that are trying to gain access to the Timber supply. That right now we feel, is positioned to benefit a smaller subset of the bidders. The three positions I'd like to go over is, and I know this is outside of what we're talking about specifically, but we believe that oral auctions are not beneficial. Sealed bids are something we'd like to see IDL work toward in the long term. Our position on the sort sales are well defined, but I'd like to just put an amendment to it that our position is based on other jurisdictions and how they have set up sort sales. I understand that IDL while they're working towards the goal of making a sort sale, it may be different than we're outlining in our letter. Therefore I'd like to offer our help, in any way, that if you want to come to us for information about how we've dealt with other jurisdictions, we can help you to find the most beneficial way for you to put those sales ahead. And our third position is we would like to propose a small business set-aside. That would encourage more competition within the IDL program, and it would allow a lot of the smaller businesses to compete in the current market. In addition, we did state that we would like to see in the rules a specific amount set aside for the higher value product sales. We didn't see that added to the rules. And, 24.01, we'd like that to read value, not volume. And as I've said at the start, our main goal is to

create more competition for these sales, because we believe that that will allow more access to supply. That's all I have. Thank you.

ARCHIE GRAY: OK, Thank you.

IAN STEWART: I have written comments; I would like to read those for the benefit of those in the room. If I can do that?

ARCHIE GRAY: Okay.

IAN STEWART: Ok, I'm Ian Stewart with McFarland Cascade. McFarland Cascade is concerned with the IDL's proposed rule changes to IDAPA 20.02.14, which effectively replace the 1986 Pole Policy and the IDL's pole sales program regulations. Our concerns are as follows:

- In practice, High Value Forest Products sales, as they are called under the proposed regulations, will not be materially different from regular timber sales. Selling all the timber together without product differentiation forfeits the higher returns that could be earned for premium products like cedar poles.
- Individual species and product values will be lost using this auction method, as specialty producers are forced to purchase large volumes of wood they cannot use. The IDL will not maximize revenues on the sale of forest products, failing to meet its mandate to the endowments.
- Because of the ability for a successful bidder to allocate up-bid to specific species or pole lengths after a timber or pole sale, the IDL does not currently know the "market" stumpage values for cedar sawlogs or cedar poles. While IDL sale data does suggest that these values are currently closer than they have been historically, the same data suggests that this will not always be the case.
- The IDL has not properly evaluated whether or not the sale of poles, the separate sale of cedar, or the individual sale of other forest products can generate higher returns on IDL timber.

Before changes are made to IDAPA 20.02.14 that could harm specialty producers and the endowments, we believe that the IDL should confirm its assumptions regarding the market prices of cedar poles and cedar sawlogs. We suggest the following:

- Put the negotiated rule-making process on hold for at least 1 year.
- Continue to sell pole sales as per the Fiscal Year 2017 Sales Plan.
- Leave the 1986 Pole Policy and IDAPA 20.02.14 in place, as written, but sell all poles and associated cedar sawlog volume removed during pole sales on a board foot basis, on actual scale. Since proposed rule changes will not take place until Fiscal Year 2018, this would require only a minor adjustment of the rules, and should only have potential upside for IDL timber sale revenues and the endowments.
- If deemed necessary, start the negotiated rule-making process again at the end of the trial period.

Again, McFarland Cascade believes that the IDL is rushing changes to IDAPA 20.02.14 without proper assessment of the potential impacts to timber sale revenues, returns to the endowment funds, or the various stakeholders. The proposed rule is simply a reflection of where the discussions were at when the clock ran out on the rule-making process, and IDL's proposed rules will not maximize financial returns to the endowments in practice.

We believe that changes can be made to IDAPA 20.02.14 that increase revenues to the IDL by isolating higher valued timber. The proposed High Value Forest Product sale still requires that the successful bidder buy the entire stand, and will not maximize returns to the endowments, as required by the Constitution.

Thank you.

ARCHIE GRAY: Thank you Ian. Anyone else?

DAVE SLAUGHTER: I'm Dave Slaughter of Slaughter Wholesale, formerly JD Lumber, years ago, and also representing some of the educational facilities around that are hurting at this point in time, have been hurting. I'll keep this brief, because while I tried to read both these, but I've been having trouble sleeping at night, and these helped dramatically. I'm a believer in competition in a big way here, for bidding. I've seen it for years, despite the fact that we had pole sales in place, I've seen a lot of competition, and yet we've seen pole companies go out of business, we've seen other companies out of business, we're seeing currently a dramatic consolidation of sawmill manufacturing in this area. That in and of itself is going to be reducing competition, not increasing it. For the department of lands. I see no reason to further reduce ability to get high dollar volumes out by taking away the pole sales. I think that's going to be an unnecessary thing. Every major manufacturer around here of lumber is doing the same thing with their own production. There selling a little bit to Home Depot, or a lot as much as they can to Home Depot, or the big boxes, for the higher dollar they get out of it. There used to, if it requires going back in, if it requires, I mean, let's face it. If a pole saler goes first, there's still some infrastructure that's there already left over ready for the regular logging to be done. It's not like it's a complete redo. I think there's some opportunity here, there might be some room to move in the middle, but certainly I can't understand wanting to remove something that generates the high volume and timber sales that cedar logs do. Plus, the business thereof. I hate to see that pulp isn't scaled completely out in Idaho due to rules of this nature when we're already seeing sawmills going out for other reasons. And, our districts up here and all school districts are hurting so bad. I know they're going to get a boost this year from the land sales, but I think we need to keep it up and see everything we can do, I know this addresses it to some extent, but we need to keep the dollars as high as we possibly can to get what money we can to our educational systems. I think that's it.

ARCHIE GRAY: Thank you, thank you Dave.

MIKE BECK: I have written comment, I'll just briefly summarize if I could. Mike Beck, Resource Manager for TriPro Forest Products, and I've submitted written testimony regarding change to the pole sale program. I believe that's 20.02.14. I want to make sure that's referenced in my written so it remains valid. Just to summarize, this rule-making process seems to be certainly not by consensus. What I've

heard here in the room today, and we agree with that. I think there's some other alternatives that really need to be explored in this. I have no problem with changing the cedar pole rule to a high valued rule, but I think that the point that needs to be made, that no one in our industry, in private some of the large and small timber companies, merchandise their high value species. That's the only way you can actually add value, maximize the return to the endowment. So, what I suggest is that we put this rule-making proposal on hold until we do have a good consensus within the industry and the department on how to proceed. That really just summarizes what these say.

ARCHIE GRAY: Is there anyone else? We'll keep the microphone going here for a few minutes. We'll stay here until 1:30, and if no one else wishes to testify, we'll close the meeting at that time. In the meantime, rather than recording dead air and making my transcriptionist have to listen to dead air, I'm going to pause the microphones.

Ok, resuming – my phone, old reliable, says it's 1:30. One more call, is there anyone else who would like to make oral testimony at this time? Ok, that closes the hearing for this afternoon. Remember that you may still provide written testimony until August 24th. You may do so by delivering it to our office, you may log on to the website, the IDL website, and you'll find a place on there for rule-making. You can click on that and attach your comments there, or you may even just email them to me, I'll set some business cards out here for you, if you would like to do that. If there are no further questions or comments, thank you for participating in the rule-making process, and we'll post the comments and other materials that we have gathered as soon as possible, and thank you very much.