



Idaho State Board of Land Commissioners

Brad Little, 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, Director and Secretary to the Board

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

April 16, 2019

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, April 16, 2019, in the Boise City Council Chambers, Boise City Hall, 3rd Floor, 150 N. Capitol Blvd., Boise, Idaho. The meeting began at 9:00 a.m. The Honorable Governor Brad Little presided. The following members were in attendance:

Honorable Secretary of State Lawrence Denney

Honorable Attorney General Lawrence Wasden

Honorable State Controller Brandon Woolf

Honorable Superintendent of Public Instruction Sherri Ybarra

For the record, all Board members were present.

1. **Department Report** – Presented by Dustin Miller, Director

Endowment Transactions

A. Timber Sales – March 2019

B. Leases and Permits – March 2019

Status Updates

C. Land Bank Fund

D. Legislative Summary – Final

Discussion: None.

2. **Endowment Fund Investment Board Report** – Presented by Chris Anton, EFIB Manager of Investments

A. Manager's Report; and

B. Investment Report

Discussion: Mr. Anton reported that the endowment portfolio was up 1% for the month of March and was up 3.3% fiscal year-to-date, through March 31st. Over the last two weeks it gained another 2%; through April 15th it was up 5.3%. Mr. Anton added that the portfolio gained 10.1% during the first quarter of 2019, offsetting some of the losses experienced late in calendar year 2018—a nice rebound.

Mr. Anton stated that the global economy is slowing, but there seems to be optimism in the financial markets that it is temporary and there will be a recovery in the second half of the calendar year, primarily due to support from the Federal Reserve. The Federal Reserve indicated there will be no further increase in interest rates this year. After the announcement, interest rates came down, and home construction and auto sales—very interest rate sensitive sectors—picked up again. Mr. Anton remarked that growth in Europe is very soft right now; there is concern about Brexit and what will happen in terms of Brexit. The trade negotiations in China are still ongoing, but investors seem to be patient. There will be positive outcomes from those negotiations. The financial markets are largely moving sideways until there is positive growth in the second half of the year, and until there is resolution to negotiations with China.

Mr. Anton indicated that distributions for fiscal years 2019 and 2020 are well secured. The estimated reserves as of February 28th are 5.8 years for Public School, and 6.3 to 8 years for the other endowments. Mr. Anton referenced the chart provided in the Board materials; it shows the level of earnings reserves for each of the endowments expressed in years of reserves. Earnings reserves move not just based on investments. They also change based on revenue coming in from the Department of Lands, and expenses going out for EFIB, or the Department of Lands, and for the beneficiaries. Overall the reserves are very solid.

Mr. Anton mentioned that the Investment Board had a special meeting on March 25th and approved the hiring of Sycamore Capitol as a mid-cap value manager in place of Systematic Financial; that transition was completed at the end of last week. Mr. Anton thanked Governor Little for the appointment of Tom Wilford to the Investment Board, replacing Gavin Gee, who was probably the longest-serving member. The Investment Board is excited to have Mr. Wilford. Mr. Wilford was the CEO for the J.A. and Kathryn Albertson Foundation for many years and he will add some strong experience to the Investment Board.

Mr. Anton noted that EFIB has been working on an investment consultant request for proposal (RFP). EFIB's policy is to issue an investment consultant RFP every 10 years. At this point, the scope of work includes investment consulting for EFIB and the State Insurance Fund, and includes a scope of services for the Idaho Department of Lands. The RFP is constructed so that those are three very distinct scopes of service. EFIB intends to distribute the RFP broadly, and interested companies can respond to all three pieces, or to individual pieces. There is not a need to select one consultant for all three entities, but there may be economies in doing so. EFIB has consulted with the State Insurance Fund and the Department of Lands. Both agencies reviewed the scope of services that are needed from an investment consultant. The RFP will be issued by the end of this week.

Consent—Action Item(s)

3. Transfer Old Penitentiary Parcel (Non-Endowment Land) to Idaho Department of Agriculture –

Presented by Ryan Montoya, Bureau Chief-Real Estate Services; Dan Salmi, Bureau Chief, Bureau of Laboratories, ISDA; and Kelly Nielsen, Administration Administrator, ISDA

Recommendation: Approve the transfer of control of the two acres, identified herein, of Penitentiary Reserve Lands to ISDA for the construction of a new laboratory.

Discussion: Superintendent Ybarra inquired if the City of Boise has been notified, given the proximity to the city park. Mr. Salmi replied that the City Parks Department was contacted and

staff concern was for a main water line at the back of the property, that caution be used so summer irrigation is not cut off. Governor Little asked if Department of Agriculture will be fixing roads to the facility. Mr. Salmi said yes, that project is now out for bid and will be contracted in the next couple of months. Controller Woolf mentioned that Department of Corrections had tended a garden plot on that parcel and asked about coordination with that agency. Mr. Salmi indicated that Department of Corrections had not yet been contacted, but he believed that garden was actually maintained by Department of Agriculture staff who then donated the produce to the food bank.

4. **Approval of Minutes** – March 19, 2019 Regular Meeting (Boise)

Consent Agenda Board Action: A motion was made by Controller Woolf that the Board adopt and approve the Consent Agenda. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

Regular—Action Item(s)

5. **FY2020 Timber Sales Plan** – *Presented by Jim Elbin, Bureau Chief-Forest Management*

Recommendation: Direct the Department to proceed with implementation of the FY20 Timber Sales Plan.

Discussion: Controller Woolf noticed that the recommendation for Maggie Creek's annual sale volume was significantly lower in FY20 than FY13. Mr. Elbin explained the difference was due to the Maggie Creek Pulp Plan, a ten-year plan which entailed harvesting high volumes of diseased trees and then replanting with healthy, productive tree species.

Governor Little asked how the 100-year sustained harvest forecast works, with different species and different silvicultural needs. Mr. Elbin responded that the Department models for each individual supervisory area, using either continuous forest inventory or stand-based inventory. Using forest modeling, the Department looks at growth projections for the future and standing inventory, and tries to determine how much volume, over what is growing, will be cut to bring the standing inventory down. At the same time, past management efforts result in more growth so there is a kind of push-pull relationship going on. The goal is to attain the balance where growth matches what is cut.

Attorney General Wasden recalled the Board made this decision to increase the cut rate because of aging timber that was beginning to exceed the sizes that were acceptable to the mills. Attorney General Wasden noted that what this evidence shows is the right decision was made. The Department is cutting timber at an increasing rate and yet growth rate is more than compensating for what is harvested. Mr. Elbin said that is correct. The Department is converting old stands that have reached a point in their growth where they are actually declining or very slowly growing, and is replacing old stands with super-fast growing stands. Mr. Elbin commented that it is a good problem to have.

Controller Woolf inquired if Department staff has a percentage of what is the growth of the cut rate, over the next 5-10 years. Mr. Elbin indicated it would be just a projection and estimated that annual harvest volume would be over 300 MMBF in the next five years.

Governor Little remarked that with programs like Good Neighbor Authority, there will be timber coming off grounds that have not been logged before, or not logged in a great number of years, and asked if the Department takes into account perpetuation of mills that have carriages for bigger logs. Mr. Elbin replied that the Department will likely never be able to accelerate harvest fast enough to get rid of all oversized timber; there will always be some segment of endowment forestland that is in that size class. Governor Little commented that having some oversized timber keeps those large carriage mills in business; those mills are essential in getting a return on the timber product from forest health projects such as Good Neighbor Authority.

Board Action: A motion was made by Attorney General Wasden that the Board adopt the Department recommendation and direct the Department to proceed with the implementation of the FY20 Timber Sales Plan. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

6. Negotiated Rulemaking IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho – *Presented by Andrew Smyth, Program Manager-Public Trust*

Recommendation: Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.04 *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho*.

Discussion: Attorney General Wasden pointed out the discussion on page 2 of the memo about whether the fee schedule would remain in the rules or be moved to allow fees to be set by the Land Board. Attorney General Wasden acknowledged Idaho Code § 58-127; however, the Attorney General is not yet convinced that the fee setting can be removed from the rules, despite the current controversy concerning rules. Attorney General Wasden wondered if the Department had discussed with the Office of the Attorney General the legality, the legal structure properly required, concerning the setting of those fees. Mr. Smyth responded that the Department is working with the Attorney General's staff on the legality. Attorney General Wasden noted that discussing it is one thing, proposing it is another, and asked the Department to make certain to fit the legal requirements in the rulemaking process.

Controller Woolf inquired when was the last time the fees listed at the bottom of page 1 were adjusted or changed, and if the change was up or down. Mr. Smyth replied the last time was 2008 and said the water intake line permit fee was actually adjusted down from \$1,000 to \$300.

Board Action: A motion was made by Attorney General Wasden that the Board adopt the Department recommendation and authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.04 *Rules for the Regulation of Beds, Waterways, and Airspace Over Navigable Lakes in the State of Idaho*. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

7. Negotiated Rulemaking IDAPA 20.03.03, Rules Governing Administration of the Reclamation Fund – Presented by Todd Drage, Program Manager-Minerals

Recommendation: Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*.

Discussion: Attorney General Wasden reiterated his concern about the fee issue and advised the Department to make certain to meet statutory requirements when addressing the fees. Mr. Drage assured the Attorney General that the Department would coordinate with his office.

Board Action: A motion was made by Controller Woolf that the Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.03 Rules Governing Administration of the Reclamation Fund. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

8. Cancellation of Reclamation Plan S01020 and Use of the Bond Assurance Fund for Reclamation – Presented by Todd Drage, Program Manager-Minerals

Recommendation: Authorize the Department to cancel Reclamation Plan S01020, and authorize the Department to expend up to \$126,997 from the Reclamation Fund to reclaim the entire site.

Discussion: Attorney General Wasden questioned how the operator ended up mining 20 acres outside of the mine site. Mr. Drage surmised that is where the good sand and gravel was so the operator ignored the rules and went after it.

Superintendent Ybarra asked if the Department exhausted all possibilities of recovering money from Prime Earth, Inc. and its principals, to pay for this site's reclamation. Mr. Drage said the Department did look into it and his understanding is the company has been defunct for quite a while. Director Miller added that the Department worked with the Attorney General's office to try and collect from Prime Earth, Inc.; the company has disbanded and has no assets.

Governor Little observed that somebody has purchased this piece of ground and wants to develop it and asked if the Department is sure that after it pays to place dirt in the hole as part of the reclamation, it will not then be dug right back out again. Governor Little asked if the Department has given any consideration to speaking with the new owner, acknowledging the state's liability while working out a way to minimize the cost of site rehabilitation to the Department and still accommodate the owner's plans for the ground. Mr. Drage indicated that there has been no discussion with the new owner, but the Department could do so. Presently, the Department has developed a scope of work to reclaim per the reclamation plan, which is to smooth out the area, add top soil and then seed it. Governor Little speculated that the Department would add top soil and the developer would scrape it off.

Board Action: A motion was made by Attorney General Wasden that the Board adopt the Department recommendation and authorize the Department to cancel Reclamation Plan S01020, and authorize the Department to spend up to \$126,997 from the Reclamation Fund to claim the entire site. Controller Woolf seconded the motion. The motion carried on a vote of 4-1; Governor Little cast the opposing vote.

Information

Background information was provided by the presenter indicated below. No Land Board action is required on the Information Agenda.

9. Strategic Reinvestment and Central Idaho Land Exchange – Presented by David Groeschl, Deputy Director and State Forester

Discussion: Superintendent Ybarra thanked Mr. Groeschl for the overview, saying it was very thorough, and wondered if the Department has an anticipated date for bringing the exchange back to the Board for approval, as mentioned in the presentation. Mr. Groeschl stated the Department's preference would be the next 2-3 months, to bring this forward to the Land Board for an action item. There is support needed still from key groups; if the Department does not feel that it can get that support, then the Land Board would be advised that staff is discontinuing efforts on this exchange.

Controller Woolf referred to page 3 of the memo, the last sentence in the summary says some groups have expressed support to move forward with a more formal land exchange process while others are outright opposed, and Attachment 7 is referenced. Attachment 7 is from Idaho County Commissioners who seem to be in the middle. Controller Woolf asked for clarification that Idaho County is not opposed right now, just in the middle. Controller Woolf also asked if there are others in support. Mr. Groeschl replied that Idaho County is interested simply in seeing the process move forward in a more formal process and is willing to continue engagement with the Department and others in that process. Mr. Groeschl said two groups have expressed outright opposition—Friends of the Clearwater, and Friends of the Palouse. Those organizations are opposed to any exchange proposal, regardless of the parties involved, and do not want to see any federal lands leave federal estate.

Controller Woolf commented that Attachment 5, which describes the exchange concept, identifies Idaho County as potentially receiving funds equal to five years' worth of property taxes, approximately \$500,000-\$600,000. Controller Woolf inquired if Clearwater County has tried to negotiate anything along that line. Mr. Groeschl stated that only about 1,800 acres of Western Pacific Lands in the Upper Lochsa are in Clearwater County and there was not a request to consider some sort of compensation. Idaho County made the request because of the significant amount of acreage coming off its tax roll.

Governor Little invited public comments from interested persons. Comments were received from the following:

Phil Lambert, Benewah County Commissioner: Mr. Lambert expressed concern about the Board's strategic reinvestment policy. Mr. Lambert said the plan is good but that it causes problems for counties. In the last two years, approximately 15,000 acres have come off tax rolls in Benewah County, which is detrimental to county health in the short term. Five northern counties affected by this exchange feel the same. The short-term effect is budgetary restriction and long-term it requires a tax shift. A tax shift dramatically increases taxes without an appropriate increase in services. Mr. Lampert noted that there is about 66,500 acres of state-owned land in Benewah County; taxes on that acreage would be approximately \$300,000. Public schools receive \$199,000 from endowments; the county is losing more than it is gaining. There is other land in the county not taxed—federal lands, tribal lands, Idaho Fish and Game land—the county receives payments in lieu of taxes for

those. Mr. Lampert indicated that if the state purchased another 20,000 acres, that would be about 20% of acres in Benewah County that are not taxed. Funds go to public schools and other entities, but very little comes to the county. If Benewah County Commissioners could have that land, according to Department of Lands' annual report, at \$46/acre net profit for timberland, that would be \$3 million into county coffers. As it stands, the county gets \$200,000; it is not fair to taxpayers. Mr. Lampert stated that Benewah County was not contacted prior to the last land purchase; commissioners were notified a month ago that Department of Lands purchased 12,500 acres and suddenly \$58,000 came off the tax rolls. The Land Board needs to consider ways to make counties whole.

10. Stimson Request for Audience – *Presented by Keith Williams, Vice President-Resources, Stimson Lumber Company*

Discussion: Mr. Williams, on behalf of Stimson Lumber Company, communicated concerns regarding the Department of Lands' policy of purchasing private timberlands as part of its reinvestment strategy. Stimson Lumber Company provided a letter with these concerns and additional information; the letter was included in the Board materials. Mr. Williams stated that Stimson Lumber Company is opposed to the scale of the reinvestment strategy as it places the state in direct competition with private investment and enterprise.

Governor Little invited public comments from interested persons. Comments were received from the following:

John Robison, Idaho Conservation League: Mr. Robison testified on behalf of Idaho Conservation League in support of the Department of Lands' purchase of 32,000 acres of private timberlands in north Idaho in December 2018. Idaho Conservation League supports the goals of the Central Idaho Land Exchange and wants to see the process move forward. Mr. Robison remarked that Idaho was granted 3.6 million acres of land at statehood to generate revenue for beneficiaries, including Idaho public schools; approximately 2.4 million acres remain today. In the last several decades, the Department of Lands has disposed of 167,000 acres in Benewah, Bonner, Boundary, Latah and Shoshone counties. It is reasonable for the Department of Lands to acquire private timberlands in those areas from a willing seller. Mr. Robison encouraged the Land Board to continue to work with affected counties to address concerns about tax shifts. Mr. Robison recognized that endowment lands are managed to maximize long-term financial returns, and not for the same multiple purposes as national forests, but said sustainably managed state timberlands can provide greater benefits for wildlife and recreationists than private properties that are developed. Mr. Robison referenced the Land Board's recreation policy that allows continued public recreation access on state endowment lands. Many private timberlands also allow public access, which is appreciated, but this privilege can be revoked at any time and has been in other areas. Mr. Robison noted that the Department of Lands has increased the capacity for forest restoration across forest boundaries by investing significantly in the Good Neighbor Authority and providing leadership in Idaho in the shared stewardship agreement with Regions 1 and Regions 4 of the Forest Service. Mr. Robison thanked Governor Little for his role in the upcoming Idaho Forest Restoration Partnership conference. The conference brings together members of local forest restoration collaboratives, from across the state, to learn how to work better with the Forest Service, and the Idaho Department of Lands, on increasing the pace and scale of forest and watershed restoration.

For the record, Governor Little commented that he was not a member of the Land Board at the time the policy was put in place and proposed that a subcommittee of the Land Board review the current situation. Governor Little noted that EFIB reported earlier in the meeting that a request for proposal for an investment consultant is being advertised, and also noted that \$200 million is a large sum of cash to be spending in a significant manner. Governor Little asked for volunteers to serve on a subcommittee of the Land Board to review the asset management plan [strategic reinvestment] going forward. Attorney General Wasden and Secretary of State Denney volunteered to serve on the subcommittee; Governor Little so ordered.

At 10:32 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 74-206(1)(f) to communicate with legal counsel for the Land Board to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. Attorney General Wasden requested that a roll call vote be taken and that the Secretary record the vote in the minutes of the meeting. Controller Woolf seconded the motion. *Roll Call Vote: Aye: Denney, Wasden, Woolf, Ybarra, Little; Nay: None; Absent: None.*

Governor Little called for a short break before the Board convened in Executive Session.

Executive Session

- A. Idaho Code § 74-206(1)(f) - to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement. [**Topic:** Lease M500031]

At 11:09 a.m. the Board resolved out of Executive Session by unanimous consent. No action was taken by the Board during the Executive Session.

Regular—Action Item(s)

- 11. Lease M500031** – *Presented by Darrell Early, Deputy Attorney General, Chief-Natural Resources Division, Office of the Attorney General*

Board Action: A motion was made by Attorney General Wasden that the Land Board, one, rescind Lease M500031 on the basis that the Idaho Department of Lands failed to comply with constitutionally and legally required processes in issuing the lease. Two, direct the Idaho Department of Lands to prepare, market, and offer for lease at public auction the parcel of land subject to Lease M500031 in accordance with Idaho constitutionally, legally, and financially required processes. And, three, that the Department, with the assistance of the Office of the Attorney General, negotiate a mutually acceptable settlement with the current leaseholder to compensate the leaseholder for costs and expenses incurred by the leaseholder associated with the lease which were not otherwise addressed during the leasing process. Attorney General Wasden asked for the opportunity to address his motion, upon receiving a second. Controller Woolf seconded the motion.

Attorney General Wasden remarked that in the Board's review of this lease, the Board has to acknowledge that there were some mistakes made in the processes employed. The best thing for the Board to do is to rescind the lease and then to engage in proper processes that meet the

