



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
September 13, 2019

The regular meeting of the Idaho State Board of Land Commissioners was held on Friday, September 13, 2019 in the State Capitol, Lincoln Auditorium (WW02), 700 W Jefferson Street, Boise, Idaho. The meeting began at 1:30 p.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 (*via teleconference*)

For the record, all Board members were present, with Superintendent Ybarra joining via conference call.

For the record, Governor Little announced that testimony would be accepted on agenda item 6 and asked those wanting to testify to please sign in.

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

Endowment Transactions

1. Timber Sales – August 2019

Discussion: Controller Woolf asked for additional information on the five timber sales that did not sell. Director Miller explained that two GNA sales, Hanna Flats and Windy Shingle, did not sell due to pending litigation. The Willow South sale was affected by market conditions, including full log yards and salvage sales in the Packer John state forest. Deputy Director David Groeschl said the Wet Boot sale required reappraisal because it had cedar on it. When the appraisal was initially done, cedar was at a higher market rate, but has since dropped \$150-200 per thousand board feet. Governor Little asked if the Department reappraises sales when prices go up. Mr. Groeschl replied that when prices increase it is not usually an issue, because if there are two or more bidders, they will bid up the increase on that product. Governor Little inquired what the hurdle rate is to justify a reappraisal. Mr. Groeschl answered that the Department typically looks at trends. The Department does a six-month

average for the stumpage rates; when the price is dropping quickly, appraisals cannot quite catch up. The Department looks at the last couple of months of sales for that species product category and adjusts accordingly when reappraisal is needed, such as on the Wet Boot sale. The Department only does that on individual sales that have not sold. Governor Little wondered why the Department does not reappraise all that do not sell; a couple hundred bucks a thousand is pretty significant. Mr. Groeschl noted that on some sales cedar is a minor product and price fluctuation has less of an impact. On the Wet Boot sale, and several others, the Department reappraised because cedar was more significant on those sales.

2. Leases and Permits – August 2019

Discussion: None.

Status Updates

3. Fire Season

Discussion: Governor Little observed that it would be helpful to have the Department's fixed costs and variable costs. Governor Little also asked if there are minimums on the number of hours for contracted airplanes and helicopters, and how do fire personnel spend their time if there are no active fires. Director Miller stated the Department will provide those numbers, and noted that contracted aircraft expenses is one of the biggest fixed costs.

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 down 1.2% for the month of August, and down 0.6% fiscal year-to-date. Investors looked for ways to reduce risks during the month of August due to a weak global economy, particularly in Europe and China, and in the manufacturing sector in the U.S. There is also uncertainty surrounding trade negotiations with China and the possibility of a disruptive Brexit, which continues to be very problematic. Mr. Anton remarked that the equity portion of the portfolio was down 2.5% for the month and is down 2% fiscal year-to-date. The fixed-income portion of the portfolio was up 2.2% for the month, and is up 2.6% year-to-date. Looking at item B, the Investment Report, Mr. Anton noted that fixed income is up 10% over the last year. As global yields are negative in many respects—\$17 trillion now in negative yielding bonds, particularly European sovereign bonds and Japanese bonds—investors have looked for safety in yield, and the U.S. has been the best place. Investors have bought U.S. Treasury bonds, which has driven up the price and reduced the yield. The yield came down from over 3.2% last fall to about 1.45%. Mr. Anton stated that in late August EFIB rebalanced the portfolio, because fixed income was getting very expensive. EFIB sold some bonds and bought value stocks. Value outperformed growth by about 6%; the rebalancing, at least in this couple week window, has been very effective. Mr. Anton noted that through yesterday, September 12th, the portfolio was up 1.2% fiscal year-to-date; a slight rebound.

Mr. Anton commented that reserves are very well funded. As Director Miller indicated, the revenue from the Department of Lands was strong in the first two months of the fiscal year; even though the investments were fairly flat, EFIB was able to make beneficiary distributions,

pay Lands and EFIB expenses, and maintain reserves at or near the target levels: 6.1 years for public schools, and 6.8 years or more for all of the other funds.

Mr. Anton mentioned that next Thursday, September 19th, EFIB has presentations from the two investment consultant finalists. EFIB invited Land Board staff, Department of Lands representatives, State Insurance Fund representatives, and the Investment Board. The meeting will be held at 9:00 am on September 19th, in the EFIB Board Room; both Callan and RVK will be presenting. The next EFIB Board meeting is November 19, 2019, in conjunction with the Land Board meeting. During that meeting, EFIB will be presenting the fiscal 2019 audit report. EFIB distributed those reports earlier this week; hopefully all Board members received a copy.

Controller Woolf noticed that the Investment Report, item B, includes all the pooled investments— the Department of Fish and Game, the Department of Environmental Quality, and other trusts that EFIB manages. Controller Woolf asked if the report could be modified to reflect only the Department of Lands fund that is the responsibility of the Land Board. Mr. Anton indicated that the performance numbers, the percent returns, will be the same because they are all invested the same, but said EFIB would adjust the fund balances to reflect just the endowment portfolio portion.

Governor Little commented that at one time, the returns would be shown in red ink if they were negative relative to the benchmark, and shown in green ink if they were positive relative to the benchmark. Governor Little asked if EFIB would re-implement that in the Investment Report. Mr. Anton agreed to do that.

Consent—Action Item(s)

3. Idaho Geological Survey Advisory Board, Designated Representative – *Presented by Mick Thomas, Division Administrator-Oil and Gas*

Recommendation: The Department recommends that the Land Board designate the Division Administrator of Oil and Gas at the Idaho Department of Lands to serve as their representative to the Idaho Geological Survey.

Discussion: Attorney General Wasden asked if Mr. Thomas anticipated a conflict between the regulatory function of the Oil and Gas Commission and the non-regulatory function of the Idaho Geological Survey. Mr. Thomas responded that he did not, and he consulted with counsel from the Attorney General's office, who also did not see a conflict. Mr. Thomas said the IGS Advisory Board is just that, an advisory board. There is no regulatory authority encompassed with the advisory board.

4. Approval of Minutes – August 20, 2019 Regular Meeting (Boise)

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

Regular—Action Item(s)

5. **FY2021 Department of Lands Budget** – *Presented by Debbie Buck, Financial Officer*

Recommendation: Direct the Department to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2021 budget proposal due on August 30, 2019.

Discussion: None.

Board Action: A motion was made by Attorney General Wasden that the Board adopt and approve the Department recommendation, that is approve the Department's Fiscal Year 2021 Budget Request as submitted to Division of Financial Management and Legislative Services Office on Friday, August 30th, 2019. Controller Woolf seconded the motion. The motion carried on a vote of 4-0. Governor Little recused himself from voting on this item.

6. **Department of Lands' Leasing Process** – *Presented by Ryan Montoya, Bureau Chief-Real Estate Service*

Recommendation: Approve the Department's proposed lease advertising and auction process.

Discussion: Prior to the presentation, Attorney General Wasden asked the Board members if any member had additional legal questions. Attorney General Wasden noted that he wanted to have time to think about those questions and perhaps, at some later point in the meeting, table this matter to answer those questions. Governor Little observed that there are certain classes of these leases that, as many are keenly aware, over the years has been the tradition of including conflict bids. Governor Little commented his understanding of the policy that the Board adopted was for some of the unique cases that were occurring at that point in time. Governor Little said, like Controller Woolf, he was a little surprised at the interpretation. Governor Little recalled a discussion, which the minutes may reflect, that it was the unique one-offs that the Board was trying to address. Attorney General Wasden suggested that the Board hear the Department's testimony, and comments from members of the public who are here, and then he may suggest tabling this matter. Governor Little agreed, but commented that the Board would have to decide if tabling the matter continues the stay that is in place on leasing, which is part of the issue.

During the presentation of slide 10, Governor Little commented that the legal notice is from a Ketchum newspaper, for a lease in Kamiah. Mr. Montoya explained that the Department provided a list of all the leases that were currently available in all the counties that they touched, for the sake of getting as much notice as possible out to multiple counties. The Department likely will not do that in the future, due to the cost associated with advertising that many leases in that county. Governor Little was concerned about setting a protocol of advertising in Bonner County for a lease in Franklin County, for example, and remarked the Department and the Board should have a policy about how far-reaching advertising will be, because of the cost alone. Mr. Montoya concurred. Mr. Montoya said the Department will also be advertising nationally for certain types of assets, such as for commercial property, as shown on slide 12. Attorney General Wasden commented that based on the scenarios described in slide 15, it appears that the Department is doing an online auction at the commencement of the process. If there are competing bids, there is a live auction portion that is simply a completion of that whole auction process. Mr. Montoya stated that is effectively what is happening. The Department receives an application as a bid, and it is advertised online, so that is opening the auction to receive bids through additional applications. Governor Little stated his interpretation of an auction is there is more than one person. For the

vast majority there is only one applicant, just by virtue of it being an isolated piece of agricultural ground or grazing ground; there is only one application, and that really is not an auction. An auction is what takes place when there is more than one applicant, and then it is a determination to see who comes in first place. Governor Little asked what he was missing in the definition of auction. Attorney General Wasden responded that is one of the legal questions the Board needs to answer. The constitution requires disposal at public auction, so this process has to be an auction. Governor Little commented that every applicant for a state grazing, ag, commercial lease, if there was only one person they do not think they went through an auction. Attorney General Wasden restated the constitution required that there be an auction. Governor Little asked if, for every lease that has been issued over this period of time without an auction, the process was illegal. Attorney General Wasden replied that is one of the issues the Board needs to address.

Public Comment: Mr. Jody Shumway, representing Cottonwood Grazing Association, said their grazing association has been in existence since 1913, and members have been participants in state leases pretty much since their date of incorporation. The association currently holds a state lease, with management of approximately 42,000 acres. The grazing association consists of 25 to 30 members which rely heavily on this state lease for their livelihood. Mr. Shumway mentioned the association was made aware of the current proposal, and the reopening of the lease for the bid process, just this past Monday evening. Mr. Shumway noted the association obviously disagrees with any decision that would open the lease up for bid again. Their grazing lease was up for renewal this year and they went through the process as outlined by the Department of Lands. They adhered to all the processes, and on April 30, 2019, there were no contests to the lease; the only application was theirs. At that point, the association felt they had an implied contract with the State on the new lease, for 20 years. Mr. Shumway reiterated the members rely heavily on this lease; it is important to their grazing association. They have been great stewards of Idaho lands during the course of running and managing this State lease ground. Mr. Shumway asserted their grazing association disagrees with any decision that leads to opening up the 2019 lease renewals to the bid process again. For the record, Controller Woolf disclosed that he and Mr. Shumway attended high school together.

Mr. Russ Hendricks, representing the members of the Idaho Farm Bureau, noted he did not have much to add to what Mr. Shumway said. Mr. Hendricks found out about the proposed auction process last night. His members were surprised to hear that there was a proposal that would retroactively go back and reopen some leases that, for all intents and purposes, the lessees felt were complete and moving forward. Mr. Hendricks commented that based upon the presentation that Mr. Montoya gave, it appears to be a very difficult timing issue for grazers. Lessees thought they had the lease in hand for next year. Now, if the Department is reopening it and lessees do not know until November, or perhaps later, whether they have that portion of their range or not, that could create a very difficult management decision for them to try to find something alternate in a very short time. Mr. Hendricks remarked that the analogy here is that lessees went to an auction, they bid on something, and they thought they had it in their hand as they walk out of the auction house. Then the auctioneer says, "Oh, wait a minute, come back; we have to redo that one." It just does not seem to sit very well. Mr. Hendricks encouraged the Board to not retroactively go back and open those leases. The Farm Bureau understands that there may be many reasons to modernize or update the procedures for advertising moving forward, and the Farm Bureau has no concerns with that, but not retroactively.

Mr. Cameron Mulrony, representing the Idaho Cattle Association, echoed the comments of the previous two testimonies. The cattle association also believes applicants who completed the process in April of 2019, that were the sole applicant, that should be considered an opening and only bid for those leases. There is no need to put unnecessary burden on the Department's staff to take their time and effort to reopen these uncontested leases.

Additional Discussion: Controller Woolf offered Mr. Montoya and the Department huge kudos and thanks, because this is helping the Board meet its fiduciary duty by advertising more widely, and is helping meet the public auction requirement. Controller Woolf noted he was always under the impression that the Board was making these auction process changes prospectively, going forward, and asked, if the process is implemented going forward, what is the legal impact. Controller Woolf requested Attorney General Wasden's thoughts on that. Controller Woolf empathized with those lessees that went through this lease process and now are being asked to do so again. Governor Little expressed concern for delaying the issue; how will that affect the three individuals who testified, and perhaps scores more; what does that do to lessees.

Board Action: A motion was made by Attorney General Wasden that the Board table this matter until a time certain, the October Land Board meeting, to be able to answer legal questions. Attorney General Wasden asked Board members who have questions to propose those questions for consideration. Controller Woolf seconded the motion. The motion carried on a vote of 3-2, with Governor Little and Secretary of State Denney voting against.

Information

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

7. Summary of Comments on Proposed Rule—IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act – Presented by Craig Foss, Division Administrator-Forestry and Fire

Discussion: Controller Woolf inquired if there were changes made to these rules, from the rules that were approved in 2013 after ten years of negotiation. Mr. Foss replied that no changes have been made since the rules were formally approved by the 2014 legislature. Controller Woolf asked if those ten years of negotiation were extensive; were many parties included or participating in those negotiations. Mr. Foss responded yes. Conversations and all the studies involved the Forest Practice Advisory Committee, and the Department would report periodically to other groups like the Idaho Forest Sellers' Association. All meetings were open to the public. The Department contracted with a well-known forest hydrologist who had a career within the forest industry, and also contracted with a modeling scientist. The Department involved the Environmental Protection Agency, Idaho Department of Environmental Quality, and the conservation community. The Department made special attention to involve as broad a group of individuals as possible, to ensure moving forward with something that would be acceptable to all Idahoans.

