



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, 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
October 20, 2020

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, October 20, 2020 in the State Capitol, Lincoln Auditorium (WW02), 700 W Jefferson Street, Boise, Idaho. The meeting began at 9:02 a.m. The Honorable Governor Brad Little presided. The following members were in attendance:

Honorable Governor Brad Little
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 Land Board members were present.

Director Miller recognized six Department employees, from multiple area offices around the state, who are in Boise participating in a quarterly onboarding event. It is an opportunity to become acquainted with the executive team and other staff in the Boise office. Attending a Land Board meeting is a key part of the experience. Attorney General Wasden welcomed everyone.

1. Department Report – Presented by Dustin Miller, Director

Trust Land Revenue

- A. Timber Sales – September 2020
- B. Leases and Permits – September 2020

Discussion: None.

Status Updates

- C. Fire Season Report – Final
- D. Cottage Sites Auction – Priest Lake Results

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 equity markets took a little breather during the month of September. The portfolio was down 1.6% during the month, which left it up 5.6% fiscal year-to-date. The confidence of equity investors was shaken by the emergence of heightened COVID-19 infections, the contentious U.S. presidential election, and the fiscal stimulus stalemate that is taking place in Congress. According to data on Johns-Hopkins' website this morning [October 20], there are now more than 40.5 million confirmed cases of COVID-19 worldwide and over 1.1 million related deaths. The infection rate began to accelerate again in Europe and in 34 U.S. states; the 7-day moving average is now higher than it was a month ago. While a lot of people have learned to live with it, the nation is still dealing with the challenges of the virus. President Trump's nomination of Amy Coney Barrett to replace Justice Ruth Bader Ginsburg on the Supreme Court seemed to chill the discussions taking place between Democrats and Republicans to provide additional fiscal stimulus during the month. Today is the day they supposedly get it done if they are going to complete it before the election. The markets are up today, apparently optimistic legislators will reach a solution. Mr. Anton stated all this is important because retail sales growth is beginning to slow and there are some challenges with labor markets. Significant hiring has occurred since the crisis, however there were roughly 20 million laid off during the height of the closures. About half of those people are still unemployed. It is important to get some stimulus back in the economy. Federal Reserve Chairman Jerome Powell has warned Congress on several occasions that the economy will suffer if lawmakers fail to act, underscoring the fact that small businesses and lower-income households require more support. Chairman Powell remarked, "The downturn has not fallen equally on all Americans. Those least able to bear the burden have been the most affected." Mr. Anton commented that Governor Little is fully aware of that; the Governor has taken actions in the state of Idaho to provide stimulus to some of those lower income families. Mr. Anton observed there is a lot of hope that Congress will reach an agreement. The President recognizes it is important and the markets are sending a message that an agreement needs to occur to keep the economy moving forward in a strong manner. As a result of the optimism, markets have come back somewhat during the month of October. As of yesterday [October 19] the portfolio is up 8.5%. Mr. Anton noted that in terms of significant actions of the Endowment Fund Investment Board, the Investment Board held a special meeting in September to learn more about possible investment opportunities in infrastructure and plans to continue those discussions at its November meeting. The November meeting will be a joint meeting with the Land Board; the Investment Board plans to join the first part of the meeting. EFIB will present its annual report as well as its audit and financial statements during that meeting.

Consent—Action Item(s)

3. **Results of September 2020 Grazing Lease Live Auction** – *Presented by Ryan Montoya, Bureau Chief-Real Estate Services*

Recommendation: Direct the Department to award grazing lease G800481 to the high bidder, Thomas Katsilometes.

Discussion: None.

4. **Approval of Draft Minutes** – September 15, 2020 Regular Meeting (Boise)

Consent Agenda Board Action: A motion was made by Attorney General Wasden that the Land 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. **Adoption of Pending Fee Rules—Omnibus Rulemaking** – *Presented by Scott Phillips, Policy and Communications Chief*

Recommendation: Adopt the Department's proposed fee rules including the amended IDAPA 20.03.02, Rules Governing Mined Land Reclamation, as pending fee rules and approve the Department's Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule.

Discussion: None.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt and approve the Department's recommendation that is adopt the Department's proposed fee rules including the amended IDAPA 20.03.02, Rules Governing Mined Land Reclamation, as pending fee rules and approve the Department's Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

6. **Approval of Pocono Poke Cedar Timber Sale** – *Presented by Jim Elbin, Division Administrator-Trust Land Management*

Recommendation: Approve the Pocono Poke Cedar timber sale.

Discussion: None.

Board Action: A motion was made by Attorney General Wasden that the Land Board approve the Pocono Poke Cedar timber sale. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

7. **FY2022 Revised Budget Enhancements** – *Presented by Debbie Buck, Financial Officer*

Recommendation: Approve the Department's FY2022 Budget Request modification and additional enhancement requests.

Discussion: Attorney General Wasden observed that the Land Board previously approved the budget that was submitted and wanted to ascertain that the enhancements the Land Board is now seeing were either requested by DFM or were done in accordance with and in cooperation

with DFM. Ms. Buck replied that the Department worked with DFM and the Governor's office to come to these requests. Controller Woolf asked if these additional five requests were ones that the Department had planned on ahead of time until the economic impact of the pandemic; they were on the radar but put on hold. Ms. Buck responded that these decision units were discussed at the Department level by the Director and executive staff. Guidance came from DFM that no new general fund requests would be accepted through the budget; staff determined these requests were still important but would not be submitted. When DFM guidance changed, it gave the Department an opportunity to re-discuss them.

Board Action: A motion was made by Controller Woolf that the Land Board adopt and approve the Department's FY2022 budget request modification and additional enhancement requests. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0. For the record, Governor Little was recused from this vote.

8. Idaho Forest Group Land Exchange – *Presented by Josh Purkiss, Program Manager-Real Estate*

Recommendation: Approve proceeding with due diligence for the IFG land exchange proposal.

Discussion: Attorney General Wasden requested clarification that this is simply for due diligence, that the Land Board is not approving the exchange at this point and if a problem is identified, the Department will notify the Land Board. Mr. Purkiss replied that is correct; this is strictly due diligence and the Department will come back to the Land Board seeking approval for closing.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt and approve the Department's recommendation that is approve proceeding with due diligence for the Idaho Forest Group land exchange proposal. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

9. Avimor Land Exchange – *Presented by Josh Purkiss, Program Manager-Real Estate*

Recommendation: Approve proceeding with due diligence for the Avimor land exchange proposal.

Discussion: Governor Little, viewing Attachment 4, asked if everything in yellow is going to Avimor. Mr. Purkiss responded that all of the scattered endowment land is going to Avimor, as well as four 40s on the large southern block. Governor Little inquired if all of Sections 35, 36 and 2 would be traded. Mr. Bill Haagenson, Deputy Director, clarified that Sections 35 and 36 will remain in Department ownership and Section 2 will be exchanged. Mr. David Lehman, representing Avimor, added the rest of that block is an existing gravel pit being leased to Avimor. When the gravel has been mined from there, Avimor will likely come back and request another exchange. Governor Little mentioned this is the first he has heard of a gravel pit. Attorney General Wasden again asked for clarification that this is just due diligence and the Department will come back to the Land Board with a recommendation at some point either to engage in the exchange or not. Mr. Purkiss answered that is correct; this is only approval to proceed with due diligence. The Department anticipates coming back in 6 months for approval to proceed with closing.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt and approve the Department's recommendation that is approve proceeding with due diligence for the Avimor land exchange proposal. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

10. Grazing Rate Formula and 2021 Grazing Lease Rate – Presented by Ryan Montoya, Bureau Chief-Real Estate Services

Recommendation: Direct the Department to coordinate with Land Board staff, gather and review pertinent information, engage with stakeholders, and conduct any other work necessary to recommend a grazing rate method to the Land Board no later than July 2021.

Discussion: Attorney General Wasden voiced his concern that this recommendation just kicks this can down the road again. In times past, when the Land Board addressed some of these issues, the Department did not have sufficient time to give legally required notice of any change. It appears with a drop-dead date of July 2021, and the intent to get a recommendation to the Land Board before that, there should be enough time. Attorney General Wasden said he wants to verify that the Department would have sufficient time to communicate any changes to meet the statutory requirements and not end up with its back against the wall again. Attorney General Wasden stated he wants to make certain that stakeholders are engaged, that someone does not come in at the last moment and say wait a minute, the Department did not talk to us. Attorney General Wasden asked for a level of comfort with what the Land Board and Department are trying to do. Mr. Montoya addressed the first concern, stating the required time to provide notification of the grazing rate change usually comes at the October Land Board. Bringing it to the July 2021 meeting would allow any comments or any questions that the Land Board has to be addressed and answered prior to the October 2021 meeting at which the 2022 grazing rate would be set. The Department believes that provides ample time to bring a recommendation and address any additional questions that the Land Board may have. Mr. Montoya spoke to the Attorney General's second comment, saying the idea is to include industry folks and other stakeholders; there would be a group within the Department that would organize that type of relationship and information gathering as needed.

Controller Woolf inquired if Mr. Montoya feels there is ample time between now and next July for Department staff to work on this, complete that study, review it, and return back to the Land Board. Mr. Montoya expressed confidence that it will provide ample time. There is significant data that has already been provided in other studies: the 2012 study, the 2015 study, and also the Wyoming study; Department staff can meet that deadline. Controller Woolf pointed out the memo talks about the Land Board directing the Department to move forward with the study; does the Land Board also need to approve the \$7.07 grazing rate for this upcoming calendar year; Controller Woolf noted that is not in the memo. Mr. Montoya replied that historically the Department provides the next calendar year AUM rate as an information-only item notifying the Land Board of the amount and if it was a decrease or an increase.

Secretary of State Denney inquired if the Department has any idea why there was such a low participation rate from the lessees on the Wyoming study. Mr. Montoya responded with a quote from the study itself because that summed it up better than anything, "It remains a mystery as to why the ranching community would not want to be involved, however one can only speculate that ranchers may have been reluctant due to fear of their grazing rates increasing as a result of this study." Secretary of State Denney commented that ranchers may stand a greater risk because if the Land Board does not have the data, does not have the information to make an informed decision, it may not be in the ranchers' best interest. Secretary of State Denney suggested the Department should try to relay to them that maybe having this information is in their best interest. Mr. Montoya mentioned that the Department made multiple attempts; staff

urged the lessees to participate in this study. Over the course of a year, there were hundreds of letters that were sent out initially to the population that was drawn. There were 800 lessees provided to University of Wyoming; a hundred of those were randomly selected to receive the questionnaires and interviews. Only 22 responses were received. A second attempt and ultimately more calls and then another set of letters went out to all the lessees asking for participation. Mr. Montoya noted that this has been an ongoing issue for almost a decade. The Department continues to fall back on these issues. The University of Wyoming made a good faith effort to get as many responses as possible.

Director Miller pointed out that Attachment 2 is a memo from Jason Laney that lays out the chronology of the multiple attempts that were made between both the University of Wyoming and the Department to contact the lessees, as well as a list of concerns that were documented by the Department with the study. As Mr. Montoya indicated, there are likely multiple reasons why there was a reluctance to participate in the study. Some may have thought it was junk mail and ended up in the wastebasket a couple of times. Director Miller commended the Department's leasing division for the multiple attempts that were made.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt and approve the Department's recommendation that is direct the Department to coordinate with Land Board staff, gather and review pertinent information, engage with stakeholders, and conduct any other work necessary to recommend a grazing rate method to the Land Board no later than July 2021. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Information

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

11. Minerals Regulatory Status Update – Presented by Mick Thomas, Division Administrator-Minerals, Public Trust, Oil & Gas

Discussion: None.

12. Winter Dock Storage on North Idaho Lakes – Presented by Mick Thomas, Division Administrator-Minerals, Public Trust, Oil & Gas

Discussion: None.

13. Endowment Leasing Status Update – Presented by Ryan Montoya, Bureau Chief-Real Estate Services

Discussion: None.

At 10:15 a.m., a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 74-206(1)(f) for the purpose of communicating 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. Attorney General Wasden recognized this Executive Session is to discuss lease E310021. Controller Woolf seconded the motion. *Roll Call Vote: Aye: Denney, Wasden, Woolf, Ybarra, Little; Nay: None; Absent: None.*

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: Minerals Lease E310021]

At 11:21 a.m., a motion was made by Attorney General Wasden that the Land Board resolve out of Executive Session. Attorney General Wasden requested that the official minutes of the meeting reflect that no action was taken by the Land Board during Executive Session. Controller Woolf seconded the motion. Attorney General Wasden asked that a roll call vote be taken, and that the Secretary record the vote in the minutes of the meeting. *Roll Call Vote: Aye: Denney, Wasden, Woolf, Ybarra, Little; Nay: None; Absent: None.*

Regular—Action Item(s)

14. Minerals Lease E310021

Discussion: Darrell Early, Division Chief of the Natural Resources Division of the Office of the Attorney General and counsel to the Land Board, advised the Land Board that this is an action item on a mineral lease in north Idaho that has been pending. Prior to turning the matter over to the Board for discussion and action, Mr. Early extended sincere thanks to his staff: Angela Kauffman, Joy Orr, Steve Strack and Robert Follett. Mr. Early mentioned this was a team effort by almost his entire division to prepare for this executive session. Director Miller added that this action item pertains to mineral lease E310021.

Board Action: A motion was made by Controller Woolf that the Department and the Office of the Attorney General continue negotiations with the vendor for 30 more days and report back at that time. Governor Little seconded the motion. Attorney General Wasden stated that he would be voting no on the motion; there is not sufficient deadline in the motion to identify what action the Land Board will take. Attorney General Wasden remarked that having the Department and the Office of the Attorney General report back in 30 days does not give finality here. Governor Little inquired if the Attorney General had a substitute motion.

A motion was made by Attorney General Wasden that the Land Board direct the Department to place this matter, lease E310021, for public auction. The motion failed for lack of a second.

Governor Little noted that Controller Woolf's original motion was still on the table. Governor Little observed that the Attorney General brought up a good point and added that he was sympathetic to the Attorney General's analysis about what 30 more days of negotiation would

