



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 19, 2021

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, October 19, 2021 in the Capitol, House Hearing Room EW42, Lower Level, East Wing, 700 W Jefferson St., Boise, Idaho, and via webinar. The meeting began at 9:00 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, the Governor's Stage 4 Stay Healthy Guidelines, dated 5/11/2021, allowed for public meetings of any size with adherence to physical distancing and sanitation requirements. All Land Board members were present at the physical meeting location.

[Editor's note: the Discussion portions, if any, for all agenda items are written in first-person format. This is not a verbatim transcript.]

1. Department Report – Presented by Dustin Miller, Director

Trust Land Revenue

- A. Timber Sales – September 2021
- B. Leases and Permits – September 2021

Discussion:

Director Miller: I wanted to give you a quick update on the Department's timber salvage efforts. The Department plans to offer for sale nearly 74 million board feet of salvaged timber including 29,000 cedar poles, valued at more than \$17.4 million, as a result of this summer's wildfires. So far, the Department has sold three sales for a total of 31.7 million board feet and \$9.35 million. Three other sales had no bids on the first attempt; these sales will be reappraised and

readvertised very quickly. The Department is committed to flexibility around timber sale extensions as needed to facilitate recovery of as much salvage volume as possible for the endowments. Our policy is very flexible under normal circumstances for granting a first extension. Historically we have extended this flexibility to a second extension where appropriate on green sales affected by salvage efforts and our expectation is to continue this practice where necessary and appropriate. The Department continues to work with its timber purchasers on these green sales while encouraging bidding out our salvage sales.

Status Updates

C. Fire Season Report – Final

Discussion:

Controller Woolf: The first page of the report shows the number of lightning and human fire starts; 240 human fire starts is quite a few and compared to and looking at all these over the past several years. I know that the Department does a lot of investigation; could you speak to that, help us understand a little bit more the amount of investigation and amount of these individuals being held accountable to help with offset of these costs that the State, the Department, the deficiency warrant, and the general fund will now take.

Director Miller: The majority of our fires are human caused and the concern there is with demographics changing and more people moving into the state, recreating on endowment lands or federal lands or elsewhere, there's a higher likelihood of unplanned ignitions or unwanted human-caused fires; that's something we pay close attention to. We are required to investigate all of our fires; we do that, and our investigators are very thorough in that process. They're highly skilled and highly trained. It is our goal if it is determined to be a negligently caused fire, then we will pursue damages from the culprits who ignite those fires. The Strychnine fire that burned a few years ago on our Ponderosa District was human caused. I believe it was a young man using some sort of incendiary device. It ignited a fire that burned on IDL, some Forest Service, and some Potlach ground. We worked closely with the Attorney General's Office to pursue damages from that individual. We secured about \$1.5 million through that case. I really appreciate the help and support of the Attorney General's Office in pursuing those damages. That's just one example; we do pursue and investigate all of our fires. In fact, the Land Board authorized and the legislature supported the creation of a Fire Investigation Program Manager, and we are in the process of hiring that position right now. That's going to allow us better coordination and more manpower to ensure that we are very thorough in our analysis and that we do pursue damages when there are negligent fires that are caused.

Controller Woolf: What do we know about these 240?

Director Miller: Some of those are still being investigated. We're still looking at a number of these fires and trying to assess how they started, were they negligent. Again, having our program manager in place to help organize this and go after individuals that do start fires negligently is a priority for us. I don't know if Craig's got something to add on that.

Craig Foss: I don't have a lot to add. We investigate every fire, and we work with our attorneys to work through the billing process but we don't have a number at this time. We can certainly get back when we have that; we're still wrapping up our investigations.

Governor Little: If we're going to hire a fire investigator and we haven't got him hired yet, what's he going to do from November to next June? We're going to pay salary for three-quarters of a year on somebody; what's the deal?

Mr. Foss: Governor, our investigation program actually involves probably a dozen different people that come on board. Some of them we hire seasonally just for investigation, others are permanent staff. For example, Archie, who's going to be up here in a little bit talking about FPA, he's our forestry assistance bureau chief; he's a fire investigator. We have multiple staff in the agency. This fire investigation position will largely coordinate all those activities and work with our DAGs on the billing process, any lawsuits, and things like that.

Governor Little: I sent the Director a question about National Guard and the response that I saw just this morning is that the bill from the Guard should be included in the deficiency warrants. Are they included in it, or are we going to have another million dollars?

Mr. Foss: Governor, members of the Land Board, my understanding is those costs are included in deficiency warrants.

Governor Little: Director Miller and Craig, you said you're going to have your fire after action report. It was two or three board meetings ago you had a display that talked about assessed and unassessed acres. We have time now before the next fire season; what date can you give us to where we'll have an analysis about the assessed and unassessed acres, where are the fires starting on unassessed grounds, what do we do. We're going to go to the legislature and ask for 70 million bucks, what do we have in the bank now, \$30 million?

Mr. Foss: That's my understanding.

Governor Little: So, we're going to ask for \$40 some million. I think in anticipation of Director Miller getting before the joint committee, a plan on assessed and unassessed acres, at least acknowledgement there are some acres that aren't paying and the general fund is having to pick up those costs would be helpful; have we got any timeline on when we're going to do that?

Mr. Foss: Governor, actually we did conduct an analysis. We analyzed 134,000 acres burned this year; of those 134,000 acres, 52% were either in an offset or they were assessed lands, so 48% of the acres burned are unassessed.

Governor Little: The question is, and it is a policy decision for the Board, are we going to propose that some of these unassessed acres at some point in time – where's the biggest risk, where's the biggest cost – shouldn't they be paying their fair share. Because in essence, when you make a proposal to the legislature, they put it on dedicated funds; it means the people who are paying are going to have to pay more. We're within a nickel of our maximum assessment right now. Prior to having to statutorily move that assessment up, wouldn't it be good if we, and we may not get it done, at least try to get unassessed acres paying their fair share?

Mr. Foss: Absolutely. That is a policy decision; it's a conversation we should have. What's going on right now really is you have your dedicated funds which is paid for by the assessments and then you have your general fund appropriations.

Governor Little: All I'm asking for is a time for us to have something concrete to look at.

Director Miller: Governor, as Craig indicated, we've done the analysis there; we can give you a really good indication of how many of our fires that we're fighting are in unassessed acres, how many are not. It warrants a discussion because Idaho Code only allows us to assess timberland, not rangeland or ag ground. This is a conversation for the Land Board staff to have initially about what this looks like and then a larger discussion with the Land Board.

Governor Little: So, when would the Board see something?

Director Miller: How about December.

Governor Little: That's perfect.

Controller Woolf: One follow up is on the after action report, if you could explain who is involved with the after action report. Not only who attends, but what can we take as a bigger picture from the Land Board's perspective to help assist with that, and that we're making great direction going forward with what's been taking place these last several years with wildfires here in Idaho.

Mr. Foss: The way we conduct our after action review process is all of our zones across the state of Idaho have after action reviews, those are district reviews. Our bureau also conducts an after action review and then everybody comes together for a report-out on all the reviews. Really what we're doing all year long is tallying what's working, what's not working, what do we need to address going forward, and next week is the roll up. We'll prioritize those items that need to be worked on, we'll break out into working groups and come up with recommendations, and then we'll have a discussion internally about what that looks like going forward.

D. Land Bank Fund

Discussion:

Governor Little: We have about \$36 million that's going to expire pretty soon. We did this the last Board meeting, I think. What's the recommendation to us about sweeping more of it prior to expiration, because there's \$7.7 and \$28 million that in about a year is going to go somewhere?

Director Miller: Governor and Land Board members, we have a pipeline report that we update regularly regarding potential transactions. If there are certain transactions supported by the Board that we can complete prior to the expiration of those funds and that makes sense for the endowments, then we will make a recommendation to the Land Board to expend those funds. If not, then we will make a recommendation to roll that funding into the permanent fund. Then there's the interest piece of that; we will need to work with the Investment Subcommittee on a recommendation to bring to the Land Board.

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

- A. Manager's Report
- B. Investment Report

Discussion:

Chris Anton: After seven straight monthly increases, financial markets took a bit of a breather in September as we saw employment gains slow, the U.S. economic growth peak, and the Federal

Reserve announced that it would likely begin tapering its bond buying program later this year. Inflation remains a problematic wildcard with supply chains struggling to meet demand and with energy prices spiking; oil prices were close to \$90/barrel yesterday [October 18] which is hurting certain sectors of the U.S. economy. China's economy slowed with no clear stimulative response from their financial policy makers, and financial markets were rattled by the near default of their real estate development company Evergrande. These uncertainties, and strong valuations, realistically merited a pause in the markets and we may face some near-term volatility. That being said, the U.S. economy still remains very strong, and GDP is expected to grow at close to a 5% rate next year. Consumer spending and U.S. manufacturing data are solid, and U.S. households are in reasonably strong condition. It also appears that the recent spike in Delta-related COVID-19 cases is beginning to roll over and Merck announced that it has created a new drug that could potentially reduce hospitalization rates and deaths for people who have contracted COVID-19 by about 50%. Pfizer is also working to receive approval to vaccinate younger children from 5 to 18 years old. Barring further virus-related setbacks, spending on services will likely improve as we head into the fourth quarter. We were down 2.9% for the month which left us just slightly ahead of breakeven for the fiscal year, up 0.1%. That being said, over the last week or so corporations have started to release their quarterly earnings for the third-quarter, third calendar quarter, and by and large the data has been very positive, particularly the banks' profitability, and the market has had somewhat of a recovery. Through yesterday the fund is up 2.6%; we're up a bit again this morning so I think most of the losses that we experienced in September have basically been recuperated. In terms of distributions, we're in very strong shape. We ended the last fiscal year with strong reserves, still sitting in good shape to make our distributions. Our next Investment Board meeting will be a joint meeting with the Land Board on November 16th.

Attorney General Wasden: I noticed that in the current month that we're slightly more loss than our benchmark; calendar year to date we're quite a bit ahead and we seem to generally do better than our benchmark. I am just curious as to why we were losing more than our benchmark in this current month.

Mr. Anton: If you look at where most of the red is located, it's on our global and our international equities. Most of that has come with some of our value managers; as we've had this volatility, value managers haven't done quite as well. I don't anticipate that's going to be a long-term problem. As you can see fiscal year to date, we're about a half a percent above our benchmark. There are periods when they're not going to perform quite as well as their targets and that's what happened during the month.

Governor Little: On the other hand, you're 200 basis points calendar year to date above the benchmark.

Consent—Action Item(s)

3. Approval of Draft Minutes – September 21, 2021 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)

4. 2021 Grazing Rate Methodology – Presented by Dustin Miller, Director

Recommendation: Adopt the 2021 Grazing Rate Formula Proposal.

Discussion:

Governor Little: Land Board members, as I have multiple times on this issue, I will recuse myself going forward. Our capable Secretary of State will chair the meeting for this part.

Secretary of State Denney: Thank you; we do have several that are signed up to testify.

Attorney General Wasden: Mr. Secretary, I do have a couple of questions at the outset.

Secretary of State Denney: General Wasden.

Attorney General Wasden: Thank you very much, Mr. Secretary. Director, I am interested a little bit in the current methodology, the one that now exists. It was created in 1993 and under current estimations it would be 37% of the private rate. You're recommending 49%. My question is: does the rate as it currently exists, the current rate, does it achieve the maximum long-term financial return as required by the constitution.

Director Miller: Thank you, Mr. Wasden and Governor. If we look at page one of Attachment 1, you can see the graph there; the current model shows that blue line, the current rate. It's peaked up a little bit over time, but still you can see the green line above that in the graph, which is the private rate, the USDA average private rate, about \$18.50 is what we're currently at right now. The current model maintains a relatively flat line; again, it's peaked up a little bit, but a relatively flat line under the current IDL model, while the private rate continues to go up. One could see that the gap has widened there and has continued to widen and one could say that we may not be achieving our mandate by allowing that line to remain stagnant.

Attorney General Wasden: In fact, Dr. Rimbey basically makes that same argument doesn't he, in his recitations, saying we really aren't hitting where we need to be. I think not only is it factual, but then we have the experts who are saying we're not really where we're supposed to be. I also recognize that we had made an effort in 2018, and said let's take a study, let's take a look at this; we basically have worked on that for three years. We're now down to October and we have to give notice of increases within a certain time period, so pushing this further down the road simply will maintain a current system that we know doesn't meet our responsibility. I'm just wondering if you agree with that, based upon the time periods that we have to give notice.

Director Miller: That is correct. I believe it's either November 3rd or 4th, our absolute drop-dead date for notifying our lessees of any rate increase. If we miss that then we've got to wait another grazing cycle, another grazing season, before we can enact anything else.

Attorney General Wasden: Essentially that would be kicking that can, the unconstitutional can, down the road for another year, so to speak.

Director Miller: Possibly, sir. You know, in the document on page one, we do talk about a study that was commissioned more than a decade ago that determined that the grazing formula was

not likely capturing the market value, and so you do see some fluctuations. Under the current model for the next grazing season we actually drop to about \$6.87 an AUM.

Attorney General Wasden: I know that in the proposed rate there is two elements that really are in play. One of them is the process, that is the mathematical formula that is asserted, and the other is the data that goes into that formula. My question to you is with regard to the process, in your view is the process sound and solid?

Director Miller: Governor, General Wasden, yes, I do believe that the process is sound and solid and I believe that we have found and are using the best available data that we can find. That was more or less backed up by both Dr. Rimbey and Dr. Tanaka. Some of this information is just hard to come by. Some of the information that we looked at initially was outdated; based on some recommendations by Dr. Rimbey we found some more current information. But there just isn't a lot of data, a lot of information on many of these non-feed costs. The data that is available is the most current that we could find and we believe that the process is sound and that the data is reliable.

Attorney General Wasden: Dustin, with regard to that data, some of the data as you mentioned has recent studies and it's solid, solid data, but there appears to be at least a couple of areas where that data is lacking, and I'm not saying that your approach is unsound I'm just saying data may be lacking. I believe there's a lack of information, such as lost animals and water costs, that are associated with private leasing as opposed to public leasing. I think we have those numbers for public leasing; I don't think we have those numbers for private leasing. I want to verify that with you, that's your understanding, and secondly, that we have the best information available, even though it's not perfect, but the best information available that we can get regarding the private leasing lost animal and water costs.

Director Miller: Governor and General Wasden, I believe that to be true. Again, on the private side there just isn't as much information and data on the water costs and the lost animals. We even included a wolf depredation component to the tune of about 48 cents, given that concern amongst the livestock community about wolf depredation and the cost of wolf depredation. We've really tried to dial in those non-feed costs as it relates to the water and the lost animals. I believe we have the most current and reliable data that is available to us, and the recommendation is to continue looking at new data as it becomes available and provide recommendations for periodic updates based on any new data that we can get our hands on related to these non-feed costs.

Attorney General Wasden: Dustin, thank you very much; can you describe for us the efforts that the Department made with regard to the lost animal and water costs. I know you searched pretty hard to get accurate data; I'm just trying to make a record of what did we do.

Director Miller: Absolutely. If it's all right with you, Governor and Mr. Wasden, I'd like to bring up Scott Phillips who really was a big architect behind building the model to answer that question.

Scott Phillips: Mr. Chairman, members of the Board, my name is Scott Phillips; I'm the Policy and Communications Chief for the Idaho Department of Lands. To answer General Wasden's question, we looked at a lot of studies out of universities trying to get a grasp of the costs, non-feed costs, associated with lost animals. When we were looking at the data sets available to us, the most current data set was the work out of Wyoming by Ms. Dollerschell for her master's

program. That included the most current data on lost animal costs. Our model also includes data from Dr. Rimbey; that data from Dr. Rimbey was based on research done decades prior at a time when wolves had not made resurgence in Idaho. Based on a conversation with Dr. Tanaka out of Wyoming we developed a model to estimate the costs of wolf predation that we included in Rimbey's lost animals numbers.

Attorney General Wasden: Thank you, Scott. The Dollerschell study is accurate data but it recognizes that it has a lack of data with regard to the private grazing rates. Am I reading that correctly?

Mr. Phillips: Mr. Chairman, members of the Board, lack of data may not be the right words to describe it. The deficiency with the Dollerschell study as it pertains to private data really is a statistical question. Specifically, Dollerschell wasn't able to determine the size of the private universe that was sampled; therefore it was impossible to calculate a margin of error and without a margin of error we didn't have a data point that we could consider statistically valid. Therefore we chose not to use the Dollerschell private data in the model.

Attorney General Wasden: With regard to the work by Dr. Rimbey, that was used as a basis and then, in conjunction with Dr. Rimbey, modified, annualized, whatever words you want to use, but to be current data as much as possible. Is that correct?

Mr. Phillips: The Rimbey research was based on data collected by the USDA NASS who was able to determine statistical significance given their understanding of the private universe, the sample. Rimbey's data was indexed to 2011; we in turn took Rimbey's work from 2011 and indexed it forward using USDA NASS price indices to give it a relevant value for today's market.

Attorney General Wasden: And the critical point, Scott, is that you've made efforts to get accurate data with regard to these data points, that is lost animals, water costs on private lands, and you have achieved the best available information. There is no perfect information, but the best available information, and that's what I'm asking.

Mr. Phillips: At every step in the process, we made every effort to use the best most accurate information at our disposal.

Attorney General Wasden: Would you also agree that it's imperfect, but that you've done your darndest to get the best you can.

Mr. Phillips: Mr. Chairman, members of the Board, by virtue of the nature of sampling and surveying, it will always be imperfect; it presents a likely value within a given range.

Attorney General Wasden: Right; that's what I needed to know. Thank you.

Secretary of State Denney: Other questions? I have a couple. Director Miller, you said that by changing this rate we would create an additional \$500,000 in revenue. Do you anticipate that going from under \$7 an AUM to over \$9 that there will be any of those leases dropped?

Director Miller: Mr. Chairman and Mr. Secretary, we did look at that. We've had numerous conversations with industry representatives about that concern and the last thing we want to do is price our customers out of the market. But through conversations, and the fact that in 2017 we were at \$9 an AUM and we did not lose any lessees to my knowledge, we feel pretty comfortable

that we will maintain our base level of lessees. Every ranch has their own economic situation and those situations may lend themselves to certain changes within their operations. I can't predict the future, but we figure that with this increase there is a low likelihood of us losing lessees.

Secretary of State Denney: If we do lose lessees, what does it cost us to actively manage that land?

Director Miller: It all depends. If we do not have a lessee, or if the current lessee does not want to lease that ground from the Department any longer and there are no other interested parties in leasing that ground, then it would go unleased. We wouldn't receive grazing income off of that ground. It depends on the ownership also of the infrastructure. Most of our lessees own the infrastructure on those grazing allotments: the fencing, the water developments and whatnot. Some of that infrastructure is owned by the Department as well. That infrastructure would need to be maintained if it exists on those particular allotments. There are costs associated with that kind of maintenance.

Secretary of State Denney: Do you have a figure, Director, what it would cost us to leave that unleased if we had to do that management ourselves.

Director Miller: I do not have an estimate; I don't know if Scott has that off the top of his head.

Mr. Phillips: Mr. Chairman, members of the Board, we did not model those numbers in this process but we could dust off our paperwork and sharpen our pencils and see if we can find a number for you on that. I don't have it today, sir.

Attorney General Wasden: Follow up on questions by the Secretary. Given the fact that any time you have an increase, supply and demand, there's a potential that someone would not lease a parcel, but as you mentioned there is the possibility that someone else will. It's also a question then of what's your bottom line; if you increase your price and someone drops out, but others are paying at market rate, have you increased your bottom line. I'm asking you what is the potential that by an increase in the grazing rate that we actually increase our bottom line. I think you told us what that is.

Director Miller: Mr. Chairman and General Wasden, as I indicated earlier, roughly, we are looking at an increase of about \$537,000, so half a million dollars plus increase to the endowments through raising the rate to \$9.07 an AUM. There's a possibility of some lessees no longer wanting to lease certain allotments from us and that income would be lost but I believe that there is a low likelihood of that happening. We would still be above where we are today and have increased the revenue to the endowment beneficiaries through this particular grazing model and the output that results from it.

Attorney General Wasden: Thank you. In the event that a lessee chooses not to lease a parcel and no one else chooses it, we have additional management costs associated with that parcel, and those are going to be ongoing management costs, but if you also consider the fact that we have an increased bottom line, that also then counteracts what other additional management costs we would have. So I'm just asking you, again recognizing into the future you're going to have increased management costs but you're also going to have increased revenue, whether you believe that's an accurate depiction.

Director Miller: We certainly could have increased management costs as a result of this fee increase. We likely will have. There could be some lessees that no longer want to lease that ground from us, but again, if I'm understanding your question and answering it correctly, I still believe that we will be in the positive and there will be a benefit, an additional benefit of income to the beneficiaries as a result of this model and the outputs resulting from it.

Attorney General Wasden: You are answering my question, Dustin; thank you.

Controller Woolf: I guess maybe clarification from Mr. Phillips, clarifying Dr. Rimbey's answers and direction. What did he help clarify on what you did this past few months in review? Was he reviewing the '93, was he reviewing your work here? Could you explain that a little bit further of what he was opining on.

Mr. Phillips: The Department worked with Dr. Rimbey to help us refine the current grazing rate proposal that we are bringing forward today. We went into this exercise under what we believed direction of the Land Board was, to develop a new model for determining a grazing rate. We did not take on the task of determining if the current 1993 formula was generating market rate because we believed it had been established that the current 1993 formula likely was not generating a market rate for the endowment beneficiaries. For example, the 2010 Resource Dimensions study, that was one of the key findings from that body of work that the Department commissioned. With Dr. Rimbey we asked a lot of technical questions. He helped advise us, for example, to use indexing instead of CPI inflationary adjustments to move numbers from his 2011 study forward to 2020 values. He also helped us understand the concept of averaging data points to obtain a central value and therefore a likely more accurate model. The scope of work with Dr. Rimbey was really consulting on the development of the current model.

Controller Woolf: Thank you.

Secretary of State Denney: Any other questions? Okay, I guess we're ready for public testimony. We'll start with Mr. Smith. Mr. Smith are you ready to testify? We will give each person who wishes to testify three minutes to testify before us.

Jay Smith: I am ready; thank you.

Secretary of State Denney: Go right ahead, you've got three minutes.

Mr. Smith: Mr. Chairman, members of the Board, thank you for this opportunity to speak with you this morning. I'm going to let Mr. Pratt make most of the official statements for the association; I'm going to speak more for myself as a producer this morning. I run on an isolated parcel of state endowment land. Isolated endowment parcels make up 49% of your land mass. Now I am going to disagree with Director Miller slightly in his assessment that there will be no loss of lessees due to a rate increase. He stated that in 2017 we hit \$9 and lost no lessees. That is a fact, but 2017 followed the two highest revenue years in history of the cattle business. So people had money in 2017 that they do not have right now in the drought-stricken year of 2021. I personally this summer have lost 17 animals to wolves. One hundred percent of that loss was on public land. Zero percent on private land. Now I know that I am not a university and that does not count as a study but when looking at a non-feed cost to operate on public land, that is a significant loss that I have taken this calendar year. The other thing I would like to point out is I got zero use on my endowment land this year because of drought. I chose not to turn cattle out

on it due to a lack of feed and a lack of water. Now I went ahead and paid my full grazing rate back in May yet chose not to use the land. These are the kind of decisions that a prudent operator can make when dealing with a reasonable rate. We can choose the best interest of the land over maximizing our use of the land. When rate is maximized, we do not have this flexibility and we would have to graze whether it was in the best interest of the land or not. Those are my comments; I thank you for your time.

Secretary of State Denney: Thank you, Mr. Smith. Mark Pratt.

Mark Pratt: Good morning. Governor, members of the Land Board, thank you for the opportunity to address you this morning. Last month I left two and a half minutes on the table and I'm wondering if there's a carry forward on that. *[laughter]*. Apparently not.

Secretary of State Denney: Mr. Pratt if you would state your name and who you represent.

Mr. Pratt: I am Mark Pratt and I represent Idaho Cattle Association, also Eastern Idaho Grazing Association. I live in eastern Idaho where 54% of your total AUMs reside. Our family holds three state leases totaling about 1,200 acres; we combine that with private lands to carry out our grazing program, along with our association membership. We've been through the contested bidding process. My granddad would tell me experience is cheap no matter what it costs. It wasn't cheap, but it was an experience. We are members of Eastern Idaho Grazing, one of your largest leaseholders. Our association land is intermingled with what is referred to as our public lands. As an association we have drilled wells to distribute livestock and assure adequate water availability. We've added cross fences to better manage livestock, none of which are on property lines. This year members pulled off early and went to CRP in an attempt to address drought. The fact that we are intermingled is most apparent during hunting and fishing season. We had eight camp trailers and the pickups and other equipment on the equivalent of two city lots. After 12 inches of snow, you can imagine what that looked like; kind of the end of the monster truck rally. The current formula mirrors the world where your partners do business. Long-term return has many facets. When we hit \$9, we were in better times. Your study stated that five-weight steers were at a near record high in 2011 of \$1.60. We currently have the same five-weight steer at \$1.60. The ebb and flow that occurs within the livestock industry is also reflected in the current grazing rate and we appreciate that. In order to protect wildlife habitat I believe that you need partners that understand stewardship. We are not on opposing teams. I would suggest in the face of continual public access pressure, we need one another. Thank you.

Secretary of State Denney: Thank you, Mr. Pratt. Any questions? Scott Bunderson.

Scott Bunderson: Governor Little, members of the Land Board, thanks for allowing me to present this morning. I'm a fifth generation Idahoan and my family originally homesteaded in Indian Valley, but for the past 20 years I've been ranching in Owyhee County. I'm in favor of an accurate grazing rate formula but I'm not convinced that we're quite there. This revision appears to be better than the last one I reviewed several years ago in front of this same Board, but I believe we have not enough flexibility and timely economic impact for these exceptions or the diversity of Idaho's public land statewide. Only utilizing data from several prior years isn't feasible for a comprehensive plan. While folks in northern Idaho and eastern Idaho have enjoyed a relatively decent year, southern Idaho, in particular Owyhee County, has had one of the worst drought and feed years that I can remember. Public and private ground attributes are not like comparing

apples to apples. In private ground we drop cattle off in April and pick them up in October with no responsibility for mineral, supplement, management, fencing, or the need to check these cattle. Private ground typically averages fewer acres per AUM than public land so cattle must travel further for less. For example, in Valley County AUMs can be as low as half an acre to an acre per AUM while in Owyhee County AUMs can reach into the 30-plus acres. In tough years like this one cattle require more supplements and water. We're already paying as much or more than we would be to graze on private ground and working harder to do it while maintaining stewardships over Idaho's lands. I understand the desire to increase the benefit to the endowment fund but what's the cost. Utilizing estimates from actual costs, my calculations on a 450-cow outfit with 425 calves and utilizing 3,500 AUMs of state land is within \$1,080 of the private rate – that's the USDA/NASS private rate – and more than \$20,000 more than the federal rate. My figures include our cost of salt, protein, labor, fencing, travel, and vehicle and ATV maintenance, but do not include any numbers for cattle transport as we have to do that on public or private. Utilizing public grounds also puts us in a position where we must deal with elk tearing down fences, recreationalists running UTVs/ATVs wherever they can, and unlike on federal ground, in very bad years it is only with very rare exception that we can utilize non-use like they can on federal grounds. It's simply not an available option for us and even in bad years, we still have to pay our bill. An increase in the grazing rate without being attributable to reliable real-time data may very well result in short-term increased revenues for Idaho but will most likely result in leases going back to the state as utilizing public grazing land becomes unaffordable. The state rate is already more than five times that of the federal rate and bearing this in mind the proposed formula is showing the need to increase the rate on a year like this year. I'd like to recognize and thank the folks that have put their time into this formula and the respect we have for Dr. Rimbey and Dr. Tanaka. Please understand we are not in favor of kicking the can down the road any further as well; we have repeatedly asked and would like to be included in the derivation of the realistic and accurate grazing formula going forward. Thank you for your time and consideration on these points and the availability to present them today.

Secretary of State Denney: Thank you, Mr. Bunderson. Any questions?

Controller Woolf: Mr. Bunderson, are you representing yourself?

Mr. Bunderson: I am representing myself as a producer. Past president of the Owyhee Cattlemen's Association.

Secretary of State Denney: Next, George Bennett.

George Bennett: I think the things that I was going to say is pretty much covered.

Secretary of State Denney: Okay. Oscar Evans.

Oscar Evans: Good morning, Governor and Land Board members. I am Oscar Evans from Homedale; current president and honored to serve as the Owyhee County Cattlemen's Association president this year. Now, I haven't convinced them to pay me so I am very active in the real estate market during the day and in between phone calls from ranchers. So this is a very common conversation I have with you as landlords in setting expectations versus reality, and I'm very comfortable doing that. Just a couple of things I want to point out in that regard is that it's very difficult for landowners, property owners who have land across the state, to set one blanket formula for all of the land that they own. Certainly Treasure Valley, Magic Valley, east Idaho,

Palouse, all have their different variances that go into that, and we understand that. But I know one thing that we can never do is demand a certain ROI, a certain return on investment, and figure out a way to get there, because what we end up with is vacant land and dark office spaces. Now, on the cattle market side, this year in particular all of the factors that have already been mentioned but I'll re-emphasize a couple of them: the drought, the feed prices. The cattle market can best be described as tumultuous right now. It's neither up nor down; it's all over the place. Probably a little bit like my golf game, I guess. But it's also...the big thing that's not really recognized, I don't think it's captured anywhere in this, is the labor. The labor market is impossible, across the board, across all industries. And what the ranchers who lease the ground from the state provide is basically free labor. They do everything. And if you heard Scott, and one of my hardest things to do over the past year has been to coordinate with Mr. Bunderson who is my predecessor and who did a fantastic job in spite of the fact that he would disappear for days on end taking care of his ground out in Owyhee County. You won't find better stewards, more devout stewards, conservationists of the ground, than you will in your ranching community. Now couple that with something that may be one of the few points that hadn't been brought up yet is that the ineptitude and incompetence coming from our federal government, we are expecting a barrage of more regulations and very agenda-related items on federal grounds. And what we need is a state partner, as Mr. Bunderson said, we need a partner and we're willing to do that with you to calculate the things that may or may not be calculated in the formula. Dustin, I appreciate what you did; I think you put a lot of work into this, but what I would like to see is more involvement from industry, and when I say "I" I am talking on behalf of the cattlemen here, on behalf of the cattle association, the Owyhee Cattle Association. Involve us as an industry, include our labor in your calculations, let the market drive the return on investment not the other way around. And you know the old saying 'log it, graze it, or watch it burn.' If we try to raise that rate, we're going to take 'graze it' out of that equation and we're going to have two choices, log it or watch it burn, and that's not going return on anything. Thank you.

Secretary of State Denney: Any questions for Mr. Evans? Thank you, Oscar. Russ Hendricks.

Russ Hendricks: Good morning, Governor Little, members of the Land Board. My name is Russ Hendricks and I represent the more than 80,000 Idaho families who are members of the Idaho Farm Bureau. We appreciate the opportunity to comment on the latest proposal to change the state grazing formula. We recognize and appreciate that IDL is doing the very best they can with the data that they have; however, the problem with the current proposal is the undisputed lack of current hard data with regard to the non-feed costs for private leases as well as several of the state non-feed costs. For example, current state grazing lessees are specifically required to provide noxious weed control by the terms of the lease; however, that cost is not accounted for anywhere in the current proposal. A spot treatment for noxious weeds on rangeland is a minimum of 20 cents per acre; typically far more than that. That means that spot control of noxious weeds on a section of state land would cost about \$128; that is an additional cost of \$1.60 per AUM that a private lessee does not pay. That is a significant cost that is completely ignored in the current proposal. There are several other non-feed costs that are not included that ensure the proposed formula is inaccurate, such as association fees, vet expense, depreciation of improvements, herding, etcetera. I can't stress enough that these are real costs and we can't just ignore them if we don't have data. We have to get the data before making a decision. To correct this situation, I believe each of you are aware that a master's student at Utah State University has worked over the summer to successfully replicate the University of Wyoming study of state

grazing lease non-feed costs, and he is now in the final process of tabulating the raw data and preparing to present his findings to his review board. Once that data is fully vetted and published in just a few months, we will have actual, current hard data to use in this process. Unfortunately, we still have very soft data that is standing as a proxy for the non-feed costs on private leases. Some data that is being used in the current proposal does not even purport to be actual data but is only the educated guesstimates of University of Idaho economists but are published as guidelines for budget-setting purposes for producers. Therefore, we request that no action be taken on this proposal until current hard data that accurately reflects the non-feed costs of private lessees is obtained, which can then be netted with the forthcoming data on state leases. I appreciate your time and be happy to answer any questions.

Secretary of State Denney: Thank you. Any questions?

Controller Woolf: No questions, but maybe just a comment. I look forward to a good analysis from a good university at Utah. Go Aggies. Full disclosure, undergrad Utah State; master's degree from Boise State.

Secretary of State Denney: Is there anyone else who would like to testify? Hearing none.

Attorney General Wasden: I have a couple of questions for the counsel for the Board if he would yield to some questions.

Darrell Early: Mr. Chairman, members of the Board, for the record, Darrell Early, Office of the Attorney General.

Attorney General Wasden: Thank you. Darrell, we talked a little earlier about the current lease process, the formula that's used, and if this were challenged in court, you would be the person who would be responsible for making an argument on behalf of the legality of that current formula. I'm interested in your thoughts as to the challenges you would face making an argument for the current lease formula.

Mr. Early: Mr. Chairman, Attorney General Wasden, because of the record that's been established over the last 10 years related to the current formula, there would be challenges associated with defending the status quo formula. We recognize, and it's been pointed out earlier in the testimony from the Director and Mr. Phillips, work quite a while ago, 10 years ago, established that there was this divergence from the private market rate that was probably not meeting the Board's obligation to meet its fiduciary obligation. In addition, we have recognized and Dr. Becker, back in 2017-2018 timeframe, pointed out to us that there were flaws in the current status quo formula, revolving around multicollinearity, which is a university word to mean basically we are counting two things twice. There was a flaw in the formula in that regard that is in part why the formula is, and that graph shows us, diverging from that private market. Finally, we have recognized in the course of these proceedings that the formula as established back in 1993 derived in part from a discussion between the Secretary of State and the Governor at a Board meeting where they effectively compromised on a decision rather than basing it on any kind of numbers and data. So there are certain challenges that would be presented if we were attacked in a legal proceeding with defending it based upon the record that we've established in the last 10 years, certainly the last four years since I've been here.

Attorney General Wasden: With regard to the Department's proposed rate formula, it's likely or at least the possibility exists that would also be challenged in court and you would have some issues that you would have to address, so I ask for your thoughts as to the viability and the arguments for and against and the challenges that you would face as you attempt to defend that rate that is proposed.

Mr. Early: The defensibility or the arguments that we would have in favor of the proposed methodology, I believe the proposed methodology is defensible in court. I say that with the caveat that, and I've told you this before, I never bet on a judge. I give you this counsel recognizing that we would still face challenge, and outcomes are not guaranteed. However, this proposed methodology is defensible for several reasons. The standard by which the Board's actions will be judged is to recognize that this is a discretionary decision by the Board exercising its business judgment in the exercise of its fiduciary duty as a trustee. That in turn is gauged by a couple of different standards. On that business judgment piece, it is essentially the 'what would an ordinarily prudent businessperson do under like circumstances.' In that regard, this methodology is tied to the private lease rate, which is what ordinary prudent businesspeople are doing, while recognizing the differences between the costs on public grazing and private grazing and acknowledging that throughout all of these proceedings we have heard repeatedly there is a difference between public and private. The methodology is done as best as it could be with the published data available to ascertain what those costs are and set an offset such that the rate is offset from the private lease rate. That exercise recognizes that ordinary prudent business judgment. The other standard that's applicable is whether or not this is a proper exercise of discretion. When you're talking about discretion, the issue is really whether or not the Board in acting upon this is exercising reason or rational judgment in doing so or is it acting arbitrarily and capriciously. Arbitrarily and capricious is in turn the lack of reason, or the lack of rational thought; whimsy, or chance. The proverbial throw at a dartboard on the wall and let that be the choice, or consider factors that are entirely irrelevant like, for example, we won't change the grazing rate today because it's raining. That has nothing to do with whether or not you should or shouldn't do it, and therefore it's not an exercise of reason to base a decision on such a factor. In this regard, this methodology represents an exercise of reason and rational judgment. As pointed out, it has objective data that is the basis for deriving that offset. The data is not perfect as we all know and has been acknowledged; no data is ever perfect when it relies on surveys which can build in bias factors, etcetera. However, it is the best available data that has been selected; it has been reviewed by the experts. It's my understanding that the experts, Dr. Rimbey and Dr. Tanaka, have both said this formula is a reasonable way of setting a formula. For those reasons, with that kind of record and that kind of evidence in front of us, I believe this is a defensible formula for this Board to adopt at this time.

Controller Woolf: I have a follow up. Along all those lines, Mr. Early, what is the defensibility of a phased approach, if that were to be done, what's the legality. If the formula was still used but with a phased approach to get to the finality of the 49% that was set when recommended by the Department. What's the legal defensibility of that?

Mr. Early: Mr. Chairman, Controller Woolf, it's very difficult for me to say, to answer that question about defensibility because it's really in some respects very much dependent upon the basis upon which that decision is made. At this point the Board has not articulated what that basis is. We've heard testimony today about the impacts of drought and those kinds of things

which might support the Board's decision in that regard. At the same time, the memorandum from the Department has discussed that issue and talked about whether a phase-in is or is not appropriate, asking that question I believe of Drs. Rimbey and Tanaka, so you have sort of that piece of evidence in the record which would be held up as reflecting against a phased-in approach versus the testimony we've heard today, and whatever this Board would make a discussion of in terms of its rationale for adopting a phased-in approach. If the rationale is based upon facts and not arbitrary or illegal considerations, then it would probably stand up on review. If it is based upon arbitrary, again 'the sky isn't as blue today,' kind of factors, or as we learned from the Watershed cases, factors that are not proper in the exercise of your judgment, which means your focus, your duty of loyalty, is to the endowment beneficiaries not to other folks. If you are doing it for reasons that are relevant to the endowment beneficiaries long-term financial returns then it can be defensible, but if it's being done for reasons that are unrelated to that or for purposes to benefit some other group, then it would be subject to challenge.

Superintendent Ybarra: Mr. Chairman, I'd like to hear a little bit more about the phased-in approach. I'm inclined to vote no against the raise today. I think like in education teachers are the experts and I believe ranchers are the experts. The data is fine, but I think the timing is poor. I took some notes: the drought issue, the feed, the possible loss of leases which is doubtful, planting a little doubt in my head for the return on investment for public schools. I would entertain listening to more about a phased-in approach and when that might start. If there is a thought around that, I would support maybe 2023 and send it back to the Department, but more discussion around something like that.

Attorney General Wasden: Darrell, I am reading a letter from Dr. Rimbey. It's in our files, page four of Attachment 3; it's dated September 13, 2021, to whom it may concern. It's regarding the September 10, 2021 review draft. Specifically in the second paragraph, the first sentence, he says 'given the new rate of \$8.33 per AUM, I do not think a phase in over a period of years would be warranted.' He goes on and says, 'it might warrant another look at the issue if the livestock industry makes that request, in light of the ongoing drought conditions and current and projected feed cost increases.' Recognizing that is part of our record, because it's part of the documents that are submitted before the Board, I'm interested in your thoughts as to the defensibility of a phase in.

Mr. Early: Mr. Chairman, Attorney General Wasden, a couple of points there. This letter was written at a point when Dr. Rimbey was looking at the \$8.33 per AUM and the rate proposal before us today is at \$9.07, so there is a change in the circumstances since the letter was written. However, he points out it might warrant a look at the issue if the livestock industry makes that request and in light of the ongoing drought conditions and current and projected feed cost increases. We've heard testimony from some of the livestock producers today. I think we've received some comment outside of today's meeting to the same effect, and it provides a basis upon which this Board could, if it chooses to, look at a phased-in approach and would provide some evidence and some support from a recognized expert in this field for a phased-in approach. This letter doesn't address what we have exactly in front of us today and therefore it is a reflection of possible testimony by an expert, not exact testimony by an expert.

Secretary of State Denney: Darrell, how many challenges have we had to the current formula over the last 28 years?

Mr. Early: We have not been legally challenged to date on the existing formula. As you know, and I've discussed this with you in the past, we have received some significantly threatening overtures. I think a lot of what's happened over the last few years is the expectation that something would happen and at that point an action would be looked at based upon whatever action the Board took. To answer your question directly, we have not been challenged to date.

Attorney General Wasden: Follow up. Darrell, I personally had received notice that folks...there are certain entities who will sue over the rate: the current rate if it's not changed and also a potential new rate if it doesn't fit within certain parameters. I suspect you've probably heard the same kinds of things, so is the basis for making a determination whether we think we're going to get sued or not, or whether we're fulfilling our fiduciary duty.

Mr. Early: Mr. Chairman, Attorney General Wasden, the ultimate standard by which this Board should always act is its judgment about whether or not it is or is not meeting its fiduciary duty. Whether or not you are going to get sued, and whether or not you will win or lose that lawsuit, is simply a recognition of risk and legal costs and other factors that go into those things. The ultimate decision that this Board should make based upon case law and analysis is whether or not the Board is exercising its business judgment to meet its fiduciary duty to maximize long-term return.

Secretary of State Denney: Okay, I guess that's it.

Attorney General Wasden: I move that we adopt the 2021 Grazing Rate Formula Proposal as provided by the Department.

Controller Woolf: I'd like to second that for discussion purposes.

Secretary of State Denney: It's been moved and seconded that we adopt the Department proposal. Is there discussion?

Attorney General Wasden: I would like to speak to my motion. We find ourselves in a position where we have a current rate formula that was set in 1993. I think most folks readily agree that it does not meet the requirements of our fiduciary duty, in fact our experts have readily said that. We have kicked this can down the road a number of occasions; in fact, we kicked it down the road three years ago. We had a grazing study subcommittee and they did a bunch of good work and we were waiting for the Wyoming study. The Wyoming study came and the Wyoming study, as good as it is, has some lack of data that would be helpful. I commend the Department for all of the efforts and I believe that they have gotten the best available data for us. No matter what set of data you have it's going to have imperfections, that's just going to happen. In the exercise of our business judgment and appropriate exercise of our discretion I think that this choice in this instance would be appropriate. Given all of that, we face the potential of a different rate. The Department has done a good job of providing a process and then getting the best available data. Now there's been a proposal today, we've got another master's study that will be done by a certain Aggie institution and we could wait for that, but at the same time that would mean we're kicking the can down the road again and we're applying a rate formula that we know does not meet our constitutional obligation. There's talk of phase in. I haven't actually seen any proposal as to phase in, and this shouldn't be done as a political compromise but instead as an objective, studied proposal. We don't have that in front of us today. We don't have a tiered system in front of us today; we don't have a lot of other proposals. We have this proposal and we also have a

fairly significant time element, that is our decision has to be rendered by this body within a very short few days in order for us to timely give notice to the lessees in the next cycle. Otherwise, we are kicking the can down the road for at least another year in which we would be applying a formula that we know does not meet constitutional muster. I urge the members of this Board to support this motion. There are flaws and imperfections but I think that we can charge the Department with examining the data and seeing if we can't improve that in years to come, but we would have in place the appropriate formula and improve its application by the data that we would gain that would be even more accurate. I urge the members of this Board to support this motion.

Secretary of State Denney: I guess I'll go next. First, thank you Scott and Jason and all the rest of the staff for the work that you did on this. Having chaired that grazing rate subcommittee from a few years ago, I can feel your frustration. Certainly it's very difficult to come up with a formula that's both fair and equitable to everyone and at the same time that meets our constitutional duty. We've heard a lot about our fiduciary responsibility but I want to start with the constitution and read a little bit of Article IX, Section 8; it says, 'it shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all lands heretofore, or which may hereafter be granted to or acquired by the state...in such a manner as will secure the maximum long-term...' So there's another factor there and it's called management and that's why I asked questions earlier. Until we know what it costs us to manage these lands in the absence of lessees, because they're doing a lot of the management for us, in fact their management plan is what the management is, and they take care of those noxious weeds and take care of removing some of the fuel load, and that's active management. What is our active management? Location: these are numbers from back when I chaired the subcommittee, currently 44% of our leases are inholdings with restricted or no legal management access. Nineteen percent have mixed access rights; only 37% have unrestricted full management access. I think we could do better as far as location. Protection: part of protection is the management of the resource, taking care of the noxious weeds, removing some of the fuel load; that is protection of the resource. Rental or lease: I have to tell you that every single leased grazing property is unique; every one is unique, and I'm sure that some are worth more than what we're charging. I'm equally sure that some are worth less than what we're asking to be paid. Let me talk a little bit about the proposal. I'm not sure that tying the grazing rate that we're setting to the private rate is the best way that we can do this. If it is the best way, I think there are some arbitrary things in this formula, that I brought to Scott's attention a few days ago, that I would be more comfortable taking the data that we have from the last 45 years on the variation in rates from private to our leased rates. From 1977-2021, we have that data and that rate goes from a high of 68% of the private rate down to a low of 34% which is lower than what we currently are. But if you average those all together, I think we have very close to the formula that we already come up and spent a lot of time developing which in my opinion may or may not be the best way forward. I would argue that having a factor in this formula that takes into account wolf depredation and water...why would we charge everyone for wolf depredation and everyone for providing water when most of our leases don't have wolf depredation and don't lack water. This year more lacked water than other years, but that's a factor in my opinion that's arbitrary. With that, I'm going to be voting no on this proposal.

Controller Woolf: I want to share a couple of my thoughts. First to thank the Department for the amount of work, it has been said and I just want to echo that. I believe that they've put forth a

model that is flexible, it's easy to understand, it's more adaptable to bring new data forward based on what we may have from what the Farm Bureau has coordinated with the master's student. I think that would help refine the rate going forward. Now it's not a perfect model, but the flexibility to add more data, if and when it comes available, we know in the process we can adjust this model quickly and to represent the best available data to support a rate. My experience has been more with Holsteins and knowing which part the hay goes in and which part the other comes out and getting the milk out. I can somewhat relate to our good friends here and understand the drought conditions, the water, the feed prices, the fuel, everything that's taken place, and I respect that. I respect my fiduciary duty as a trustee. I'm wanting to hear if the Superintendent has other comments, seeing that we're maybe not aligned and may have different thoughts of approach or direction of how we handle this. I want to hear more discussion and I appreciate everyone speaking forward and sharing their thoughts on this model and the work that's gone into it.

Superintendent Ybarra: Mr. Chairman, I don't have much more to add except for what I said earlier. Counsel did say that it's our discretion if it were exercised in reason. I feel very strongly that we would be, voting no today, because we do need to take into consideration the timing and the things that were explained to us like the drought and the feed market. If the ranchers are out of business, we haven't done our duty. I'll be voting no. But again, I trust the Department; they came up with the formula that we have today and I think if we sent this back to them with the expectation that we want a phased-in approach, that we are not into kicking the can down the road or making political decisions, that this has to be fixed, which I believe I heard from most the ranchers that they agree with that, that they could come up with a phased-in approach and we need to put a date on it and say 2023, that would be the expectation. As it stands today, I will be voting no.

Attorney General Wasden: Call for the question.

Secretary of State Denney: Okay, we will vote. Do you want a roll call as well?

Attorney General Wasden: No.

Secretary of State Denney: The motion is to accept the Department's recommendation. All those in favor say aye.

Wasden and Woolf: Aye.

Secretary of State Denney: Those opposed nay.

Ybarra and Denney: No.

Secretary of State Denney: The motion fails on a tie vote.

Controller Woolf: Mr. Chairman, based on our not being aligned, and the work that's gone in here, I do want to see if there's opportunity here to pursue a phased-in approach. I take this from a standpoint of my research and work that I've done on my MBA and the work of others totally outside of this, and I look at an example that happened with Netflix where they totally priced out all their consumers. Respecting our right, wanting to stay within our legal bounds, that we look at what a potential for a phased-in approach would be if we can meet that legally for doing it for the right reasons, nothing arbitrary or capricious, that we do this from a standpoint of a phased

approach to move from the \$7.07, whether it's over a two-year period, that we can move towards this point, that way we can continue, we're not kicking the can down the road as now the decision has been made. I think from a standpoint that we can continue to use the model that's been put forward. That's a long motion and I should have waited for a second in my discussion after that, so I apologize Board members. Let me pause there; my motion is to have a phased approach over a two-year period, that we phase in 50% this first year and get to the remaining part the following year.

Superintendent Ybarra: Second.

Attorney General Wasden: Question. Is your motion to adopt the formula as proposed by the Department?

Controller Woolf: Mr. Chairman, Mr. Attorney General, yes.

Attorney General Wasden: And then, I'm not certain I understand the phased-in portion of that. So if it's 50%, that would mean that this assessment would be below the current rate? I guess I am completely confused.

Controller Woolf: My recollection and my point is, going 50% of the increase. It's at \$7.07 currently; the recommendation was to move to \$9.07. I'm just throwing out that part to say let's move 50% to get to \$8.07. That was my 50% part, if that helps clarify.

Attorney General Wasden: Thank you for the clarification.

Superintendent Ybarra: Mr. Chairman, I want to withdraw my second. I want the Department to figure out that part. I'm not going to second that motion. I would support a motion where we use the phased-in approach but I want the Department to come back with what that would look like.

Attorney General Wasden: Mr. Secretary, does that motion fail for lack of a second?

Secretary of State Denney: It does.

Controller Woolf: I used to run marathons so I'll give it one more try. Mr. Chairman, I'd like to make a motion that we do a phased-in approach, that we have based on the direction of what the Department of Lands would recommend, the timing, and submit that to us.

Attorney General Wasden: What is the timing of this? Is this intended to occur so that there's sufficient time to notify this year's lessees? Or is this putting this off until some future date?

Controller Woolf: Let me refer to Mr. Phillips if he had a recommendation on that.

Mr. Phillips: Mr. Chairman, members of the Board, we are under very tight time constraints to get notifications out to our customer base in order to meet our statutory obligations for any rate change. That said, I do have in my papers kind of a breakout of various rates at different percentages. Based on the second motion, the substitute offered by the Controller, he was basically recommending a 43% of the USDA NASS private rate for Idaho for the first year. I would also like to point out that we do have the opportunity to add additional data to our body of research and our evaluation with the completion of Mr. Lake's study at Utah State University. Did I answer your timing question, sir?

Controller Woolf: Thank you, Mr. Phillips. I think the question, still following up to the Attorney General, is if we did this motion, you would need the timing for November 3rd or 4th, in that time frame, to meet the 180 days that we have to notify our lessees of the increase.

Attorney General Wasden: Correct. And Mr. Secretary, if that is to happen in the current year, we would have to hold a special Land Board meeting at which that would be adopted, unless it's adopted today, and the Department's recommendation would have to be made, but then this body would have to meet and adopt whatever it's going to adopt. So that's the timing question. And what is the answer to my question?

Superintendent Ybarra: Could the Department come back in 2023 with specifics? I am not inclined to vote for an increase today of any kind, but could you come back and say, in 2023, this is what's going to happen, this is what we propose, this is the plan.

Mr. Phillips: Mr. Chairman, members of the committee, the Department can come back at a future date. I am prepared to speak about the potential of stepping into a rate; that was a concept that we considered in an early rendition of the formula. If the Board has some questions about what rate is generated by a specific percentage number, I'd be glad to answer those and perhaps help guide the process in that form, at your pleasure.

Controller Woolf: Mr. Chairman, I'd like to rescind my motion.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt the 2021 Grazing Rate Formula Proposal as provided by the Department. Controller Woolf seconded the motion. For the record, Governor Little recused himself from this vote. The motion failed on a tie vote of 2-2. [Aye: Wasden, Woolf; Nay: Denney, Ybarra]

A motion was made by Controller Woolf that the Land Board adopt the formula as proposed by the Department, with a phased approach over a two-year period; the first-year rate would be \$8.07 which is 50% of the increase from the status quo formula (\$7.07) and the proposed model formula (\$9.07). Superintendent Ybarra seconded the motion but later withdrew her second. The motion failed for lack of a second.

A subsequent motion was made by Controller Woolf that the Land Board adopt the formula as proposed by the Department, with a phased-in approach based on direction and recommendation from the Department, including timing, that would be submitted to the Land Board. Controller Woolf rescinded his motion soon after.

5. Adoption of Pending Rule IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act – Presented by Archie Gray, Bureau Chief-Forestry Assistance

Recommendation: Adopt the pending rule for IDAPA 20.02.01 *Rules Pertaining to the Idaho Forest Practices Act*.

Discussion: None.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt the proposal by the Department concerning the pending fee-rule. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

For the record, Attorney General Wasden later realized he stated in his motion "...the pending fee rule." Attorney General Wasden clarified it is not a fee rule and with unanimous consent re-stated his motion to "...the pending rule."

6. Adoption of Pending Rule IDAPA 20.03.09, Easements on State-Owned Navigable Waterways –
Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

Recommendation: Adopt the pending fee rule for IDAPA 20.03.09 *Easements on State-Owned Navigable Waterways*.

Discussion: None.

Board Action: A motion was made by Attorney General Wasden that the Board adopt the rule as proposed by the Department. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Information

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

7. Abandoned Mine Land Fund Revenue – *Presented by Mick Thomas, Division Administrator-Minerals, Pub Trust, Oil and Gas*

Discussion:

Governor Little: First, thank you. This is one that we're being proactive and, as is usually the case, none of these options are great, but the sooner we address them the better off it's going to be. To me, option 1 and option 3 are the same; we're just taking money from the general fund. Option 2 is the only one that we're either not giving it to the general fund to begin with or we're taking it from them later, is that correct?

Mick Thomas: Yes, Governor, you're correct.

Governor Little: I think looking at what other states are doing, talking to the mining industry about it, would be a good thing. I'm glad we're being proactive about it.

Executive Session

None

There being no further business before the Land Board, at 11:15 a.m. a motion to adjourn was made by Attorney General Wasden. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

