



## 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  
February 15, 2022

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, February 15, 2022 at the Boise City Council Chambers, Boise City Hall, 3rd Floor, 150 N. Capitol Blvd, 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. Four Land Board members were present at the physical location, and Secretary of State Denney joined via Zoom webinar.

*[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 – January 2022

**Discussion:**

**Governor Little:** Director, we inquired a couple of times about splitting out salvage versus green timber; what's our schedule to get that done?

**Director Miller:** Governor, we will work on that for next month [March], we'll split that out. We're up 10% in our stumpage pricing from last year. We've had some strong cedar sales that have been part of these salvage sales. It's created more competition at auction; we have seen some competitive up-bidding despite the salvage sales.

**Governor Little:** The variance on the last uptick, and the other uptick, you attributed to the salvage sales. That's why I thought we'd agreed that if we take the salvage sales off, that graph on the monthly lumber and stumpage price would be more accurate. Did I miss something?

**Director Miller:** You haven't missed anything. Again, it all fluctuates given what type of sale we're looking at and all of the different variables that go into a particular sale. One month you have high cedar sales, one month you have low-valued sales. We will try to parse out two different graphs and see what that looks like moving forward.

B. Leases and Permits – January 2022

**Discussion:**

**Controller Woolf:** Back on page 2, that has the trust land management division and the receipts, for example the \$600,000 that Corey Barton was required to pay, does that go into this particular area of the real estate services or does that go into the Land Bank fund.

**Director Miller:** Mr. Controller, this \$600,000 of the failed sale to Corey Barton goes into our earnings reserve account. The rest of that money was that 4% buyer's premium from the actual purchaser of the property.

**Governor Little:** That was my question too, Dustin. Basically that \$1.1 million accrues to the beneficiary and is not income.

**Director Miller:** That's correct.

**Status Updates**

C. Legislative Summary

**Discussion:** None.

D. Resource Protection and Assistance Report

**Discussion:**

**Governor Little:** Mr. Thomas, I know you internally track pending permits and you're staffing up to do that, but you might just think going forward so we can track with you where we are in addressing pending permits.

**Mick Thomas:** The permits are processed as they are received and so our best tracking mechanism is to look at year-over-year growth. We think in general spring is normally a bit more productive than fall, but we don't have a mechanism now to say these permits may come out in March or April or May; they are processed as they are received by the applicant.

**Governor Little:** You receive a request, then you issue a permit. I am just trying to see what the delta is between the two of them, what's your inbox versus your outbox.

**Mr. Thomas:** That's a good question. I will track that.

**Controller Woolf:** I appreciate your areas where they have winter dock storage and appreciate their work in getting those contracts signed. I've had a lot of comments from different individuals

up there. I appreciate having visited with Andrew Smyth at the [Mica] area office and the update that he gave and that you've shared here as well.

**Mr. Thomas:** Thank you very much. It is an area effort, and we wouldn't be able to do it very well without Mr. Wasden's team.

**Governor Little:** The Triumph mine there's money proposed in the budget to do some remediation on that, will that lessen our liability for Triumph?

**Mr. Thomas:** Governor, we asked for spending authority for the Triumph mine in anticipation of receiving federal funds for that reclamation; currently that isn't going to pan out. There is a bipartisan bill moving through the Senate right now sponsored partially by Senators Risch and Crapo that may enable Good Samaritan reclamation on some of these mines. It's a pilot project; I think they're anticipating max 15 projects nationwide.

**Governor Little:** Is the new change from all abandoned mines to coal mines, is that statutory or is that regulatory from the Department?

**Mr. Thomas:** Governor, specifically are you asking about the spending authority that we're asking for?

**Governor Little:** No, when we initially thought there was going to be revenue funding for us to take care of some of our pending doom over running out of money in our abandoned mines fund. Was that a change that was in ARPA, or the infrastructure bill, or was it guidance from Treasury and the Department?

**Mr. Thomas:** The money that we anticipated that eventually didn't happen was part of the Infrastructure and Investment in Jobs Act.

**Governor Little:** Let me do a little mission work on that if you'll get Nate the details of it.

**Mr. Thomas:** Thank you Governor, will do.

At 9:24 a.m., Attorney General Wasden remarked that midway through the Department Report, Land Board and Department staff at the meeting location were informed that there was no audio for webinar participants and the IPTV internet streaming platform; the meeting was paused until audio was restored. Attorney General Wasden explained that the Department Report is not an item on which the Land Board takes action; it is simply a report. No action was taken during the audio outage. Should the public have interest, the Department Report is available in recording or in print upon request.

### **Consent—Action Item(s)**

#### **2. Results of January 6, 2022 Minerals Lease Live Auctions – Presented by Mike Murphy, Program Manager-Minerals Leasing**

##### **Discussion:**

**Governor Little:** Director, what do we get per yard for the gravel?

**Director Miller:** Governor, \$1.15 per loose cubic yard, or 75 cents per short ton. So, \$1.15 per loose cubic yard is what we're charging.

**Recommendation:** Direct the Department to award mineral lease E600102 to ASG Resources, LLC and direct the Department to award mineral lease E600103 to Central Paving Co., Inc.

**3. Disclaimer of Interest Request DI700262–French Quarter Farms LLC, Snake River – Presented by Loren Moore, Program Manager-Navigable Waterways**

**Discussion:**

**Governor Little:** We maintained an easement; do we have access to that easement? Does the public have access to that easement?

**Loren Moore:** Governor, we do not at this time. The idea is that these disclaimers are voluntary, and when we collect these easements from parcels along the river, eventually we can string them together in the event that we can use that public use right-of-way.

**Governor Little:** If somebody can get ingress and egress to the easement to utilize the easement.

**Ms. Moore:** Correct.

**Governor Little:** I looked this company up; they've been in existence for one year. We're basically giving them 35 acres of ground at \$28 an acre in an area where real estate prices are quite elevated. My fellow Board members, I think we ought to talk about this going forward. I doubt most people in Idaho would think that 35 acres of prime riverfront property at \$28 an acre is a good deal for the state of Idaho. Put that on the agenda at some time. I know it is predicated on old code, but \$1000 doesn't hardly cover the administrative cost of doing this.

**Attorney General Wasden:** I was intrigued in this instance; the way the ordinary high water mark was originally plotted was on top of a 200 foot cliff. I don't think the river just ran up a cliff and went that way. Our claim to this property is the ordinary high water mark, so factually that is just not sustainable in any kind of action. What we're doing in this instance is we're making that correction. Those 35 acres, we would not factually be able to establish that was in fact where the ordinary high water mark was. That is kind of a unique element of this case.

**Governor Little:** But at a minimum \$1,000 doesn't cover administrative costs.

**Recommendation:** Direct the Department to issue a Disclaimer of Interest for seven parcels totaling 35.475 acres of the original meandered bed of the Snake River, to French Quarter Farms, LLC following their payment to the Department of the remaining processing fee of \$1,000.

**4. Approval of Draft Minutes – January 18, 2022 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. Endowment Fund Investment Board Report – Presented by Chris Anton, EFIB Manager of Investments;

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

#### Discussion:

**Chris Anton:** Governor, members of the Land Board, good morning. January was a challenging month. Equity markets had their worst month since March of 2020 as strong labor markets and persistently high inflation led the Federal Reserve to accelerate their plans to unwind monetary support. The fund was down 4.4% for the month which left us essentially at break-even fiscal year-to-date, down 0.2%. The Federal Reserve has communicated that they plan to begin steadily increasing interest rates starting in mid-March and shortly thereafter commence balance sheet reduction. Financial markets have currently priced in about five rate increases in 2022; it's unclear how much of the balance sheet will be reduced during the year. The current balance is close to \$9 trillion so those are the tools they have to fight inflation, both increasing rates and reducing the balance sheet. Time will tell what happens; but their plans certainly spooked the market. Inflation uncertainty, rising bond yields, escalating geopolitical tension particularly surrounding Ukraine and the ongoing surge in the Omicron variant of COVID 19 all contributed to heightened market volatility. Growth and technology stocks were particularly hard hit during the month with the NASDAQ falling over 9% and at one point during the month it was down 15%. If you look at the back page of the investment report, item B, you'll see Sands Capital, Eagle Asset Management, WCM, our growth managers, were the ones that were particularly hit hard during the month and had the biggest impact on our performance. The one ray of good news is the last couple days of the month, we saw the markets recover slightly and show some strength primarily driven by greater than expected GDP growth, up about 5.7% for the year, and solid corporate earnings reports. The economy remains relatively strong, but people are worried that with the Federal Reserve increasing rates and trying to fight inflation that will just slam the brakes on the economy. Through Valentine's Day we were down about 1.3%; however, today's a pretty strong day in the market and I would characterize this as being close to breakeven fiscal year-to-date. We continue to be well reserved and in good shape for making our distributions to beneficiaries. We have an Investment Board meeting this Thursday [February 17].

**Governor Little:** How often does Callan recommend, and the Investment Board, on the performance, given you told us last Board meeting you were doubling up on Sands or adding to it; at what point in time do you say maybe they're not the best large cap growth manager?

**Mr. Anton:** Callan presents a quarterly performance report and part of that report looks at performance of all our managers, whether they are above or below their respective benchmarks. Certainly, EFIB staff looks at that every day. We generally tend to be patient investors; we recognize that certain styles can go in and out of favor. We know it is our fiduciary responsibility to do what is right for the fund so if they're chronically underperforming, we will change out a manager. At this point it's one month in, it's too early to tell. Sands tends to be on the more aggressive end of the growth range, and naturally they're going to be down more than the growth index during periods of volatility.

**Controller Woolf:** A follow up on the Governor's question. You put them on a watch list and then is there a governance structure at EFIB that you watch it for so many quarters or so many months? Do you have something set in governance structure of how you review or monitor?

**Mr. Anton:** We don't have a hard line that says if you underperform for two or three quarters, but we're regularly discussing it. There are factors besides performance that can also trigger removal of a manager, if they change their management team, they do other things. It's not a rigid formula but certainly a diligent process where we keep a close eye on all of our managers.

#### C. Asset Allocation Study Update

**Recommendation:** Direct the Endowment Fund Investment Board and the Department to utilize the Land Board's General Consultant (Callan) to update the Asset Allocation Study.

#### **Discussion:**

**Mr. Anton:** When the Department of Lands and EFIB updated the Land Board's investment policy statement in November of 2021, we noticed as you will see on Attachment 1 that because the financial assets had a large gain in the last fiscal year, and over time, the financial assets were approaching the upper end of the target asset allocation range that Callan identified in 2014 when they developed this policy. Similarly, the timberland was close to the lower end of the range. When we noted that, we went back and reviewed our policies and the plan that was put together in 2014 when Callan was first engaged indicated that approximately every eight years we should review the asset allocation, take a look at expected risk and return for the combined whole trust portfolio. Given the timeline and where we're at in the asset allocation, we believe it's appropriate to consider updating this policy. We went to Callan, we sought a proposal, which is included in Attachment 2 for your consideration. I believe James Van Heuit, from Callan, is participating in this meeting via Zoom if there are any questions on Callan's proposal. Our recommendation to the Board for consideration is that we engage Callan to update the Strategic Asset Allocation.

**Governor Little:** The proposal here says that we've agreed on the valuations of timberland and rangeland, \$45 an acre for rangeland, \$1,600 an acre for farmland, and about \$1,560 an acre for timberland; are those hard numbers? Then of course the big issue is inflation as predicated and put into this formula at 2.25%; what all is on the table for \$40,000?

**Mr. Anton:** Governor, I will answer that to the best of my ability. It's my understanding that during the summer we updated both timber and rangeland values based on an income approach. I don't think we had full appraisals using multiple valuation methods, but we used an income approach to try to bring those values closer to market.

**Governor Little:** My only thought, and we need to do this, we've got a policy that we do it every eight years and it's eight years since we did it the last time, but if you're building it based on income approach and we're having auction sales and other things that show that our income approach doesn't come anywhere close to what the fair market value is, do we need to have that discussion before we implement this? The old cart in front of the horse question. It's probably not for you, it's probably for us strategically as a Board. I assume Callan will look at the inflation number because that is strictly a financial forecasting number.

**Mr. Anton:** I believe that is correct.

**Governor Little:** My fellow Board members, this is an action item, do we need to collectively as a Board discuss the fundamentals of this study, because Callan is bidding this no-bid contract of \$40,000 to do it on some numbers that may not be 100% accurate. It's forecasting, you don't get 100% accuracy, but that's my question to the Board.

**Attorney General Wasden:** Governor, a conversation would be appropriate on the issue of a no-bid contract. My understanding is that was covered in the contract with Callan. I would like to pose that question to clarify that, so we're not caught off guard.

**Mr. Anton:** Governor and Mr. Attorney General, my understanding was the Land Board first engaged Callan in 2014, and then in 2019 both the Land Board and EFIB went out to bid for consulting services. Eleven companies provided proposals, the top consulting firms, and in fall of 2019 we reengaged Callan. In terms of the Land Board contract specifically, because much of the heavy lifting had been done during those interim years, we reduced the scope of their services. There was a significant reduction in their fees from approximately \$130,000 a year to \$50,000 a year with the understanding that under that contract they could be reappointed for special projects such as this project.

**Attorney General Wasden:** My understanding is that's the process that we have gone through; therefore, it's not really a no-bid, it is actually part of what we have previously done, correct?

**Mr. Anton:** Yes sir.

**Board Action:** A motion was made by Attorney General Wasden that the Land Board direct the Endowment Fund Investment Board and the Department to utilize the Land Board's General Consultant (Callan) to update the Asset Allocation Study. Controller Woolf seconded the motion. The motion carried on a vote of 4-1; Governor Little cast the opposing vote.

**6. Negotiated Rulemaking IDAPA 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands** – *Presented by Mick Thomas, Division Administrator-Minerals, Navigable Waterways, Oil and Gas*

**Recommendation:** Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.17 *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands*.

**Discussion:** None.

**Board Action:** A motion was made by Attorney General Wasden that the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.17 *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands*. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

**7. Omnibus Rulemaking – Adoption of Temporary Rules (Fee and Non-Fee) – Presented by Scott Phillips, Policy and Communications Chief**

**Recommendation:** Adopt as conditional temporary rules all of the Department's administrative rules, as set forth in Attachment 2. The rules will become effective only if the pending rules are not otherwise approved or rejected by the 2022 Idaho Legislature.

**Discussion:** None.

**Board Action:** A motion was made by Attorney General Wasden that the Land Board adopt as conditional temporary rules all of the Department's administrative rules as set forth in Attachment 2. The rules will become effective only if the pending rules are not otherwise approved or rejected by the 2022 Idaho Legislature. 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.*

**8. Good Neighbor Authority (GNA) and Shared Stewardship Update – Introduction by Craig Foss, State Forester and Division Administrator-Forestry and Fire; Presented by Jon Songster, Bureau Chief-GNA, and Ara Andrea, Idaho Shared Stewardship Coordinator**

**Discussion:**

**Attorney General Wasden:** I suspect that the Department of Lands doesn't go trouncing through the national forests and say we're going to have a good neighbor authority project here; take me through the process of how it's identified, who does what, and how do we get to the end result.

**Jon Songster:** What we do is meet periodically throughout the year with our partners to review and consider proposed projects to be organized and executed through the program. That involves some field visits with our staff, and we determine whether that's a good fit for the program and then we also determine what parts the State is going to do and what parts the Forest Service is going to retain. We identify those different pieces of the project in our agreement and then we move forth with the project and continue to check in throughout the planning and preparation and execution of those projects.

**Attorney General Wasden:** In identifying the parcel, the federal government will say here's some things we think, you all then go and study that and say we think that's good, or we think it's not good. That doesn't dissipate the requirement that the federal government do its work on its own. I mean, ESA and other stuff that it has to do, right. Then they're doing their work, and we're saying okay we've got some expertise here that we can bring to bear that helps get this thing done. That's really what we're doing, correct?

**Mr. Songster:** General Wasden, that is correct. All of the federal policies and laws still apply to these projects; we just negotiate on a case-by-case basis how we're going to execute the work.



**Attorney General Wasden:** I was going to include NEPA in all that other stuff that they have to do; they're doing their thing and we're saying hey we've got some expertise that we can bring to bear and some available resources, and we can help apply this mechanical thinning or whatever the process may be, that will then end up in a better managed federal forest. We benefit as well because we are the neighboring property and all of the other kinds of things that go with it. That's my understanding, is that correct?

**Mr. Songster:** That is correct. Our intent is to be additive with these projects and bring additional resources to the table to do more.

**Attorney General Wasden:** As I think back, we nominated about 1.8 million acres, and then the federal government added another 4.3, ended about 6.1 that was originally designated. I don't know whether we're limited to that, or we have other projects that can be added on, so help me with that part.

**Mr. Songster:** We don't have to stick to just those designated areas. It does allow for a categorical exclusion which is an abbreviated NEPA process.

**Superintendent Ybarra:** I want to thank you for being here. I got to come up north and sit down with you all on your stomping ground and hear about this. We as Land Board members often get questions about the land management and I think you did a really good job; it was very professional and thanks for all you do on our behalf.

**Controller Woolf:** I am going to go back to slide 8 that has the numbers part. You have the program costs, the sales revenue for FY21, the current cash balance, and the sale revenue. One of the things to help myself and the other Board members is understanding the distributions. After you get the receipts from the sales, what takes place? What's the distribution, what's the allocation that is divvied out? How much goes back? On slide 9 it talks about these restoration service contracts. I don't know if those are over the entire time frame of the project or that's one fiscal year; maybe you can answer that. I would like something, maybe not for today, but in the future if you could provide us a copy of how those distributions work, where the allocation, if it is a percentage, or how you divvy and budget that out would be helpful for us.

**Mr. Songster:** We can absolutely do that.

**Governor Little:** It would be helpful for me if you tie slide 8 to slide 9; that would be helpful. My question is what we can do either individually or collectively at the Board to scale this up. We're a long way from getting to 6 million acres; we're a long way from getting to 1.8 million acres. What are the impediments to even getting fractionally closer to that? Besides money.

**Mr. Songster:** Governor, members of the Board, there are various bottlenecks in the system in doing more. Agency staff is a bottleneck at times for both IDL and our federal partners. Contracting capacity is certainly an issue, but number one is the planning bottleneck is typically what we're up against on the federal side.

**Governor Little:** I was under the impression that, both GNA and Share Stewardship, we're supposed to get our way through NEPA faster because the State and state contractors could do it faster. That was the whole genesis of both of those programs because the feds weren't getting their work done, we were; on all our state land we could get it done faster. What's the problem?

**Mr. Songster:** As you saw on slide 9, the pie chart, that is really an important way that we're helping is through contracted resources to help with project planning. To date we've spent over \$3 million in contracted resources and oftentimes we're supplementing that federal NEPA team with one or two positions to keep those projects on track. I really feel that is something that we need to continue to do as we move forward.

**Governor Little:** What's the friction, what's the sand in the wheels of getting that done? Is it just lack of interest by the forest supervisors, is it the regional forest office, what's the hang up?

**Mr. Songster:** I would say that the biggest hang up is just the capacity, on the federal side as well as on the state side; there's only so many people available to take on those projects and move them forward. NEPA and project planning isn't really in our wheelhouse, so we are reliant on assistance from our partners in that area.

**Ara Andrea:** Just to add to that a little bit, Governor, members of the Land Board, on doing the cross-boundary work, besides the limited pool of operators and contractors, the additional hang-up for us is finding counties, entities that can take our grant money for our state shared stewardship funds and put it on the ground. They are able to report back to us to receive those monies and able to contract out the operators and do the agreements for liability purposes with the landowners. That's what we're having some hold-up with, who can accept our granted funds and get it on the ground.

**Controller Woolf:** I want to say congratulations for being self-sustaining. We had great partnership from all levels including the private industrial services as well as the State putting in seed money to get this. It's great to see that we're at that point. Kudos and continue to inform what we can do as individuals and as Board members to help this process.

**Attorney General Wasden:** My thanks as well.

**Director Miller:** I too appreciate the work of both Jon and Ara and our state forester and their leadership that they've shown coordinating through all of this across the landscape and really getting at the treatments that we need on the ground, which goes hand in hand with the fire suppression piece. Thank you for your support for these programs.

At 10:24 a.m., Attorney General Wasden reported a brief interruption of IPTV streaming during the presentation of agenda item 8; however, the webinar and YouTube streaming had no interruption. Attorney General Wasden noted that this item is an information item, not an action item and therefore no action was taken.

**9. Morrill Act/Use of Caldwell Property Disposition Funds** – Presented by Darrell Early, Natural Resources Division Chief, Office of the Attorney General, President Scott Green, University of Idaho, and Mark McGuire, Associate Dean of the College of Agriculture and Life Sciences, University of Idaho

**Discussion:**

**Darrell Early:** Governor, members of the Board, for the record Darrell Early from the Office of the Attorney General. I know how much you love to listen to lawyers talk, so I am going to try to keep this very short. This is a brief presentation on the legal landscape applicable to the use of the proceeds from the sale of the Caldwell property. As you'll recall, this fall the Board authorized and the Department executed the sale of some land out in Caldwell that netted somewhere in

the neighborhood of about \$20,000,000; that money is now held in the Land Bank, and it is for the use of the Agricultural College endowment fund. This presentation is to give you the legal landscape of what can be done with that monies in light of the presentation you're going to hear from the University of Idaho about what they would like you to do with that money. This presentation will essentially address three fundamental questions: what can you do with the money legally, what should you do, and what standards apply to your decision making, and then ultimately how do you go about effectuating that decision.

I will give you a brief history to start with. The Morrill Act of 1862 created the land grant colleges and provided that for each member of Congress, senator and representative, each state coming into the union would receive approximately 30,000 acres in land. Idaho, upon statehood, received roughly 90,000 acres in land for the benefit of the Agricultural College, which ultimately became the University of Idaho. The Morrill Act had a couple of key pieces in it. The original Morrill Act provided that if any of these lands were sold, the proceeds of the sale of those lands would go into a permanent endowment fund, but it provided that 10% per year could be used to buy or purchase sites or experimental farms. The specific language says except at a sum not exceeding 10% upon receipt by any state under the provisions of this chapter may be expended for the purchase of lands for sites or experimental farms whenever authorized by the respective legislatures of said states. Further it provided that no portion of said fund, nor the interest thereon, shall be applied directly or indirectly under any pretense whatever to the purchase, erection, preservation or repair of any building or buildings. The original act said you can buy land, but you can't build buildings and you can only spend 10% a year and it had to be authorized by the respective state legislature. That Morrill Act, when Idaho became a state, was adopted and ratified by the Idaho state legislature and by our constitution in the admissions bill. The admissions bill provides that any lands granted under this shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned in such manner as the legislature may provide. In Article IX, Section 8 of the [Idaho] constitution, it directs that the State Board of Land Commissioners shall provide for the location, protection, sale, or rental of all lands heretofore or which may hereafter be granted or acquired by the state from the general government under such regulations as may be prescribed by law and in such manner as will secure the maximum long-term financial return to the institution to which granted. Those documents, those laws, are the fundamental trust documents that you all operate under with respect to these lands and this decision.

In 2007, Congress amended the admissions bill; it did not amend the Morrill Act. The original plan was to amend the Morrill Act but when it got back to Congress, apparently it ran into some headwinds in terms of amending the actual Morrill Act. Instead, they amended the admissions bill of Idaho to allow and to remove the limitations that I just spoke of with respect to the 10% cap and the limitation on not being able to use it to build buildings. The 2007 amendments allow you to invest and manage the earnings and proceeds derived from land in accordance with standards applicable to a trustee under law; that provision reaffirms your obligations as a trustee. Then it says you can deduct and pay expenses. Then it says use earnings and proceeds generated by the grant for any uses prescribed without regard to the limitations set out in Section 5 that prohibit the state from exceeding 10% for the purchase of land and prohibit the state from purchasing, erecting, preserving, or repairing any building or buildings. As the trust instruments now stand, the Board is empowered to expend the proceeds from the sale without any limitation on how much it spends, and it is now authorized under the terms of the trust to

construct, or erect, or preserve building or buildings. But the trust still has those other overlays of the trust responsibilities to manage these proceeds for the maximum long-term benefit of the institution to which granted. As you will hear in a few moments from the University of Idaho, the University would like to use some or all of the proceeds from the recently auctioned Caldwell property that are now in the Land Bank for various purposes including the CAFE experimental farm. The questions are can you, and clearly the law has been made such that you can, spend these monies to purchase land or build buildings for a site or an experimental farm pursuant to acts of the legislature. That brings up one fine point of this, the question that we looked at is whether or not the legislature has authorized the expenditure of these monies in any way, shape, or form. The general law of Idaho that is passed by the legislature in Idaho Code § 58-133 specifically allows you, as the Land Board, the general power to acquire lands, purchase and otherwise deal in real estate. In that sense, you have legislative authorization as a general matter.

The language of the Morrill Act might suggest and could be interpreted to require a more specific piece of legislation directing your actions with respect to a specific purchase. In that regard, we note that in the 2007 legislative session, House Bill 325 specifically authorized the expenditure of appropriated funds and also spoke about the Board's authority to use proceeds to build what was then referred to as the CLES, the Center for Livestock and Environmental Studies, which is basically the predecessor to what we now talk about as CAFE. With respect to CAFE, and projects associated with that, it is my belief that we have specific legislative authorization; we don't have to rely on that general authority under § 58-133. It might be prudent if there are other projects and we've, in staff conversations, had some discussions that perhaps the University might have other ideas for other places to spend some of this money. It might be prudent to look at that issue and discuss whether or not specific legislative authority might be appropriate if the Board decides to use some of these proceeds for something other than CAFE. Those are the limitations; that's the can you portion of this presentation. The answer is definitively yes, you can do this to spend money on the CAFE.

**Governor Little:** Darrell, I remember working with Clive on this. We can indubitably buy land, no question about that, and then maybe laboratory, but the specific language in the Morrill Act which we didn't amend, and this is my question, is what about an administration building or administration office because that's what they were getting at when they passed the Morrill Act was that we not build administration buildings. The Morrill Act lands were designated for research and that's what they wanted. Where's the line between what we can build; can we build a classroom? Can we build administration? What's your opinion about where that line is.

**Mr. Early:** Governor, that's a very good question. The Morrill Act says you can spend the money for sites or experimental farms, and it does not define what a site is or an experimental farm. I think it is within the discretion of the Board to look at the intention of the Morrill Act as originally enacted. What the amendments did was they removed the prohibition on building buildings at all. It was clear that the original Act was simply to buy land.

**Governor Little:** And the 10% cap.

**Mr. Early:** And the 10% cap. We have the ability now to build buildings. What kind of buildings and for what purposes I think is still governed by that sites and experimental farms piece of this. My understanding from the preview I've seen of the presentation, the University is formulating

specific proposals that it will ultimately bring back; the reason we're on the information agenda today is because they don't have specific proposals today. But we will have to answer that question at that time.

**Governor Little:** My question for the rest of the Board is where's the Morrill Act challenge line that we can say with great confidence you can go up to here, you can't go here, there might be some gray area in between. Is that what we're trying to get to?

**Mr. Early:** That will ultimately be the question that we have to resolve when we receive the specific proposals from the University as to exactly what they are asking you to spend this money on. The easy one is buy some land; that could be what they ask from you. Another could be, I think they call it the Discovery Center which is an interpretive center or something like that...is that a site or an experimental farm, is that within the meaning of the Morrill Act? Those are the questions we have to look at, and the University will be presenting to you what they're thinking along those lines.

**Governor Little:** But if they have non-Morrill Act land, not the proceeds from the sale at Caldwell, they can do whatever they want with that. The main thing is that we identify the Morrill land that it goes into the general intent of the Morrill Act.

**Mr. Early:** Correct, Governor. The use of their other funds is by the State Board of Education and the Board of Trustees and other statutes that govern how their monies are used which is outside of your purview. The second question really comes back to the question of should you use this money for this purpose? Clearly the legislature has indicated an intention that this money be used for the purpose of building this facility, but the ultimate decision on the use of these funds is vested with this Board as a trustee and that is governed by Article IX, Section 8 of the Idaho Constitution which directs you to manage the assets of these endowments for the maximum long-term financial return to the institution to which it is granted. The question you have before you as a matter of the should you do this, is it in the best interest of the institution, the University of Idaho, to use these monies in the long term. It's important to note that this is the long-term issue, it's not the short term, it is long term. Secondly, it's not the endowment per se; we often talk about these as the endowments, but the actual language of the constitution says the institution to which granted. I think it is fair to talk about the long-term interest of the University of Idaho. The final point, and a major component to this decision is, it is your decision. It is not the University's decision to decide what is in its best interest. They can provide you that information, they can make their recommendations to you and seek your approval on that. Ultimately, it is up to this Board to make that decision in the exercise of its fiduciary responsibility. The question you face is whether these proposed projects that you'll hear about will be in the best long-term financial return, or promote the long-term financial return, to the institution to which granted.

Finally, the question about how to do this, and that comes back to the question that it's intertwined with both your fiduciary responsibility and with the legal authorities we have. The Morrill Act allows you to purchase these lands or erect these buildings for sites or experimental farms. I think it is fair to interpret that language to imply that the experimental farms can be purchased for the use of the University. The Act doesn't specifically say that, it says for sites or experimental farms, it doesn't say for the use of the school. It is not expressed that way, but I think it is a fair interpretation to say that it can be purchased for their use. Under such an

interpretation, you could authorize the use of the lands without compensation if you determine that is in the best long-term interests of the institution to which granted. That in turn comes full circle to ask you, what is it you're being asked to do and is it the right thing to do. For example, we have been in the business for the last number of years of getting rid of split estates: buildings on lands that are owned by somebody else, our cottage sites. We've determined that's not a great relationship to have. If the University proposes to ask you to spend money to build a building on land that is owned by somebody else, that would be a question that you would have to ask yourself. Is it in the best interest long term to own a building on land you don't own, a depreciating asset on land that you don't own, or is there a better use of this money, is there a better transaction to be proposed? I'm sure the University of Idaho in formulating these proposals will be keeping that in mind as they move forward and make these specific proposals, that they're here to convince you about that question.

**Governor Little:** When we sold the 280 acres, was the revenue off of that, some farmer was leasing it, was it going into the earnings reserve or was it going right to the beneficiary? Mark is telling me it went right to them. We've already crossed over the line that we have with all our other beneficiaries where that revenue comes into earnings reserve or the Land Bank, so the University of Idaho's lands in their trust, that's different than some of their other lands they've got. Like the land down in Mountain Home; does that go directly to them, or does that go into the earnings reserve and thus eventually the trust?

**Mr. Early:** Governor, you've got me at a loss about the Mountain Home lands.

**Governor Little:** Well, any other of the University of Idaho lands...

**Mr. Early:** ...I think that the Caldwell property was unique in that...

**Governor Little:** ...that was an R and E center originally.

**Mr. Early:** Yes, and many, many, many years ago an instrument was executed that granted the University of Idaho an easement to use that land and it had a nominal payment. They basically had an easement to use that land and then once they quit using it themselves, started leasing it and collecting the revenues from that going forward.

**Governor Little:** Are they still paying that easement?

**Mr. Early:** The easement has been extinguished by virtue of the sale of the land. Whatever happened in the past is what happened in the past. The decision you have before you today is make this decision based upon the trust instruments that you have in front of you.

**Governor Little:** It would be good for the Board to know out of the portfolio of all the real estate the University of Idaho has, how much of it goes to them directly or how much of that filters through the endowment earnings reserve like all the other.

**Mr. Early:** I think that would be a prudent thing. The University clearly has land that is acquired with non-Morrill Act that was granted and acquired in other forms.

**Governor Little:** Which the 40 acres Caine Center was.

**Mr. Early:** Yes, exactly. So, we have these different types of ownership. This is something we could get assistance from IDL, but to the extent that we have lands that are Morrill Act lands, any revenue from those lands should be managed by this Board as a trustee, whether it is put in the permanent fund or used for some other purpose under the relevant laws. We are dealing today with the specific issue of the sale of the Caldwell properties; we have this pot of money, and I am trying to provide that legal landscape for you going forward. We can sort out the history later.

**Attorney General Wasden:** This is the information agenda; we will not be taking an action today. We are considering information in its legal framework, but we're not going to be taking an action. It would seem to me that we need to have a firm proposal in order for us to examine all of the relevant legal issues that we have to deal with. That's my perspective.

**Governor Little:** Good point. Anybody else?

**Mr. Early:** That is the reason this is on the information agenda today. In discussions with the University, it is clear that they have some specific ideas in mind, but they had not formulated those into fine points yet, and we'll hear from the good folks from the University today more about that; I am just here to provide that legal landscape. You can also make the decision that leasing the land is in the best interest, so again this is your discretion to make that determination based upon that standard of long-term return to the institution to which granted. It is appropriate for us to look at those issues at the time we have those proposals in front of the Board and make those decisions as a fiduciary; you have a great deal of discretion in how you go about doing that. That's basically the three points I wanted to make in this presentation.

**Governor Little:** Thanks, Mr. Early. Anybody have other questions? Okay. Mark are you up? President Green; you're bringing in the heavy weights Mark, good for you.

**C. Scott Green:** Governor, Board members, I won't take too much of your time. I am Scott Green, for the record, President of the University of Idaho and I am joined by our leaders of our College of Agriculture and Life Science who will share our vision for building on the University's legacy of supporting Idaho agriculture. This plan will help provide a sustainable future for one of our state's top industries and produce a long-term maximum return on investment for our University of Idaho. We all agree about the importance of agriculture in Idaho. In 2019, we had nearly 25,000 farms and ranches in our state, and they generated more than \$25 billion in sales. The University of Idaho has long been a driver of agriculture in the state. The Idaho Agricultural Experiment Station opened in 1892 before the University welcomed any of its first students to Moscow. Since then, we have opened research extension and education centers across the state and met the needs of Idaho industry and private citizens through our research and outreach.

The Center for Agriculture, Food, and the Environment, or CAFE, is our newest center and will be the country's largest experimental dairy and farm complex. Located in the Magic Valley, CAFE will be a leader in addressing water usage and environmental quality challenges, enabling the sustained growth of our dairy, livestock, cropland, and food processing industries. We've developed a plan for the center that will result in dynamic research, training, and education to develop solutions to our state's complex challenges, and our students will benefit by having access to a world-class facility where they'll gain hands-on experience working with the latest agricultural technologies. Idaho industry will gain access to the latest advancements in research and agricultural practices shared through our extension network. The state stands to gain from

increased agricultural productivity and sustainability. Since planning began in 2020, CAFE has already garnered nearly \$13 million in grant funding and more than \$7.5 million in gifts. We're confident this funding will grow as the full vision for CAFE is realized. We ask that you invest in the future of the University of Idaho and our state's farms and ranches by supporting our plans for the center. I will turn it over to Mark McGuire, our Associate Dean of Research and Director of the Idaho Agricultural Experiment Station, who's going to share more about CAFE with you.

**Attorney General Wasden:** I don't know that I've had an opportunity to publicly welcome you back to the state of Idaho, but welcome back to be the president of my alma mater, the University of Idaho. I am glad to see you back and am grateful for what you do.

**Mr. Green:** It's great to be home; thank you, General.

**Mark McGuire:** Governor, commissioners, it's my pleasure to be here this morning. I am Mark McGuire, Director of the Idaho Agricultural Experiment Station, in this position as part of the CALS leadership who manages the research and extension centers otherwise known as our experimental farms throughout the state. The map shows our research and extension centers across the entire breadth and width of Idaho and represents the various climates and growing conditions to support agriculture in Idaho.

One highlight of this is that we have a lot of land for potato production, sugar beets, wheat, and barley, but we aren't necessarily reflective of the major commodity in Idaho and that is milk and dairy. If you're not aware, the dairy industry is number three in the nation; it is the top commodity in Idaho. We have 100 cows and they're in Moscow. That dairy in Moscow does a good job of educating students and does some basic research but it doesn't reflect the dairy industry which is predominantly in the Magic Valley. To be more reflective of Idaho, we need an experimental farm to really address the dairy industry. It has been described that we are today talking about Idaho CAFE, the Center for Agriculture, Food, and the Environment. It's a regional model that includes a research dairy and experimental farm in Rupert. It includes a discovery center at the crossroads of [interstate] 84 and [highway] 93, which is an outreach center, but it also has some laboratory facilities we hope, and then a food processing pilot plan in collaboration with the College of Southern Idaho. Today I am only going to focus on the dairy portion, the experimental farm portion.

We have approval for the design and out to construction bid for the research dairy at Rupert. The design is through Keller Associates and the construction will be McAlvain Companies, two Idaho companies that are leading us in the design of this experimental research dairy. While it is a commercial dairy in many cases, it is an experimental farm because we have to figure out how to look forward to the future and meet the needs of the dairy industry and agriculture in general. This experimental dairy will be located on 640 acres north of Rupert; it is on land that was purchased by the University in March of 2019. There are two pivots to the north, 320 acres, owned by the University of Idaho, and two pivots to the south were purchased in partnership with Idaho Dairymen's Association. They're owned by the IDA at this point, reflecting the industry's desire to have a research facility to address their needs, an experimental farm that is critical to making sure that that dairy industry, and agriculture in total, is sustainable in Idaho.

A quick overview shows the current design of the facilities which include dry land space, dry lot space for dairy cows, which reflects the dairy industry, and a cross-ventilated barn which also



reflects the future of the dairy industry in Idaho. I want to drill down into looking at the phased approach that we have for the development of this facility. Phase 1 is the building of a milking parlor that will support milking 2,000 cows a day. This parlor, I will show you shortly, has a combination of State funds and University funds and it will go out to construction bid here in a month. There is also excavation that will be necessary at the site to ensure that we have the appropriate grading for the dry lots, calving and research barn, and the manure handling system which is critical to not only the functioning of the dairy, but also to the research opportunities that are there to conduct experiments on the opportunities for economic value for the dairy industry and to examine the nutrient qualities that would enhance the agronomic production and potentially improve soil carbon and soil health. The cross-ventilated barn for approximately 1,200 cows is currently designed in Phase 3 of construction. Also note that there are research ponds and a manure processing facility that is designed so that it can be plug and play, that we can test out new technologies for the industry to determine whether or not it has economic value. A methane digester could be installed, it does not have to be. Those research ponds though are critical to examining whether or not we have the appropriate liners to make sure that there are no nutrients being leaked out of ponds. This is in partnership with the Idaho Dairymen's Association. They really demand it so that we can get the proper information to guide best management practices. As I said, the University is already engaged in the building of the milking system. We have contracted with DeLaval, and Total Dairy Solutions out of Jerome, for a 60-cow rotary parlor. This is the most current experimental parlor from DeLaval, so it will be the forefront of our milking system. It will be housed in this \$6 million estimated cost milking barn. This is really just a commercial dairy facility at this point.

**Attorney General Wasden:** How do you convince 60 cows to get on that rotary scale at the same time?

**Mr. McGuire:** It's actually amazing to watch cows enter a rotary parlor. It's like it's a fun time of the day for them compared to a parallel parlor.

**Attorney General Wasden:** A merry-go-round.

**Mr. McGuire:** They don't hesitate; they walk right on there, take their one trip around and then it's like hey that was a fun day. It is amazing to watch cows enter. You can't quite see it in this facility, but I would be more than happy to have you sit in the observation deck and watch those cows enter and exit. This barn has been designed specifically for this rotary parlor. It is essentially a commercial milking parlor, milking system, but it will have additional electronics, animal ID, that will allow us to do extra experiments tied to milk yield and milk composition.

Besides the milking system, we are already conducting a fair bit of research on those existing pivots that are there. This research is really tied to understanding the flow of nutrients through the soils. Over the past three years, since obtaining ownership of that land, and also on the IDA property, the soils have been extensively sampled on a 0.6-acre grid to analyze the chemistries, the depth of bedrock, the nutrients that are there before there's any manure application or manure bi-product application. This gives us a good baseline to set up our experimental plots for research purposes so that we don't have any biases that we didn't understand. For example, we've taken nearly two tons of soil off of each of these pivots for analyses to understand what the baseline values are. The irrigation pivots have been upgraded substantially so that this facility will be a sensor-centric facility for precision agriculture. We are going to have real-time

information on evaporation of water from plants, soil moisture, and be able to precisely target the delivery of water so that we can protect that important natural resource for Idaho. Not only the dairy, but those lands are going to be used extensively and are being used extensively as an experimental farm.

Just to summarize the development of CAFE, there currently is 640 acres at the property; the University owns 320 acres, the Idaho Dairywomen's Association owns two pivots, or 320 acres. There is an agreement with Idaho Dairywomen's Association that those 320 acres will be donated to the University when CAFE is operational, and the definition of operational is we milk 100 cows 30 days at the facility. We are working on those construction improvements; we will have a fully operational experimental dairy that will be the largest research dairy in the United States on the basis of the number of cows. Now, that may sound extravagant, but realize that we need enough cows to be scientifically valid. We need to have a substantial number of cows to do some of the work with regards to animal health, animal welfare, as well as to make sure that we can replicate information as far as the manure process, or air emissions. In particular our focus will be on the dry lot housed cows and on the emissions that are there where there's really very poor information in the literature to guide federal authorities in the regulation. Again, our experimental dairy waste system will be the most advanced so that we can do plug and play and really address the sustainability of the dairy industry. Finally, we will be working on precision agriculture on that experimental farm for all of the commodities that are present.

As far as returns to date, we've received nearly \$8 million in gifts from industry for the sustainable growth of agriculture, dairy food processing sector, and that's tied to CAFE. One of the major donors is Anheuser Busch; they've given \$400,000 at this time to really focus in on malt barley production where Idaho is the number one grower in the nation. Why are they doing that? It's because they want to make sure that they can say that the malt barley that's grown in Idaho is the most sustainable possible; we need to tie together dairy manure commercial fertilizer with malt barley production in the rotations that are typical in southeastern Idaho. University faculty have received grants of over \$13 million in the past three years either directly or indirectly tied to efforts at CAFE. These grants will become more readily available when we actually have cows on the facility and can utilize those cows for research. Those grants are restricted funds for specific research purposes though and cannot be used for building buildings. Enrollment growth is a critical part of CAFE where having an experimental dairy in Rupert will attract more students. Those grants immediately have already employed 30 more graduate students for their research purposes, and they also employ undergraduates as research assistants. We will have a substantial amount of education onsite that is coincident to the experiments that will be conducted at CAFE. And finally, there's already been a field day where producers and growers have been there to look at this precision agriculture piece and understand the value of it and the sustainability of agriculture.

I am going to walk you through this slide [15] really quickly. It lists the costs of the different phases of development of the CAFE approach, and it includes the various funding sources that are there. The top line is the purchase of the land, which was a partnership between the University, again owning the two north pivots, and the Idaho Dairywomen's Association and the family who sold the land as a part of donation. Phase 1 is that milking system and barn, and it is also coupled with excavation of the site to prepare for the dry lots for the manure handling system, etc. It is estimated to cost about \$12 million; \$10 million is from the State of Idaho

through the permanent building fund and \$2 million is the University contribution in purchasing the milking system from DeLaval and Total Dairy Solutions. Phase 2, which would ultimately get us cows on site, is the final development of those dry lots, shade structures, feed lanes, the manure system which is critical for the research that will be done there, the feed preparation area, a calving barn, and the farm office which will have classroom potential and outreach potential, but it will be mostly directed towards those researchers that are housed on site. We have a \$13 million estimated cost there, of which we have about \$5 million in donations towards that; we have a deficit of about \$8 million for Phase 2 completion at this point. In Phase 3, we're looking at a cross-ventilated barn and equipment storage at a cost of about \$10 million, and in Phase 4 we should purchase some additional land in the area for nutrient management. A conservative estimate is that the 640 acres is approximately \$6 million at this point in time. I've italicized in this slide what is land and what are buildings if we would move forward with a proposal to you. Our current needs are approximately \$24 million, although fundraising is still quite active and continues to be quite successful. What is the impact of the sale of Caldwell R and E center on the College of Ag Endowment distributions? The sale was \$23,250,000 from the endowment; our estimated annual distribution will be 5%, representing an increase to the College of Ag of approximately \$1.2 million per year. If we take into mind what is the maximum long-term financial return to the College of Ag, there may be an alternative and that is a partnership with the Land Board to invest directly in those facilities. We believe that the completion of the full CAFE experimental farm will be delayed if we don't have a partnership with the Land Board. We conservatively estimate based upon grants, gifts, student enrollment, outreach, etc. that we will annually return \$3.5 million a year based upon completion of the CAFE project, about a three-fold improvement in return on investment with partnership. In conclusion, with your guidance, we will develop a proposal for Land Board's participation in CAFE that will provide the best long-term financial return to the College of Agriculture. Thank you, Governor.

**Governor Little:** Thank you.

**Attorney General Wasden:** I look forward to your presentation when it is all final and put together. Thank you.

**Mr. McGuire:** Thank you, Attorney General.

**Governor Little:** Controller, did you have a question?

**Controller Woolf:** Just more of a disclaimer, maybe with the Secretary of State. We've spent a lot of time with the little black and whites, having milked for a long time and having hauled milk for another college from their research dairy at Utah State up to their creamery. That disclaimer being that I will be independent in my thoughts here.

**Governor Little:** Duly noted. Mark, you got the tone from Darrell some of the issues and General Wasden alluded to what the next steps are. It was convenient that you needed \$24 million, and we have \$24 million; that didn't go by me.

**Mr. McGuire:** Math works sometimes.

