



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
September 20, 2022

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, September 20, 2022 at the State Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 West Jefferson, 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 State Controller Brandon Woolf
Honorable Superintendent of Public Instruction Sherri Ybarra

Three Land Board members were present at the physical location; Secretary of State Denney and Attorney General Wasden were absent.

For the record, a motion was made by Controller Woolf to amend the agenda pursuant to Idaho Code § 74-204(4)(c) to remove agenda item 8, the Cottage Site Leasing 2025 Plan. Controller Woolf explained his reason for this amendment and motion is to have more time to consider the issue and allow the Department to provide additional information to the Land Board. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

Director Miller recognized seven Department employees, from various area offices around the state. These individuals are in Boise participating in an onboarding event which includes experiencing a Land Board meeting. Director Miller asked them all to stand and thanked everyone for being here.

[Editor's note: the Discussion portions, if any, for 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 – August 2022
- B. Leases and Permits – August 2022

Discussion:

Controller Woolf: Back on page one at the very top on the timber sales you talk about the third and final attempt for a salvage sale that did not sell. Are you able to learn or gain some feedback from the market, from the loggers, the owners...what is taking place and what can we do on this?

Director Miller: Governor and Controller Woolf, after a third sale we take a look at that, we work with potential purchasers, understand what the concerns were. Our foresters have this dialed in very well. I believe we will try a direct sale on moving this volume. After the third attempt, we have limited options. In order to recoup some value and remove that wood, we will be having conversations about likely moving forward with a direct sale on that particular sale.

Status Updates

C. Fire Season Report

Discussion:

Governor Little: Director, I met with the Chief [Randy Moore] last week on the negotiations that your team is having with the Forest Service on cost share. It sounds like they are going to move the deadline out, but they were fairly complimentary about the negotiations; you are doing a good job. Are we and Montana the only states that do not have a final agreement?

Director Miller: Yes, Governor that is correct. We had a long week with our federal partners at Forest Service and BLM, going through maps and working to get closer to an agreement on how we trade acres that is more equitable and works for all agencies. I am very optimistic with how things are going so I appreciate your assistance.

Governor Little: The net of this is had the Department not engaged in this negotiation, we would have firefighters passing each other, Forest Service going to one fire and us going to another fire which would not have looked very good. I cannot believe these other states have acquiesced. For the Board members' awareness, it is the result of an audit in California that was not necessarily applicable to Idaho. Nice job on that.

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

A. Manager's Report

B. Investment Report

Discussion:

Chris Anton: Governor and members of the Land Board, good morning. August was definitely a month of two very different halves. Financial markets started the month in positive territory as inflation appeared to have peaked. Corporate earnings and job openings remained resilient and prospects that the Federal Reserve could contain inflation quickly without pushing us into an inflation appeared plausible. Federal Reserve Chair Jerome Powell, however, in his speech in Jackson Hole, made it very clear that the Federal Reserve is committed to returning inflation to its 2% target, increasing interest rates – what they believed to be considered their long-term neutral rate to achieve this goal – and remaining at these restrictive interest rate levels for some time because history cautions strongly against premature loosening of policy. Financial markets sold off as it became increasingly clear that there was no quick or pain-free resolution to the

inflation problem. To give you a feel for the numbers, at one point the portfolio was up almost 9% around midmonth but we ended up down 3% during the month, which left us up 0.29% fiscal year-to-date. Through yesterday, we are up 1.3%; we are down slightly more than we were at the end of August. The Federal Reserve is expected to increase the federal funds rate by 0.75% to 3.25% when they conclude their two-day meeting tomorrow. We will see what Federal Reserve Chair Jerome Powell has to say. If you look at their dot plot, they are now expecting to increase rates to almost 4.5% by early 2023. They are certainly pushing the rates up hoping to get inflation under control. We have not seen a lot of evidence that inflation is coming down yet, but some elements of the economy are slowing. Overall, Governor, our reserves are still healthy, and we are well secured for our distributions in FY23.

Consent—Action Item(s)

- 3. Disclaimer of Interest Request DI600305-Spencer Hill, South Fork Boise River** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

Recommendation: Direct the Department to issue a Disclaimer of Interest for one parcel totaling 0.93 acres of the former bed of the South Fork Boise River to Spencer and Sara Hill following their payment to the Department of the remaining processing fee of \$300.

Discussion: Item 3 and item 4 discussion was held after presentation of item 4. See Discussion section for item 4, below.

- 4. Disclaimer of Interest Request DI600306-Aaron Fuhriman, South Fork Boise River** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

Recommendation: Direct the Department to issue a Disclaimer of Interest for one parcel totaling 1.60 acres of the former bed of the South Fork Boise River to Aaron and Caroll Fuhriman following their payment to the Department of the remaining processing fee of \$300.

Discussion:

Governor Little: Eric, do we record these easements at the county level?

Eric Wilson: We do, sir.

Governor Little: One of the items in this document says the threat of adverse possession, to my knowledge there is no adverse possession on public land. I do not think you can do adverse possession on public land.

Mr. Wilson: The Idaho Supreme Court in the Rutledge case determined that when lands have lost their public trust character, when they are now above the ordinary high water mark, they are subject to adverse possession at that point.

Governor Little: They are no longer public?

Mr. Wilson: Exactly.

Governor Little: Well, we will talk later. I think it takes action by us to change it to public land, but this is into the future. The other issue that I have asked before is does \$300 cover all our costs in these accreted lands.

Mr. Wilson: The initial application fee is \$300; at the end of the process, we look at our hours and add up what our total costs are, then they pay an additional minimum of \$300 or a greater sum. We do not issue the disclaimers until we get the final payment of \$300 or that additional sum. There is an Idaho Attorney General's opinion regarding disclaimers and easements and that lays out the justification and the reasoning why these disclaimers are the appropriate way to come to an agreement by the property owners on a property line. It is a boundary by agreement.

Controller Woolf: Eric, we almost see these monthly, what is the long-term plan. Is this up to each citizen as they come forward to say hey, I want to pay my \$300 to get my disclaimer of land. Is there a process or opportunity that the Department has talked about to handle this going forward?

Mr. Wilson: The current process that has been laid out since the 1980s is a voluntary process by the landowners when they want to clear up title, when they need to clear up their title to get a bank loan, or just to get that satisfaction of a cleared title. The Department of Lands has taken the long view in regard to these disclaimers and easements. The city of Boise greenbelt system has benefited from this approach. The greenbelt has been developed over more than 40 years and it is still expanding today. This has led the cities of Garden City and Eagle to develop their greenbelts and to connect to each other. The cities of Star and Fruitland, and others, are also working on greenbelts built in part on these easements. Predicting where the development, demand, and those community partners will all come together is a very difficult task. We take the long view; we reserve the easements that make these things possible at some point in the future when all of those things come together.

Governor Little: All of these that we have done since I have been on the Board, they have all been isolated somewhere where there was not any connectivity to them. The question is, and you do not have to answer this now, but can we expect every Land Board meeting for the next 50 years to have disclaimers of interest on all of the rivers of Idaho forever?

Mr. Wilson: Development pressures kind of drive the disclaimer process and right now there is a lot of building going on.

Governor Little: So, the answer is yes. *[laughter]*

Mr. Wilson: If Boise will stop winning most desirable city in the United States...

Governor Little: I do not know that Featherville is the most favorable city...

Mr. Wilson: There is a lot of spillover; we have an easement almost two miles long that is just a mile downstream of where these two easements are. There is an opportunity in the not too distant future that those could connect and then you would have almost 4 miles of greenbelt up in the Featherville area. It is not too far from Forest Service land, and I could see that being an amenity that would also attract people up in the forest.

Governor Little: Everybody has access to the navigable waters anyway, it is just where do they get to them.

Mr. Wilson: Those access points are critical, that is true.

Governor Little: At some point, we ought to have a policy discussion about how we handle these going forward, if there is a simpler way, what other states do, because you look at these maps of that parcel and that river has not been on that ground for a long, long time. Those parcels are adjacent to each other, and it makes me wonder how many more of these we are going to do.

Mr. Wilson: Potentially thousands, Governor.

5. Approval of Draft Minutes – August 16, 2022 Regular Meeting (Boise)

Consent Agenda Board Action: A motion was made by Controller Woolf that the Land Board approve and adopt the Consent Agenda. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

Regular—Action Item(s)

6. FY2024 Department of Lands Budget – Presented by Rhonda McFarland, Financial Manager

Recommendation: Approve the Department's FY2024 budget request as submitted to Division of Financial Management and Legislative Services Office on Wednesday, August 31, 2022.

Discussion:

Controller Woolf: Welcome, Rhonda and thank you for your work. One quick question, were there any major changes from what the Department presented on August 16th at the last Board meeting compared to what was submitted to DFM?

Rhonda McFarland: Governor, Controller Woolf, there were no significant changes.

Board Action: A motion was made by Controller Woolf that the Land Board approve the Department's FY2024 budget request as submitted to the Division of Financial Management and Legislative Services Office on Wednesday, August 31, 2022. Superintendent Ybarra seconded the motion. For the record, Governor Little recused himself from this vote. The motion carried on a vote of 2-0.

7. University of Idaho CAFE Project Proposal – Presented by Josh Purkiss, Bureau Chief-Real Estate Services, IDL; Scott Green, President, University of Idaho; Mark McGuire, Associate Dean of CALS, UI; Kent Nelson, General Counsel, UI; and Brian Foisy, Chief Financial Officer, UI

Recommendation: Given the authority granted in Morrill Act, the value to the endowment and the direct benefits to CALS as the endowment beneficiary, the Department recommends that the Land Board approve the acquisition of the Minidoka Property for \$6,000,000 and distribute the remaining balance of \$17,250,000 to fund construction of the milking parlor.

Discussion:

Governor Little: Does that mean if a student enrolls at the University of Idaho, is engaged at this, that revenue all rolls through the CAFE and not through the University system or are we double counting that?

Brian Foisy: No, we would certainly receipt that tuition in the same place that we receive all other tuition revenues at the institution. They are unrestricted revenues, though, so that does give us the flexibility to apply those to the CAFE project.

Governor Little: Still sounds like you are double counting them, but that is okay.

Mr. Foisy: Well, we certainly will not spend twice.

Controller Woolf: Brian, if you could go back to page 12 on the slide deck; it is the financial analysis. The top part you have the \$29.9 million for improvements, construction bid and then, two more lines down, the buildings and offices. What is the difference of those, \$6 million set aside for the land, \$17.2 million for construction of the milk parlor; where does that \$17.2 million fit into this if you could help me out.

Mr. Foisy: Do we have access to exhibit B? [*technical issues encountered*] Well, I can give you the short answer, and I will just use my paper copies of the slides and work from there, but within the \$29.9 million total for improvements on the construction bid, that actually incorporates activity for phase 1 and phase 2; we would be selecting certain of the projects from that improvement/construction bid of \$29.9 million to establish the ownership for Land Board assets including the milking system, the milking parlor. [*Exhibit B located and displayed on screen*] It is quite small, but you can see phase 1 construction 2023, the first lettered item there, B, is the milking parlor as well as the land ownership for the two separate parcels.

Controller Woolf: Thank you. Brian, one of the things you shared previously with us was the cost of construction. With the market and where it is going right now, will the \$17.2 million fully cover the cost of the milking parlor, item B, or will it only cover a portion of it, based on where the bids come in. Help me understand how that will work for the Board.

Mr. Foisy: Obviously there is some estimation or projection going into this, Controller Woolf, but I will say that these numbers are far more solid than perhaps just an estimate might indicate. We received bids for phase 1 of the dairy, we actually had full blown bids received from contractors. We used the experience in comparing those bids to our estimates to adjust our estimate for phase 2; we feel we have a very strong basis for the cost and associated financial calculations going into this. It may actually come out between the land and the milking parlor is slightly under the \$17.25 million, of course the \$23.25 million in total. We would have to work through those details very carefully as construction proceeds.

Controller Woolf: I do not know if this is for you or for Mr. Nelson, or others, but section 3 of the operating agreement discusses ownership of the building and fixtures to be constructed and refers to exhibit B. Exhibit B was not in our packet; it was just emailed to me during your presentation. We have not seen any of the exhibits; they are all listed as draft. It is a little hard for us to soak that in. But I did not see exhibit B attached. My question concerns the possible need to amend exhibit B, the percentage of ownership of certain improvements, based on the actual versus estimated construction costs. I understand the need to ascertain ownership, however, I would like to avoid the fractional ownership of an improvement. What provisions are in the operating agreement to prevent this from happening?

Kent Nelson: Thank you, Governor, Mr. Controller, I appreciate that question and I think this is an important clarification that we can make for you. There will not be fractional ownerships of improvements. We are committed to that. Some of this language in this section of the agreement, although it could still be applicable, was more attuned when we believed that there would be funds beyond the milking parlor and the barn. We want to be able to clarify as we solidify the available funds to construct improvements so that it was very clear, ultimately, what the endowment owned that was built with the \$17.25 million of additional proceeds. In the event we are somewhat short, for example, on the milking parlor then that could be made up by the University, but we will not create a fractional ownership; that parlor will still be owned 100% by the dairy. I have been in discussions with our controller and looked over how we book these sorts of things. We will be booking the \$6 million of funds that we have applied to the underlying site preparation as well. We are prepared to make sure that there are no fractional ownerships between the endowment and the University.

Controller Woolf: Kent, thank you. One concern I had was this is a different type of request from others and what the other beneficiaries may come and ask for if this takes place. Can you explain the situation, how it is unique and how it is different from a typical reinvestment of Land Bank proceeds. Are we opening something up that other endowment beneficiaries could come to us and request something similar?

Mr. Nelson: No, this is unique in two respects. Number one, you do not have very many endowments that have simply a single, identifiable beneficiary, such as the Ag College endowment. Two, none of the endowments except for the Ag College endowment have the language that we added to the Morrill Act that specifically calls for the furnishing of endowment assets, land, and buildings to the beneficiary for the purpose of an experimental farm. That is the language we are operating under for this request; no other endowment has that.

Controller Woolf: What makes this unique is, all other things we look into what is the endowment receiving back on an annual basis, where on this part we are not really receiving anything annually or anything future unless we sell. And the milk parlor is a single use. Not seeing any annual income coming off of this and having grown up in the dairy industry, disclaimer there, there are fewer dairy farms today, the volatility of the dairy market and such, in having a single use of this. Help me understand and grasp a feeling of confidence, the risk that we are putting in place as a Board to make this investment.

Mr. Nelson: Governor, Controller Woolf, thank you for that question as well. That is something that we have thought about quite a bit for a number of years. The first thing I would say is that the job of the endowment, of course, is to benefit the beneficiary. One of the ways that the endowment benefits the beneficiary is to utilize income-producing assets, take that income and have that distributed into the beneficiary, and that is the classic way, no doubt about that. Another way that is unique to this endowment is to let the endowment assets themselves benefit the beneficiary, and our analysis is that we get a better benefit from this asset because of the way that the University can utilize it. When Vice President Foisy went through the numbers for how we finance this, nearly all of those numbers, with the exception of the endowment assets, are money that is coming into the University for the purpose of this dairy. The University would not be able to utilize that money but for this dairy project. So even that utilization is a benefit to the University that we could not get simply from an income-producing asset. Our overall analysis is that the operational benefits, the benefit to the University, in increased

student enrollment, in increased research capabilities and the like, outperforms the benefit that we would get from an income-producing asset.

Governor Little: You talked earlier about the conversation that took place last night, I just want to paper the file, after this \$23.5 million, the Ag College endowment has no further liability, whether cost overrun, whether it is liability, fill in the blank, that the amendments that were proposed and talked about last night, basically says \$23.5 million from a non-performing asset, the land at Caldwell, what was the rent on it, a hundred bucks a year or something. I think the endowment was given a hundred dollars a year on a \$23 million asset; not necessarily the internal rate of return we like to have. So, we are taking one non-performing asset and putting it to one that might perform but has a much higher risk because of the operations part of it. At the end of the day, the record will reflect that we as trustees are capping our liability for the endowment going forward with the amendments and addendums that are going to be added to some of the agreements we have seen and some of them we have not seen. Basically, what I was asking is, notwithstanding all other agreements, the Land Board has no further liability, because this is the right thing to do for the University of Idaho, it is the right thing to do for agriculture, it is the right thing to do for the State. One question I have is if I remember the Morrill Act, you can build a laboratory, you can buy land, but it says offices...was the amendment to the Morrill Act, did it say offices? I thought that was the taboo part of the Morrill Act that you could not build an administration building, sell Morrill Act Land, and build an administration building. Do I have that correct or not?

Mr. Nelson: Governor, you have that historically correct. In fact, the University of Idaho has a Morrill Hall that was not built by the endowment assets; almost every Morrill Act institution has something along those lines. What we changed in 2008 were two things. One was the limitation on acquiring land but not buildings, so the State of Idaho has the ability to use the Morrill Act proceeds for buildings. The other one was to remove a limitation of 10% of the endowment assets although I do not think we are approaching that. We can build buildings. There will be more buildings for the dairy than just the milking parlor, office buildings and pure research buildings, for example, that the University will fund separately.

Governor Little: I thought it was laboratories and not buildings was the historic language in the Morrill Act and then we put a little more flexibility in it.

Mr. Nelson: Actually, the Morrill Act itself simply said experimental farms, but no buildings. There is not a lot of case law on the Morrill Act.

Superintendent Ybarra: While we are talking about case law, can you just clarify for me is the legal review complete or not. I thought I heard earlier that it was not.

Mr. Nelson: We are addressing the last-minute questions to completing these documents. A term that I generally use in these sorts of situations is that we have a document that you can say that the final documents will be in substantial conformation to that, because there are no material things at issue at this point. There is clarification on the language; the University is committed to making sure that the documents clarify number one, the limitation of the obligation of the endowment, and number two, that liability and responsibility is on the University. That is where we are at with those documents. I cannot put something in front of you right now that I would ask you to sign, but we are close.

Governor Little: But the minutes will reflect that the intent when we get to the final vote, the intent is that the endowment be sheltered for any liabilities above the \$23.5 million.

Mr. Nelson: Correct.

Josh Purkiss: I will wrap up. It sounds like you discussed most of the things that I wanted to hit upon, so I will be fairly brief. We are all aware of what they are trying to do. Really, the Board has three options for this revenue: transfer the funds from the Land Bank to the permanent fund, leave the funds in the Land Bank for potential reinvestment in timberland, or do as what is being requested by CALS, invest in the Minidoka property, and construct a milking parlor. For our internal review we took a look at what this revenue would be worth for the beneficiaries at the 5% annual distributions, if we grew the endowment from the \$32 million that it sits at today up to about \$55 million, if we move those Land Bank proceeds into it. We used the 5.8% appreciation, 4% discount rate, and we looked at that at an 8-, 25- and 50-year horizon. The eight year, which they used in their slides, shows a net present value of distributions at just under \$6 million. Twenty-five years, that would equate to \$20 million, and 50 years at \$30 million. That is one option that the Board has, direct the Department to move the funds into the permanent fund. Option two is to acquire the Minidoka property, and we worked with the University to look at what revenue that they were projecting, whether that is grants, increased enrollments, research trials, but in the end the endowment would actually own the ground and the milking parlor which is the main parts of the dairy facility so there is benefit there. In addition, the operating agreement talks about them keeping it well-maintained, so if at a time in the future it is no longer a research facility, the endowment will have a functional dairy, basically a dairy facility, with the appreciation of the ground; there is benefit there to the endowment. With all the upside to the beneficiaries, we believe that option two, to acquire the Minidoka property and fund the construction of the milking parlor is in the best interest of the endowment. We presented this to the Investment Subcommittee yesterday [9/19]; they recommended the investment of the proceeds from the Caldwell sale to acquire the Minidoka property and fund construction of the milking parlor. The Department's recommendation given the authority granted in the Morrill Act, the value to the endowment, and the direct benefits to CALS as the endowment beneficiary, for the Land Board to approve acquiring the Minidoka property for \$6 million and distribute the remaining balance of \$17.25 million to fund the construction of the milking parlor.

Controller Woolf: How does that money transfer, that \$6 million and then the \$17.25 million.

Mr. Purkiss: The \$6 million would be similar to any type of real estate transaction we do; we would use this memo and the authority granted to the Department by the Land Board at closing to work with Fiscal to transfer the funds over to the University. The second part, there is still a couple questions there, but again, the authority from the Board today would...it is my understanding we would hold that balance and as DPW, Public Works, requires funding for this project to be built, we would issue those proceeds to the Department of Public Works.

Board Action: A motion was made by Controller Woolf that, given the authority in the Morrill Act, and the value to the endowment and direct benefits to CALS as the endowment beneficiary, the Land Board adopt the Department's recommendation and approve the acquisition of the Minidoka Property for \$6,000,000 and distribute the remaining balance of \$17,250,00 to fund construction of the milking parlor pending final legal review between the University of Idaho and the Attorney General's Office. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

8. Avimor Land Exchange – *Presented by Josh Purkiss, Bureau Chief-Real Estate Services*

Recommendation: Approve the exchange, subject to assurances that the title issues are fully resolved and will be released of record and that the Department and legal counsel are comfortable with the final Exchange Agreement and direct the Department to complete and close the as-proposed Avimor land exchange.

Discussion:

Governor Little: One of the memorandums from CenturyPacific talked about access. There is county road on both sides of it and I assume in the document if they have a strip of land between the county road and this parcel that we have full ingress and egress to the property. Is that going to be in the documents?

Mr. Purkiss: Governor, members of the Board, yes that is correct. We just wanted to vet the underlying ownership of that easement. There are no strips of land that are in between the endowment land and that road.

Controller Woolf: This has been going on for a little while, and probably for your happiness, on your last day, to see it through. One of my questions is the validity of the appraisal and the length of it. When was it done, is it still valid and is there still value for value today.

Mr. Purkiss: That is a great question, Controller, Governor, members of the Board. Whenever we are doing exchanges, we have an appraisal that is set with a certain effective date. They both have the same effective date so when you do that exchange it is that value for that value at that date. Have things changed over the last year and half since that appraisal was done? Sure. It has appreciated quite a bit. The endowment land that is being traded out of does not have legal access; when we initially had appraisals done, there was a first round of appraisals done on this property, the endowment land was appraised at \$700,000 and Avimor's land was appraised at \$2 million, because of the lack of access. However, because Avimor was absorbing this into their ownership and they had access, we asked the appraiser to take another look at it and say, look, appraise it as if it has access. Right now, that \$1.99 million is what it is worth if it had legal access, and it does not, so it is a huge win. It is not necessary to have an updated appraisal in my opinion because of the significant benefits to the endowment on this exchange.

Board Action: A motion was made by Controller Woolf to approve the exchange, subject to the assurances that the title issues are fully resolved and will be released of record and that the Department and legal counsel are comfortable with the final Exchange Agreement and direct the Department to complete and close the as-proposed Avimor land exchange. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

9. Brisbie LLC Land Exchange – Presented by Josh Purkiss, Bureau Chief-Real Estate Services

Recommendation: The Department recommends the Land Board approve proceeding with due diligence for the Brisbie land exchange proposal.

Discussion:

Governor Little: Josh, who pays for all this stuff?

Mr. Purkiss: The proponent.

Controller Woolf: Josh, I do not know if this is for you or maybe Darrell. My question is, and I know this is just due diligence and maybe this will come down further, help me walk through a disguised sale and how does this proposal present in that case, because this to me looks somewhat like that, and smells like that, looks like duck...help me understand that this is not a disguised sale.

Darrell Early: Governor, members of the Land Board, for the record, Darrell Early, Division Chief of Natural Resources. I do not want to go into a lot of details of course because this involves our legal analysis, and we are on the open record here and so we want to keep it at a high level. As you know, the statutes that authorize land exchanges actually contemplate these kind of multi-stage transactions, including third-party transactions like this. It has not been challenged in Idaho; we do not have an Idaho case law under Idaho statutes and Idaho's constitutional provisions relating to the disguised sale issues. We have flagged those issues in the past to the Board because other states who have similar constitutional provisions have looked at and found these types of transactions to pose that type of legal risk. What this presents for the Board is a question of a case of first impression in Idaho and the legal risks associated with that. At the time this comes before the Board we will have provided the Board with that legal analysis of risk versus reward and then the Board will be able to make a policy decision on whether or not to move forward with this proposal in light of that analysis, but as outlined, at least at this stage, the reward is potentially significant to the endowments in the sense that we may be getting effectively something for nothing. That is our analysis at this stage.

Board Action: A motion was made by Controller Woolf that the Land Board adopt the Department's recommendation and approve proceeding with due diligence for the Brisbie land exchange proposal. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3.0.

10. Carey Act Lands Transfer (Idaho Department of Water Resources) – Presented by Mark Cecchini-Beaver, Deputy Attorney General, IDWR

Recommendation: 1. Accept conveyance of Parcels 1, 2, and 3 from IDWR; and 2. Convey Parcels 1, 2, and 3 via state deeds to the United States acting through the Department of Interior, Bureau of Land Management.

Discussion:

Governor Little: Full disclosure, I know a little bit about the 40 acres in Gem County, a family member runs livestock on it; I have been on it. Part of it has the Black Canyon canal through it,

part of it is below the canal. I am looking at a map of it right now, it shows on the county maps that it is state land right now.

Mark Cecchini-Beaver: Correct.

Governor Little: But in essence, because it is Carey Act land, we are going to get it and give it to the BLM, is that correct?

Mr. Cecchini-Beaver: Correct, that would be the net effect of this.

Governor Little: There are no issues with the right of way for the Emmett Irrigation District canal that goes across it? There is a power line across it also.

Mr. Cecchini-Beaver: Governor, members of the Board, no, there are no issues related to those.

Board Action: A motion was made by Controller Woolf that the Land Board adopt the Department of Water Resources' recommendation to accept the conveyance of Parcels 1, 2, and 3 from IDWR; and convey Parcels 1, 2, and 3 via state deeds to the United States acting through the Department of Interior, Bureau of Land Management. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

Information

None

Executive Session

None

There being no further business before the Land Board, at 10:22 a.m. a motion to adjourn was made by Controller Woolf. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

