



Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board

Phil McGrane, Secretary of State

Raúl R. Labrador, Attorney General

Brandon D Woolf, State Controller

Debbie Critchfield, 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

March 21, 2023

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, March 21, 2023 at the Boise City Council Chambers, Boise City Hall, 3rd Floor, 150 N. Capitol Blvd., Boise, Idaho, and via webinar. The meeting began at 9:01 a.m. The Honorable Governor Brad Little presided. The following members were in attendance:

Honorable Governor Brad Little
Honorable Secretary of State Phil McGrane
Honorable Attorney General Raúl Labrador
Honorable State Controller Brandon Woolf
Honorable Superintendent of Public Instruction Debbie Critchfield

For the record, all Land Board members were present. Governor Little, Secretary of State McGrane, and Attorney General Labrador attended at the physical location; Controller Woolf and Superintendent Critchfield attended via Zoom webinar.

Deputy Director Bill Haagenson was acting Secretary to the Board, sitting in for Director Dustin Miller. Mr. Haagenson introduced a group of new employees in town for onboarding, which includes the opportunity to attend a Land Board meeting, and asked those employees to stand up and be recognized. Governor Little welcomed everyone.

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

Regular—Action Item(s)

1. Brisbie LLC Land Exchange-Final Approval – Presented by Zane Lathim, Program Specialist-Real Estate

Recommendation: Approve the exchange and direct the Department to complete and close the as-proposed Brisbie, LLC land exchange.

Discussion:

Attorney General Labrador: This does not make any sense to me. You spent a great deal of time explaining to us why it is beneficial to the state to acquire the property in the north, but what is going to be the hidden cost to the state to convey these mineral rights and other things. You

claim there is going to be a tax benefit to the conveyor? It seems like such an uneven exchange that there is something we are not hearing about. I am trying to figure this out.

Mr. Lathim: Brisbie LLC is the land holding entity for Meta, more commonly known as Facebook. Meta is constructing a large data center at considerable expense, in the hundreds of millions of dollars. Brisbie's mission is to provide a property with the certainty of full fee title to Meta for the construction of the facility. Brisbie feels that the certainty of a consolidated estate on their property in Ada County is equitable with the value of the land that they are trading to us.

Attorney General Labrador: What is going to be the cost to the state in tax benefits to Meta because of the land exchange?

Deputy Director Haagenon: In terms of the lands we would acquire, the tax impact to the county for 125 acres of timberland would be in the range of \$3-4 per acre per year. The tax impacts on the acquired parcel in Ada County, I cannot answer how they will be taxed moving forward under that ownership.

Attorney General Labrador: We do not know those tax implications but what is the state going to be giving this company in benefits once they acquire all this land and they start building. We always hear about the economic impact, but there is always a cost to the state when we give tax benefits and other things to large corporations; do we know what that benefit is going to be?

Deputy Director Haagenon: A difficult question to answer because that is outside of our domain, what happens with other benefits or tax issues related to the future of that data center.

Governor Little: This is a large capital-intensive project. What has happened in other areas is somebody will come in from outside, buy the mineral rights, and then the purchaser of those mineral rights will wrest money out of the person doing the capital project to either politically stop it or to wring money out them. This looks like a really unbalanced exchange, but it is a half-billion-dollar project and that is why they are donating part of the value back; they are paying an ample sum to have the surety that nobody can stop their project.

Attorney General Labrador: One more follow up, who owns the mineral rights and who owns the surface rights?

Mr. Lathim: The State of Idaho owns the mineral rights on the 205-acre parcel in Ada County, and Brisbie LLC owns the surface rights.

Secretary McGrane: It was good that you presented it as more of a donation. I am inclined to support it because clearly it is in the best interest of the beneficiaries to add an additional 125 acres. Looking back at the meeting minutes from September, it felt more equitable because it did not talk about the relative values, just 125 acres versus 205 acres of mineral rights, whereas now we have the appraisals, and it is well over 100 times difference. I can appreciate where having fee simple title is valuable to the landowner in this case. When you look at the law and the constitution as it relates to land exchanges, it infers a sense of equity to make sure that the beneficiaries are not duped in any way, in any of these exchanges. This does seem beneficial to the state, but it also seems strange.

Controller Woolf: I am looking at Attachment 3, on the exchange part, does that border other state land or is that U.S. Forest Service land?

Mr. Lathim: The Brisbie property that we will be trading into is bordered on the east and west sides by existing endowment land.

Controller Woolf: I appreciate the good questions and the dialogue. One thing, from the Western Watersheds case, is that we must take into consideration only what is in the best interest of the beneficiaries. We cannot consider anything else.

Superintendent Critchfield: I appreciate the discussion and the understanding that as someone that owns land you would have a reasonable expectation that you would own everything that belongs within that parcel of land, so this seems fair and reasonable.

Board Action: A motion was made by Superintendent Critchfield that the Land Board approve the Department to move forward with the exchange. Controller Woolf seconded the motion. The motion carried on a vote of 4-1; Attorney General Labrador cast the opposing vote.

2. Benewah Land Exchange-Due Diligence Approval – *Presented by Zane Lathim, Program Specialist-Real Estate*

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

Discussion:

Governor Little: For the new Land Board members, we have done exchanges in the last few years where Benewah County has been a loser. We have taken private land and made it state land, and in my mind even though we have a constitutional obligation to do each one of these an arm's length transaction, if I had my druthers between helping a county that we have taken property away from them, I am going to default to that, because Benewah County has been a loser two of our last land exchanges, I think.

Deputy Director Haagenon: Yes, well acquisitions, Governor; two acquisitions.

Governor Little: Commissioner Short, do you want to briefly add anything?

Commissioner Short: Yes, Governor. Currently the property that we talk about trading to the state, we have not collected any taxes on it since 1943, and the county has no rock pits of their own. We are trying to correct that and help the saddle club with their lease and that type of thing so people can use that property.

Secretary McGrane: As a county person, I appreciate your comments, Governor. If there is balancing to be pursued, I would favor us acquiring more lands than less even if that requires funding from the land bank to get the right balance. I want to make sure that the county is whole in this process, but that fits in with what Commissioner Short said. Whatever we can do to help facilitate what the county needs, and more land seems better for us in the long term.

Controller Woolf: Based on our previous agenda item dealing with minerals and leases, any idea how much we are earning off the current leases, the rodeo grounds and rock quarry?

Mr. Lathim: We are in the \$500-600 per year range for both of those, so \$1,000-\$1,200 a year.

Board Action: A motion was made by Secretary of State McGrane that the Land Board authorize the Department to proceed with due diligence on the Benewah County land exchange. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

3. Negotiated Rulemaking IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners – *Presented by Scott Phillips, Policy and Communications Chief*

Recommendation: Authorize the Department to initiate negotiated rulemaking for IDAPA 20.01.01 *Rules of Practice and Procedure Before the State Board of Land Commissioners*.

Discussion:

Attorney General Labrador: Is this the usual rulemaking process, are we making amendments to the rulemaking process, does the Land Board usually give you this much authority? I just want to understand all those things.

Mr. Phillips: This is very consistent with how we have done rulemaking in the past. We routinely go to the Board per the Governor's Zero-Based Regulation 5-year schedule. We review 20% of our rules every year; we come to you seeking authorization to begin the negotiated process. We go through the public process, and we bring the results of that process back to the Board for adoption as a pending rule. This is business as usual for us.

Attorney General Labrador: During this rulemaking process, do my attorneys participate with you in this process? I would feel more comfortable if Scott Campbell and others are helping with this so we can look at the rulemaking process from the legal perspective.

Mr. Phillips: Yes, our deputy attorneys general are part of the process. We started working with Angela Kaufmann last year on understanding the sideboards of the Board's authorities versus House Bill 629. We also met with the staff from Idaho Office of Administrative Hearings, and your attorneys will be part of our process as well.

Superintendent Critchfield: I understand the public comment requirement within the rulemaking process; explain what that looks like from the Land Board perspective.

Mr. Phillips: As we enter the negotiated rulemaking process, we will post information about the rulemaking on social media, we will include information on our website, we have outreach lists of interested parties that we maintain that we will be emailing about the effort, we will invite those folks to provide comment, we will invite them to the public meetings that we hold, and then we will review that information vis-à-vis the draft that we develop and make changes that are appropriate to the draft of the rulemaking.

Superintendent Critchfield: Will those notes and meeting summaries be available to us?

Mr. Phillips: Yes, they will be posted to our website for all citizens to review.

Board Action: A motion was made by Secretary of State McGrane that the Land Board authorize the Department to initiate negotiated rulemaking. Superintendent Critchfield seconded the motion. The motion carried on a vote of 5-0.

Consent—Action Item(s)

4. **Timber License Plate Fund** – Presented by Jennifer Okerlund, Director, Idaho Forest Products Commission

Recommendation: Direct the Department to proceed with the recommended educational projects developed jointly with the Idaho Forest Products Commission.

Discussion:

Controller Woolf: Thank you, Jennifer. In the past, we participated with the Forest Products group in a political or new leaders' tour. I noticed just the education tour for this year. Is there an opportunity for that to come back or did we lose interest in that?

Jennifer Okerlund: This year, due to budget constraints, the commission, which typically puts on an exceptionally large opinion leader tour, was forced to remove that from our general budget, which off-set our small request for use of the timber plate fund. We are hoping to bring that back in future years as our budget balances. We will be working with the Department of Lands, helping them pull together a smaller tour for leaders this year.

Controller Woolf: Thank you. It was a valuable thing for me when I first came on the Board and it was helpful to learn all about, not just from the Land Board's perspective, the whole forest products industry.

5. **Disclaimer of Interest Request DI600323-Horseshoe Bend Schools, Payette River** – Presented by Mick Thomas, Division Administrator-Minerals, Navigable Waters, Oil and Gas

Recommendation: Direct the Department to issue a Disclaimer of Interest for one parcel totaling 11.579 acres of the former bed of the Payette River to Horseshoe Bend School District #73 following their payment to the Department of the remaining processing fee of \$300.

Discussion:

Superintendent Critchfield: Is it typical practice, in this case where we are doing business with the school district, to charge them processing fees? I know it is only \$300, but, nonetheless.

Mr. Thomas: We do not delineate the fee coverage between schools or private industry or anyone else in that way.

6. **Approval of Draft Minutes** – February 21, 2023 Regular Meeting (Boise)

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

For the record, Superintendent Critchfield left the meeting at approximately 9:42 a.m. to attend other business.

7. Department Report – Presented by Bill Haagenson, Deputy Director

Trust Land Revenue

A. Timber Sales – February 2023

Discussion:

Secretary McGrane: This is more of a learning moment for me, I noticed compared to last month's board meeting we are down. Does that mean certain contracts were completed?

Deputy Director Haagenson: If the volume under contract went down, that would mean that sales had closed.

Governor Little: Would you have your timber staff look at the inland composite lumber price and measure that to our species. You see these up-bids on cedar; if we have a lot of cedar, we should be exceeding that. How our bogey that we are measuring against, how that matches up with our species composition and distance from mills, and high lead, and the other things. A report on that next month would be great.

Deputy Director Haagenson: Governor, cedar is a major driver for us; we will try to put some data together for you.

Governor Little: We implemented a plan two years ago and hired new foresters to get more of the harvest done. How does that match up with the graph that shows that we are the same volume as we were two years ago before we added foresters to get more volume.

Deputy Director Haagenson: The Board approved our new Forest Asset Management Plan in 2019. The Department saw ahead of time that our recommended harvest level was likely to go up and we started two years before to incrementally ramp up towards that new level. We did the FAMP and brought that forward for Land Board approval; we are now in year four of the implementation of that FAMP, selling 326 million board feet. Next year we are going to 328 million board feet and that would complete our implementation, coincidentally just in time to start the process again. But it takes time for that; each timber sale contract can have a period of two to four years and it takes time for that additional volume to move through the system and be realized as revenue.

B. Leases and Permits – February 2023

Discussion:

Governor Little: My one question is actual receipts versus revenue expected. Commercial military facilities are eight times what we forecast; what are we not getting right with our forecasting.

Deputy Director Haagenson: It varies by category, but speaking specifically about commercial and military, we did have about \$83,000 in land use permits for new uses and other activities that we are now working to get under lease. Those new activities would not have been captured at that time in our forecast.

Governor Little: Do we know they are coming?

Deputy Director Haagenon: It depends, Governor. If we know they are coming and have relative certainty that they are going to be realized, we would include them in the forecast.

Controller Woolf: Last year we saw a big uptick on the sand and gravel. Seems like it is down a little bit this year. Is that just what the market is driving?

Deputy Director Haagenon: Last year was a highly active year in the construction world with heavy demand for that resource and that has dipped a little bit this year.

Status Updates

C. Legislative Summary

Discussion: None.

8. Endowment Fund Investment Board Report – Presented by Chris Halvorson, EFIB Investment Officer

A. Manager's Report

B. Investment Report

Discussion:

Chris Halvorson: Good morning, Governor Little and Land Board members. Exhibit A, the monthly status report to the Land Board, for the month of February the fund was down 2.1% making our fiscal year return 5.8%. The markets have been off a little bit in March; our month-to-date number is -1.5%, fiscal year-to-date return 4.25%. The Federal Reserve has been raising rates up until recently; during the month of February up almost 4% on the 10-year Treasury, which is the gauge of the bond market. Inflation went from 6.4% to 6%. It is the same old story, trying to fight inflation with higher interest rates and making that balancing act of not slowing the economy down into a recession. In March we had a bank crisis, the most notable one is Silicon Valley Bank in California. Just a quick reminder, banks take in deposits and then they loan out money. They hold a fraction of their money in reserve to offset loans when they go down in value. Many loans lately have been written down; as loans go down in value, reserves must go up at the banks. For banks to make any kind of earnings, they have had to portfolio long-dated securities. A long Treasury a year or two ago was yielding 2% or 2.5%. Now you can get over 5%, a big shift in rates. This has really impacted banks, and the bank problem has been compounded by the frequency of valuation on their bank loan portfolios. We look at our securities daily, they report their assets either quarterly or semi-annually. What has happened? Silicon Valley went to receivership, and they are going to sell off their assets. For certain bond holders, there will be recovery of funds. Silicon Valley Bank also had equity; they had a stock listing. The endowment fund had Silicon Valley exposure in the equity market through index funds, around 0.3% of the index. Our exposure to these banks for equities is very small, \$400,000; we had a \$280,000 bond hold by Western Asset Management for Silicon Valley Bank and that currently is valued at about 50 cents on the dollar. Securities have been stressed in banks. After a week of digesting the quality of the banks and the earnings and how strong the reserves are, bank stocks are doing well; it is as if the crisis has passed, but there has been more scrutiny on the finances and the reserves of banks. Back to the Silicon Valley example, they knew they were running into a crisis with reserves, they had lined up investors but the investors at the last minute backed out because they could not raise enough capital to keep the bank going. That is what happened with Credit Suisse in Switzerland. They had investors lined up, they got an investment over the

weekend, but it was not substantial enough to keep the bank afloat, so the Swiss government intervened and forced the merger of UBS Bank and Swiss Bank in Europe. The endowment fund did not have any equity exposure to Swiss Bank. It is interesting that the Swiss Bank shareholders are going to recover some of their assets; they have a fixed exchange rate of equity for equity. Each Swiss Bank shareholder is going to get 22.48 shares for each Credit Suisse Bank share held; currently each Credit Suisse share is worth about a dollar. The equity did not get wiped out, but what got wiped out at Credit Suisse is AT1 capital, additional paid in, tier 1 capital. They go to the capital markets to get this money, but it is deemed absorbable for losses, and that was totally wiped out. We do have Credit Suisse bonds and those are all going to UBS.

Attorney General Labrador asked about the green versus the red on Exhibit B. We measure the performance of the fund relative to benchmark. For example, on the current month the total fund was -2.1% for February, but the benchmark was -2.4%; when we beat the benchmark the color is green. When we are behind the benchmark, the color is red. It is a quick way to say green, we are doing well, or red, there are performance issues.

Governor Little: Besides State Street, who does your fixed income?

Mr. Halvorson: We have two types of fixed income management throughout our portfolios. Just a reminder for Land Board members, we also advise the funds of the State Insurance Fund. The State Insurance Fund is a combination of both passive fixed income index funds and active fixed income in areas of securitized credit, which would be mortgages and credit card receivables, and things like that. Our active managers are Western Asset Management in California and DoubleLine. We have money at State Street, passively managed. Total fixed income, as you can see on Exhibit B, page 1, about three-quarters of the way down, we have \$645 million in fixed income. About a third of that is passive and the rest of it is active.

Attorney General Labrador: You explained this a little bit, but what exactly is our exposure on bank holdings right now?

Mr. Halvorson: Our current exposure is we have about \$3 million of Credit Suisse bonds which will go to UBS. Those should be money good; those are fine. On Silicon Valley Bank, last week we had about \$830,000. Most equity positions have been sold. We are going to unfortunately take a market value loss on our equities. The bonds, which are \$380,000 par, are worth about half of that. That is in an active manager account. The manager will take discretion on when to dispose of those assets, which will favor us the best.

Secretary McGrane: Last month I asked about the comparison to benchmark on real estate and this month I noticed we got rid of the benchmark on real estate. That seems like a solution, maybe not the long-term best solution. I am wondering if we will get a new benchmark.

Mr. Halvorson: I am glad you brought that to my attention. The problem with real estate is it is valued once a quarter, and everything works with a lag. We measure real estate to a benchmark, but the benchmark data is available fast. There is a lag time difference, which could be up to a quarter, between the benchmarks and the actual manager performance. When we had that in the report last month, it was a quarter behind manager return with the current benchmark; it looked bad. That is not a fair comparison of apples to apples. When the benchmark numbers are solid and reportable, we will put them back in the report, which will probably be next month. There is something developing in real estate in that real estate funds are now getting valued

once a month. I expect that the indexes are going to have to keep up with the managers and those valuations will become timelier and not have these lag effects. This is a big issue with private equity as well, which is even worse because that is valued on when they do a deal. There are not particularly good comps out there for valuations. We are doing our best, but we did not want to unfairly portray the situation with those lags. On this report, we take all our data from our custodian. Our custodian, Northern Trust, is the official book and record of our assets. We do not want to just put some number in there. We want to use the official numbers from our custodian Northern Trust.

Information

9. 2024 Grazing Lease Rate – Presented by Jason Laney, Section Manager-Real Estate/Leasing

Discussion:

Secretary McGrane: I have been told that there is a lag related to the market to how our calculation based on the 1993 formula operates. You can appreciate the struggle here when we see inflation rising dramatically in every sector and we are seeing a decrease in our lease rates.

Jason Laney: I agree with that assessment. The lag time is primarily due to the indices that we are using, from 2022 USDA reports. There is some inflation captured in those numbers. Part of the reason we have that lag time is a mandate in rule that we are to notify lessees within 6 months of a rate increase. Those two factors result in a two-year lag in our grazing rate.

Attorney General Labrador: Explain why a Prices Paid Index increase results in a lower price in lease rate.

Mr. Laney: It is how the formula is structured. An increase in the Prices Paid Index will decrease that rate. Cattle prices and forage prices will increase the rate. An increase in the Prices Paid Index is more heavily weighted, and even if we see a significant increase in cattle prices, it sometimes does not offset the Prices Paid Index when prices really go up.

Secretary McGrane: I am assuming we do not see that with private leases, when someone is grazing private ground that it would not decrease in this type of circumstance, would it?

Mr. Laney: We have private lease rate numbers that are reported by the USDA every year. They are self-reported by folks that graze, in a survey that is sent out annually. We have seen that the private lease rate steadily ticks up or stays stable year to year. For example, in 2022 and 2021 it was \$19 per AUM. It was \$18.50 in 2020.

10. Disclaimer of Interest Delegation of Authority – Presented by Mick Thomas, Division Administrator-Minerals, Navigable Waters, Oil and Gas

Discussion:

Secretary McGrane: Is it necessary, based on legal review, when the proposed right-of-way is greater than 25-foot? From my perspective it seems fine if we have a greater right-of-way.

Mr. Thomas: Anything outside of the 25 foot requires Land Board approval.

Controller Woolf: Back in 2014 we did something similar with timber sales. All the timber sales used to come before the Land Board, and we set up criteria that if there are certain circumstances met then the Department needs to bring those before the Board. I like this concept, if there are certain criteria met then they would need to come before us.

Secretary McGrane: Just for education, why the increase in disclaimers of interest?

Governor Little: Real estate is worth more money.

Mr. Thomas: Governor Little nailed it. There is more real estate activity now in Idaho. As people want to sell that property, they realize there is a clouded title, and they want to resolve it.

Secretary McGrane: More just for education on my part, I follow the disclaimer of interest and the navigable waterways. If the waterway shifts such that it consumes private land, what happens in the inverse?

Mr. Thomas: Normally if the channel moves, there is give and take. Accretion is unpredictable but it takes a while. In this case, there is a significant amount of property, 11 acres or so, that became upland. Often with disclaimers, there is a give and take where we have gained property. We would gain property on the other side of the river for example.

11. Master Fire Agreement Update – Presented by Craig Foss, State Forester and Division Administrator-Forestry and Fire

Discussion:

Secretary McGrane: Just to confirm your closing there, it seems like you are at a meeting of the minds, you are just ironing out the final details. For the next five years, after your two years of negotiations, we are finally here.

Craig Foss: That is correct. This will be a five-year agreement from the date of signing.

Governor Little: When we do these swaps, is there real estate in Idaho where previously the Department of Lands was in charge of initial attack, but the Forest Service is going to be in charge of initial attack, and they may decide we are going to let the fire burn. What is our risk there?

Mr. Foss: There are areas in this proposed agreement where we had been protecting federal lands through offset. Now those lands will go back under federal protection. That is a conversation that we had intensely through our negotiations process. It is my understanding that they are aware of the different land ownerships around their lands and, while they do have areas where they have special management objectives, it is certainly our expectation there will be aggressive initial attack.

Governor Little: When the Department comes to the Land Board about their next budget recommendation are we going to have to deploy more resources to cover this added real estate that we will be responsible for?

Mr. Foss: After the really bad 2015 fire season, we were given money to conduct an analysis of our fire program. We said we would hold off on requesting additional resources for our program until we had that analysis. Once we got that analysis, we put together a series of requests. This

