

State Board of Land Commissioners Open Meeting Checklist

Meeting Date: March 21, 2023

Regular Meetings

3/10/2023	Meeting Notice posted in prominent place in IDL's Boise Director's office five (5) or more calendar days before meeting.
3/10/2023	Meeting Notice posted in prominent place in IDL's Coeur d'Alene staff office five (5) or more calendar days before meeting.
3/10/2023	Meeting Notice posted in prominent place at meeting location five (5) or more calendar days before meeting.
3/10/2023	Meeting Notice published on Townhall Idaho website https://townhall.idaho.gov five (5) or more calendar days before meeting.
3/10/2023	Meeting Notice posted electronically on IDL's public website https://www.idl.idaho.gov five (5) or more calendar days before meeting.
3/17/2023	2nd Revised Agenda posted in prominent place in IDL's Boise Director's office forty-eight (48) hours before meeting.
3/17/2023	2nd Revised Agenda posted in prominent place in IDL's Coeur d'Alene staff office forty-eight (48) hours before meeting.
3/17/2023	2nd Revised Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
3/17/2023	2nd Revised Agenda published on Townhall Idaho website https://townhall.idaho.gov forty-eight (48) hours before meeting.
3/17/2023	2nd Revised Agenda posted electronically on IDL's public website https://www.idl.idaho.gov forty-eight (48) hours before meeting.
1/3/2023	Land Board annual meeting schedule posted – Boise Director's office, Coeur d'Alene staff office, and IDL's public website https://www.idl.idaho.gov .

Special Meetings

	Meeting Notice and Agenda posted in a prominent place in IDL's Boise Director's office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted in a prominent place in IDL's Coeur d'Alene staff office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted at meeting location twenty-four (24) hours before meeting.
	Meeting Notice and Agenda published on Townhall Idaho website https://townhall.idaho.gov twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted electronically on IDL's public website https://www.idl.idaho.gov twenty-four (24) hours before meeting.
	Emergency situation exists – no advance Meeting Notice or Agenda needed. "Emergency" defined in Idaho Code § 74-204(2).

Executive Sessions *(If only an Executive Session will be held)*

	Meeting Notice and Agenda posted in IDL's Boise Director's office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted in IDL's Coeur d'Alene staff office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted at meeting location twenty-four (24) hours before meeting.
	Meeting Notice and Agenda published on Townhall Idaho website https://townhall.idaho.gov twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted electronically on IDL's public website https://www.idl.idaho.gov twenty-four (24) hours before meeting.
	Notice contains reason for the executive session and the applicable provision of Idaho Code § 74-206 that authorizes the executive session.

Renee Jacobsen

Recording Secretary

March 17, 2023

Date



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

NOTICE OF PUBLIC MEETING MARCH 2023

The Idaho State Board of Land Commissioners will hold a Regular Meeting on Tuesday, March 21, 2023 in the **Boise City Council Chambers, Boise City Hall, 3rd Floor, 150 N. Capitol Blvd., Boise**. The meeting is scheduled to begin at 9:00 AM (Mountain).

Directions: Enter City Hall from Capitol Blvd.; take the Capitol Boulevard elevators to the 3rd floor; Council Chambers are directly across from the elevators.

The State Board of Land Commissioners will conduct this meeting in person and by virtual means. This meeting is open to the public. No public comment will be taken.

Meeting will be streamed live via YouTube:

<https://youtube.com/live/sXig9ISVzr4?feature=share>

Members of the public may register to attend the Zoom webinar through this link:

https://idl.zoom.us/webinar/register/WN_rPT3rINuQVqNWI55_nnLMg

First Notice Posted: 3/10/2023-IDL Boise; 3/10/2023-IDL CDA

This notice is published pursuant to Idaho Code § 74-204. For additional information regarding Idaho's Open Meeting law, please see Idaho Code §§ 74-201 through 74-208.

Idaho Department of Lands, 300 N 6th Street, Suite 103, Boise ID 83702, 208.334.0242



Idaho State Board of Land Commissioners

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State Board of Land Commissioners Regular Meeting

March 21, 2023 – 9:00 AM (MT)

Second Revised Final Agenda

Boise City Council Chambers, Boise City Hall, 3rd Floor, 150 N. Capitol Blvd., Boise

Directions: Enter City Hall from Capitol Blvd.; take the Capitol Boulevard elevators to the 3rd floor; Council Chambers are directly across from the elevators.

The State Board of Land Commissioners will conduct this meeting in person and by virtual means. This meeting is open to the public. No public comment will be taken.

Meeting will be streamed live via YouTube: <https://youtube.com/live/sXjg9ISVzr4?feature=share>

Members of the public may register to attend the Zoom webinar through this link:

https://idl.zoom.us/webinar/register/WN_rPT3rINuQVqNWI55_nnLMg

Regular—Action Item(s)

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

Consent—Action Item(s)

4. **Timber License Plate Fund** – Presented by Jennifer Okerlund, Idaho Forest Products Commission
5. **Disclaimer of Interest Request DI600323-Horseshoe Bend Schools, Payette River** – Presented by Mick Thomas, Division Administrator-Minerals, Navigable Waters, Oil and Gas
6. **Approval of Draft Minutes** – February 21, 2023 Regular Meeting (Boise)

State Board of Land Commissioners

Final Agenda-v0317.1

Regular Meeting – March 21, 2023

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

Trust Land Revenue

- A. Timber Sales – February 2023
- B. Leases and Permits – February 2023

Status Updates

- C. Legislative Summary

8. Endowment Fund Investment Board – Presented by Chris Anton, Manager of Investments

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

Information

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

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

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

Executive Session

None

IDAHO DEPARTMENT OF LANDS



Idaho Statutes

Idaho Statutes are updated to the web July 1 following the legislative session.

TITLE 74
TRANSPARENT AND ETHICAL GOVERNMENT
CHAPTER 2
OPEN MEETINGS LAW

74-206. EXECUTIVE SESSIONS – WHEN AUTHORIZED. (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;

(c) To acquire an interest in real property not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law;

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement; or

(j) To consider labor contract matters authorized under section 74-206A (1) (a) and (b), Idaho Code.

(2) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this chapter to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

(4) If the governing board of a public school district, charter district, or public charter school has vacancies such that fewer than two-thirds (2/3) of board members have been seated, then the board may enter into executive session on a simple roll call majority vote.

History:

[74-206, added 2015, ch. 140, sec. 5, p. 371; am. 2015, ch. 271, sec. 1, p. 1125; am. 2018, ch. 169, sec. 25, p. 377; am. 2019, ch. 114, sec. 1, p. 439.]

STATE BOARD OF LAND COMMISSIONERS

March 21, 2023

Regular Agenda

Subject

Final approval for the Brisbie, LLC land exchange

Question Presented

Shall the Land Board authorize the Department to complete the land exchange with Brisbie, LLC?

Background

In July 2022, the Idaho Department of Lands (Department) received an application for a land exchange from Brisbie LLC (Brisbie). Brisbie is proposing to exchange 125 acres of timberland it has the contractual option to purchase in Shoshone County (Brisbie Property), for 205 acres of mineral estate-only on former endowment land located in Ada County near the City of Kuna (Mineral Estate).

On September 20, 2022, the State Board of Land Commissioners (Land Board) approved the request to proceed with due diligence (Attachment 1).

Upon receiving approval from the Land Board, the Department completed the due diligence analysis required for the Brisbie land exchange. The due diligence included financial analysis, encumbrance review, public comment, Member of the Appraisal Institute (MAI) appraisals, review of the MAI appraisals, and an independent third-party analysis completed by the Land Board's Real Estate Advisor, Michael Finch of CenturyPacific, LLLP. The review completed by Mr. Finch (Attachment 2) recommends the land exchange and notes, "...exchanging the Endowment Property for the Brisbie Property – a contiguous 125-acre timberland property – appears to be financially and operationally advantageous to the State of Idaho. The proposed exchange appears to be accretive to the Land Board and affords the exchanging parties to derive unique value due to the characteristics of the property exchanged (location, access, contiguity, perfection of title, etc.). CenturyPacific is of the opinion that the proposed land exchange is beneficial to the Land Board."

All neighboring landowners were informed of the land exchange by certified letter and were invited to submit comments. None of the adjacent landowners replied to the request for comment. Meetings were held with Shoshone County Commissioners on October 18, 2022, and Ada County Commissioners on October 25, 2022. Shoshone County Commissioners were concerned with the reduction in tax base but did not submit a letter in opposition to the proposed land exchange. Ada County Commissioners were neutral on the proposed land exchange as it will not have a negative effect on the Ada County tax base.

Discussion

Brisbie Property

The Brisbie Property consists of 125 acres of timberland in Shoshone County. The land is contiguous and bordered by existing endowment land as seen on the ownership map (Attachment 3). Brisbie does not currently own the property, but they have the contractual option to purchase the property and will close the purchase of the property prior to or simultaneously with the closing of the proposed land exchange.

The Brisbie Property was appraised by Joseph L. Torzewski, MAI, of Stout's Services on March 3, 2023. The market value of the property as determined using the sales comparison approach is \$1,000,000. An appraisal review was performed by Joel Baxley, MAI of RSM US, LLP, on March 3, 2023, which supports Mr. Torzewski's analysis and value conclusion.

The Department's Timber Bureau evaluated the timber on the proposed Brisbie Property and had this to say: "This acquisition will accelerate the harvest of IDL's current asset, removing over-mature stands and replacing them with newly regenerated stands that will improve long-term productivity. The property had a recent precommercial thinning and no further investments will be necessary until the next rotation." The Timber Bureau calculates the value of the timberland to be \$591,468.96. The discounted cash flow model does not include the value for the underlying bare land value, which underestimates the overall property value.

Endowment Mineral Estate

The endowment Mineral Estate proposed for exchange consists of approximately 205 acres. The Mineral Estate was reserved to the State of Idaho upon conveyance of the surface rights from the State to private ownership in 1940 and 1937. The Mineral Estate is in Ada County near the City of Kuna (Attachment 4). The Mineral Estate does not include sand and gravel or geothermal resources. The State has never leased the subject Mineral Estate.

The Mineral Estate was appraised by Joseph L. Torzewski, MAI, of Stout's Services on March 3, 2023. The market value of the Mineral Estate is \$6,400, mainly due to the low possibility of oil and gas deposits. An appraisal review was performed by Seun Olatoya-Ojo, MAI, of RSM US, LLP on March 3, 2023. The appraisal review supports Mr. Torzewski's analysis and value conclusion.

Mr. Torzewski's report concludes the following concerning the Mineral Estate on the former endowment property: "The analysis of the area geology, an examination of active and historic leases, and the analysis of subsurface deposits in the East Kuna North Site by Brown and Caldwell shows that there is no potential for non-energy leasable minerals and coal within the Project Area. The likelihood for oil and gas development is consider low at best." And "A review of mineral developments near the Project Area and the geology of the Project Area shows that the only locatable minerals in the vicinity are in sedimentary deposits not the basalt that is found in the Project Area. This and the lack of locatable minerals found by

Brown and Caldwell, indicates that there is no potential for mining of locatable minerals in the Project Area."

While the market value of the Mineral Estate is very low in comparison with the Brisbie Property, the unique *recognized* value of a consolidated estate and the perfection of title to Brisbie LLC is relevant when considering whether this exchange is an even value land exchange. The recognized value to Brisbie LLC is such that they consider the property rights involved in this land exchange to be equitable, even though the difference in market value will be treated as a donation to the endowment.

Benefits to the Endowment

The Brisbie Property is adjacent to existing endowment land. The Department's Timber Bureau reports the following regarding the benefits of the exchange in terms of increased management efficiency: "Acquisition by IDL would help block up lands and allow for more efficient management of the ownership in the area. There are approximately 3,500 acres of Endowment land in the immediate vicinity of this parcel that use the same road system for hauling of forest products. The property would provide access across 2,600 feet of roadway to approximately 1,100 acres of current Endowment timberland."

Completing this land exchange will trade a low value, non-performing asset for a high value timber asset that will generate revenue for future generations.

Based on the review of the due diligence and the potential benefits to the endowment, the Department recommends completing the proposed Brisbie land exchange.

Recommendation

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

Board Action

Attachments

1. September 20, 2022 Approved Memo
2. CenturyPacific Review/Recommendation
3. Brisbie Parcel Map
4. Endowment Mineral Estate Map

STATE BOARD OF LAND COMMISSIONERS

September 20, 2022

Regular Agenda

Subject

Request approval to proceed with due diligence for Brisbie land exchange.

Question Presented

Shall the Land Board authorize the Department to proceed with due diligence for the proposed land exchange?

Background

In July 2022, the Idaho Department of Lands (Department) received an application for a land exchange from Brisbie, LLC (Attachment 1). Area staff and Department leadership have reviewed the proposal and believe it warrants further formal evaluation via the due diligence process.

Brisbie, LLC is proposing to exchange 125 acres of land it has the contractual right to purchase in Shoshone County for 205 acres of endowment mineral estate only on former endowment land (referred to as "mineral estate").

The mineral estate proposed for exchange consists of approximately 205 acres in Ada County near the town of Kuna. The mineral estate on this land was reserved to the State of Idaho upon conveyance of the property from the State to private ownership in 1937 and 1940. A map of the mineral estate (Attachment 2) is attached.

The Brisbie property consists of 125 acres in Shoshone County. The land is contiguous as seen on the existing ownership map (Attachment 3). The land exchange would add to a block of approximately 1,000 acres of endowment timberland.

Discussion

This proposed land exchange would improve the long-term value and help block up endowment timberland.

Specific benefits of the exchange include:

- **Return on Asset:** While a return on asset (ROA) cannot be finalized until due diligence work is completed, it is anticipated that the long-term ROA for the Brisbie property as timberland will be higher than the mineral estate. The mineral estate does not include sand and gravel or geothermal resources. Also, the mineral estate does not contain commercially valuable mineral deposits. The State has never leased the mineral estate.
- **County Tax Assessments:** As a result of the proposed exchange, there would be an estimated one time \$800 reduction to Shoshone County tax rolls due to the state's

exemption from property taxes. As part of the due diligence process, the Department will seek comments from the Shoshone County Commissioners.

Upon Land Board approval, the next steps for the land exchange would be for the Department to perform due diligence consistent with the following and Attachment 5:

- Review the preliminary title report to confirm the legal descriptions and the current exceptions to title on the properties.
- Complete a Phase 1 Environmental Site Assessment to review the environmental history of the property. The report is intended to identify actual and potential problems based on a review of historical documentation, regulatory agency databases, and a physical on-site investigation.
- Verify the properties have legal access.
- The properties with merchantable timber will require a timber cruise to determine the species, quality, and quantity of harvestable timber. Sufficient data must be obtained to create a statistically reliable sample for the timber modeling.
- Review the existence of any endangered species at the site. The presence of threatened/endangered species can significantly reduce the value of a property.
- A real estate appraisal will be completed by a Member of the Appraisal Institute (MAI) appraiser to determine the market value for the property. Appraisals will be reviewed by a second MAI appraiser to verify the report meets Uniform Standards of Professional Appraisal Practice (USPAP).
- Review the recorded surveys, verify survey pins are placed at the corners, and determine if there is a need to order a survey.

Based on the review of the due diligence, the Department leadership will approve or terminate the land exchange for further consideration. If Department leadership approves, it will be brought back to the Land Board for approval to proceed.

Recommendation

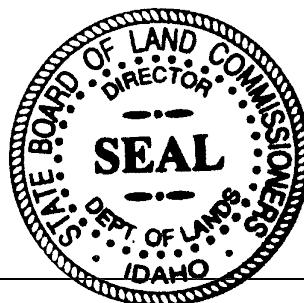
The Department recommends the Land Board approve proceeding with due diligence for the Brisbie land exchange proposal.

Board Action

A motion was made by Controller Woolf that the Land Board 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.

Attachments

1. Brisbie LLC Application
2. Mineral Estate Parcel Map
3. Brisbie Parcel Map
4. Brisbie Overview Map
5. Due Diligence Checklist



CENTURYPACIFIC, LLLP

REAL ESTATE INVESTMENT BROKERS ■ ADVISORS ■ ASSET MANAGERS

MEMORANDUM

DATE: March 6, 2023
TO: Mr. Jim Elbin, Trust Land Management Division Administrator
FROM: Michael E. Finch, Michael A. Odegard
RE: Proposed Land Exchange:
Brisbie Mineral Rights for ±125 acres of timberland in Shoshone County

SUMMARY

Thank you for the opportunity to review the information in connection with the proposed land exchange between the State Board of Land Commissioners (Land Board) and Brisbie, LLC (Brisbie). As outlined in the land exchange application (July 2022), Brisbie holds a Real Estate Purchase Option (Brisbie Option) on ±125 contiguous acres of timberland in Shoshone County currently owned by Jamestown Forestlands, LLC (Brisbie Property). Brisbie proposes to exercise their purchase option and provide the fee simple estate in exchange for the mineral estate under control of the Land Board (Endowment Property) pertaining to ±205 contiguous acres in Ada County owned by Brisbie.

Based on CenturyPacific's review of the provided information and discussions with IDL and Deputy Attorney General Robert Follett, assuming certain conditions discussed herein are met in ways acceptable to IDL and the State of Idaho Attorney General's office, exchanging the Endowment Property for the Brisbie Property - a contiguous 125-acre timberland property - appears to be financially and operationally advantageous to the State of Idaho. The proposed exchange appears to be accretive to the Land Board and affords the exchanging parties to derive unique value due to the characteristics of the property exchanged (location, access, contiguity, perfection of title, etc.). CenturyPacific is of the opinion that the proposed land exchange is beneficial to the Land Board.

SUPPORTING INFORMATION

CenturyPacific's evaluation of the proposed land exchange is informed by the following:

- **Brisbie Land Exchange Application:** The Land Exchange Application, submitted by Givens Pursley, LLP on behalf of Brisbie, claims that unique and equitable value would be received by both parties as a result of the proposed exchange. Brisbie receives certainty associated with the perfection of title to property it owns in Ada County by obtaining a non-revenue producing mineral estate associated with real property it already owns; IDL receives value from existing timber stock, fee simple ownership of 125 contiguous acres, land value appreciation, as well as improved access and contiguity of existing holdings. The timberlands proposed for the

exchange are, to any party others than Brisbie, LLC, more valuable than the mineral estate.

- **Brisbie Real Estate Purchase Option Agreement:** Assuming no defaults, the Option Agreement verifies Brisbie’s ability to purchase the fee simple estate. IDL has advised CenturyPacific that the option will be exercised upon approval of the application for exchange and Brisbie will take title to the 125-acre timberland parcel prior to the proposed exchange.
- **Phase I Environmental Site Assessment (Phase I):** A thorough review of the Phase I site assessment, conducted by Ramboll US Consulting, Inc. (November 21, 2022), revealed no recognized environmental conditions (RECs), underground storage tanks (USTs), nor other concerns regarding environmental contamination. Further, the Phase I estimated that, based on review of aerial photographs, timber harvest on the Brisbie Property has not occurred in the current 12-year ownership period by Jamestown Forestlands, LLC-- and has likely not been conducted since the early 1990’s.
- **Valuation of Certain Mineral Rights (Endowment Property):** Based on the Appraisal report by Stout Risius Ross, LLC (March 3, 2023), the market value of the mineral estate of the Endowment Property is \$6,400.
- **Appraisal Review – Valuation of Certain Mineral Rights (Endowment Property):** RSM US LLP’s third-party review (March 3, 2023) of the Stout Risius Ross, LLC appraisal found the valuation methodology implemented by Stout to be reasonable and compliant with the Uniform Standards of Professional Appraisal Practice (USPAP).
- **Timber Property Appraisal Report (Brisbie Property):** Based on the Appraisal report by Stout Risius Ross, LLC (March 3, 2023) the appraised market value of the Brisbie Property is \$1,000,000.
- **Appraisal Review – Valuation of Timber/Recreation Property (Brisbie Property):** RSM US LLP’s third-party review (March 3, 2023) of the Stout Risius Ross, LLC appraisal found that the valuation methodology implemented by Stout to be reasonable and compliant with the Uniform Standards of Professional Appraisal Practice (USPAP).
- **Correspondence with IDL – Timberland Value (Brisbie Property):** Based on a January 17, 2023 report by IDL, the estimated net present value of the timber resources, alone, is \$591,468 – without contemplation of a future sale event (a component of financial value in a standard appraisal of “Fair Market Value”). In addition to the creation of sustainable net revenue to the Land Board, control of the Brisbie Property would “allow for more efficient management of the ownership in the area” and “the (Brisbie) property would provide access across 2,600 feet of roadway to approximately 1,100 acres of Endowment timberland.” At present, it is

unclear to CenturyPacific whether Jamestown Forestlands, LLC (current title holder) has the right or option to harvest existing timber after the exercise of the current purchase option.

- Review of Area Maps, IDL Correspondence: Based on review of area maps identifying ownership of surrounding parcels, the Brisbie Property would create additional contiguity and enhanced access to existing IDL holdings in Shoshone County. Access opportunities and the promotion of IDL timber operations through this exchange are further confirmed via correspondence with Lawson Tate (IDL Lands Program Manager).
- Review of IDL Internal Correspondence – Endangered Species: Based on correspondence between Joel Clark and Colton Finch, IDL is not aware of any endangered species that are inhabiting or using the Brisbie Property in a way that would adversely affect timber operations and/or ownership of the Brisbie Property by the State of Idaho.
- Review of IDL Correspondence – Brisbie Option: Correspondence with Lawson Tate (IDL Lands Program Manager, September 2022) confirms legal access through existing right-of-way via Childs Creek Road. Additional review of the Brisbie Option shows the reservation of reciprocal easements to be contemplated in the purchase and sale agreement after the exercising of the option. Within these two (2) reciprocal easements Jamestown Forestlands, LLC would be allowed to cross the Brisbie property on Olson Creek Road, while the second would grant the State of Idaho an easement on a nearby parcel owned by the seller that would enhance the State’s access to the Brisbie property and other holdings. It should be noted, however, there exist easement gaps on Olson Creek Road and, as such, secondary legal access by these means is not confirmed.

BRISBIE PROPERTY

Estimated Value

The appraised fair market value of the Brisbie Property is \$1,000,000 (Timber Property Appraisal Report, Stout Risius Ross, LLC, March 3, 2023). To arrive at this valuation, Stout employed a sales comparison approach utilizing nine closed transactions. CenturyPacific finds the number of data points included to be sufficient and the valuation reasonable.

Title Matters

The preliminary ALTA Title Commitment for the Brisbie Property provided by First American Title Insurance Company (May 13, 2022) listed thirty-one (31) exceptions to title. Pursuant to various correspondence with Deputy Attorney General Robert Follett, the title exceptions include the reservation of mineral rights, oil and gas rights, as well as reciprocal access or easement encumbrances.

Through correspondence with IDL and Mr. Follett, it is CenturyPacific's understanding that matters on title are consistent with similar acquisitions IDL has previously undertaken and risks associated with the title encumbrances are acceptable to the State of Idaho. Several of the encumbrances on record have expired and CenturyPacific recommends attempting to clear expired encumbrances if the Land Board elects to pursue an exchange.

Insurance & Indemnity

Upon review of Mr. Follett's notes to the title exceptions and subsequent related correspondence, there exists potentially problematic language related to indemnification and insurance requirements if the Brisbie Property is to be owned by the State of Idaho. It is our understanding that consensus for removal or modification of indemnity language is unlikely due to the number of parties associated with the easements. We recommend IDL attempt to remove expired exceptions as well as amend remaining objectionable language related to indemnification and insurance. Similarly, the same title encumbrances require Commercial General Liability (CGL) insurance coverage. We understand the State of Idaho typically provides a memorandum of self-insurance in lieu of CGL coverage and State of Idaho self-insurance has been acceptable in previous property transactions. As previously noted, title encumbrances on the Brisbie Property closely resemble language and risk previously accepted through recent transactions IDL has completed. Notable transactions for reference include the Packers 1 transaction (December 2018) also involving Jamestown Forestlands, LLC, as well as the Vandals 1 transaction (January 2023).

Existing Timber Harvest Rights

The Phase I ESA conducted by Ramboll US Consulting, Inc., estimates the timber located on the Brisbie Property has not been harvested within the last 12 years of ownership by Jamestown Forestlands, LLC. Ramboll US Consulting, Inc. references several aerial maps appearing to indicate that timber harvest has not occurred on the Brisbie Property since the early 1990s. Confirmed by the Idaho Department of Lands, there remains considerable timber stock currently available for harvest. As provided for in the Brisbie Option, Jamestown Forestlands, LLC maintains the ability to harvest all timber over 13 years of age during the option period. It is unclear if Jamestown Forestlands, LLC will maintain this right after exercise of the option. While the existing timber management contract between Jamestown Forestlands, LLC and Molpus Woodlands Group, LLC has expired, the Brisbie Option allows Jamestown Forestlands, LLC to enter new timber harvest contracts during the option period. Though near-term timber harvest rights are somewhat unresolved, current harvest value aside, it appears the value Brisbie Property to the State of Idaho exceeds the value of the Endowment Property proposed for exchange due to contiguity with, and improved access to, existing State of Idaho holdings.

ENDOWMENT PROPERTY

Estimated Value: Mineral Estate

The Endowment Property refers to the mineral estate (as reserved pursuant to Section 47-701, Idaho Code) relative to a 205-acre parcel of land owned by Brisbie, LLC on W Kuna Mora Road in Ada County (APN S1531300000). As confirmed by the appraisal conducted by

Stout Risius Ross, LLC (March 3, 2023), the geological profile of the parcel alludes to little, if any, potential for valuable minerals to be extracted. The appraised fair market value of the mineral estate is \$6,400 and efforts to monetize resources reserved in the mineral estate are not deemed to be financially feasible. A further review of the Stout valuation report conducted by RSM US LLP (March 3, 2023) confirms that the valuation methodology applied is reasonable and compliant with USPAP appraisal standards for mineral interests.

CONDITIONS OF CENTURYPACIFIC'S RECOMMENDATION

CenturyPacific's recommendation in support of the proposed transaction exchanging the Endowment Property for the Brisbie Property is conditioned upon the following:

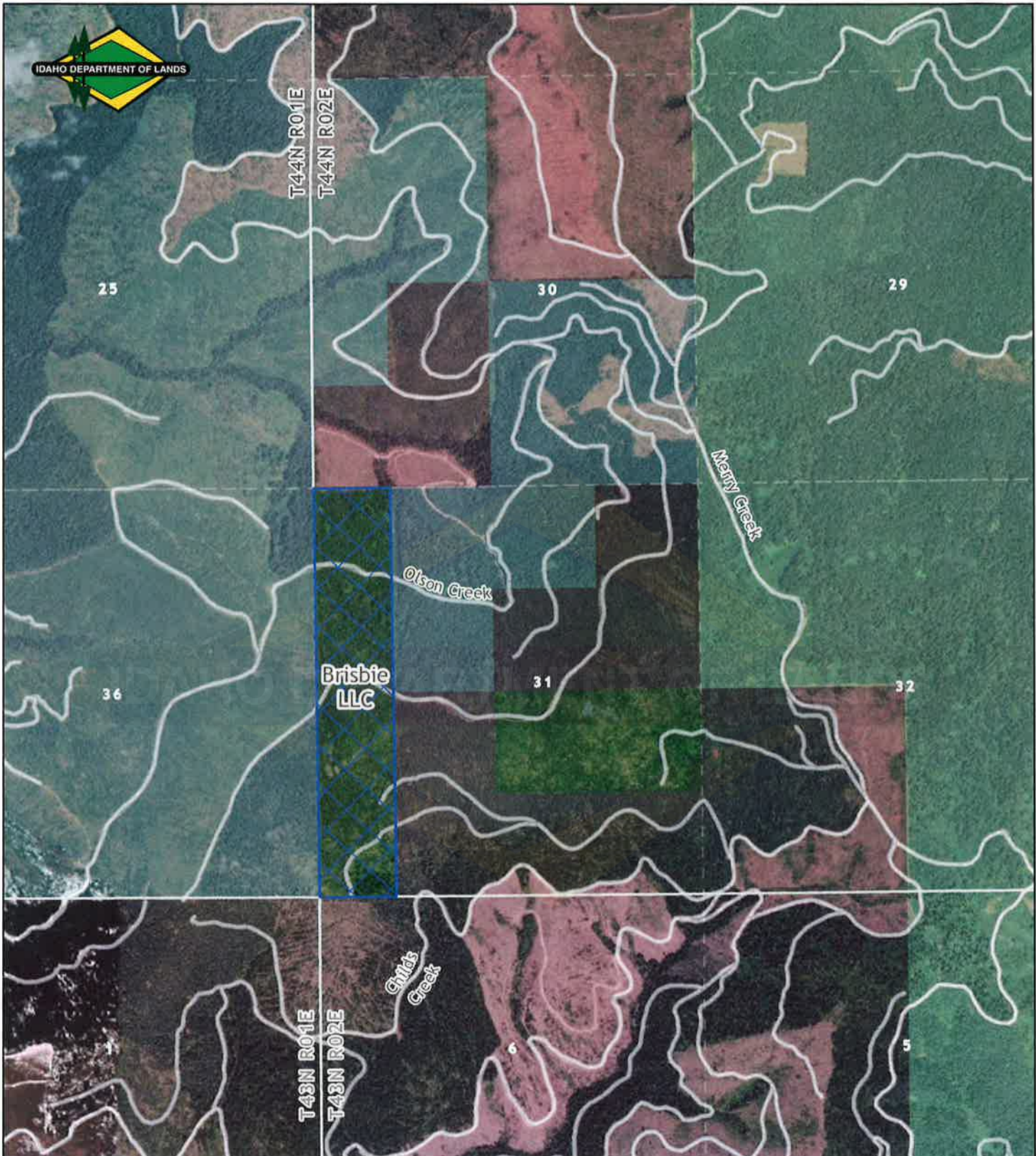
1. All financial and legal exposure as a result of encumbrances related to the Brisbie Property are acceptable to the State of Idaho Attorney General's office; and
2. A complete, current title report is reviewed and approved by IDL and the Attorney General's office immediately prior to finalizing the exchange.
3. IDL understands and is comfortable with the condition of the Brisbie Property at closing, including then existing timber stock and any rights in favor of Jamestown Forestlands, LLC or others that would extend beyond closing of the proposed land exchange.


DOCUMENTATION REVIEWED

This memorandum, and CenturyPacific's support for the proposed land exchange, is informed by the following:

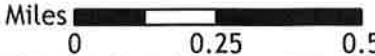
- Brisbie, LLC and Jamestown Forestlands, LLC. "Real Estate Purchase Option Agreement." July 25, 2022.
- Givens Pursley, LLP. "Land Exchange Application." Submitted on behalf of Brisbie, LLC to IDL. July 28, 2022.
- Stout Risius Ross, LLC. "Valuation of Certain Mineral Rights in Ada County, Idaho as of November 30, 2022." Issued March 3, 2023.
- RSM US LLP. "Review of Stout's Valuation of Certain Mineral Rights in Ada County, Idaho As of November 30, 2022." March 3, 2023.
- Stout Risius Ross, LLC. "Real Estate Appraisal Report as of November 30, 2022." Issued March 3, 2023.
- RSM US LLP. "Review of Stout's Valuation of Timber/Recreation Property along

- Olsen Creek Road, Fernwood, ID 83830 As of November 30, 2022." March 3, 2023.
- First American Title Insurance Company. "2016 ALTA Commitment for Title Insurance." Provided to Brisbie, LLC. May 13, 2022.
 - Idaho Department of Lands, State of Idaho Attorney General's Office, CenturyPacific. Various Correspondence, 2022-2023.
 - Idaho Department of Lands. "Jamestown Forestlands Brisbee Land Exchange" January 17, 2023.
 - Idaho Department of Lands. "Endangered Species Review - Brisbie Land Exchange" Internal Correspondence, September 2022.
 - Idaho Department of Lands. "Brisbie LEX - Access Confirmation" Internal correspondence September 2022.
 - Jamestown Forestlands and Molpus Woodlands Group. "Memorandum of Agreement with Respect to Log Harvest Agreement" January 1, 2013.
 - Ramboll US Consulting Inc. "Phase I Environmental Site Assessment: Timber Property Olson Creek Road, Shoshone County, Idaho" November 21, 2022.



-  To Be Acquired
-  Roads
-  USFS
-  State
-  Potlatch

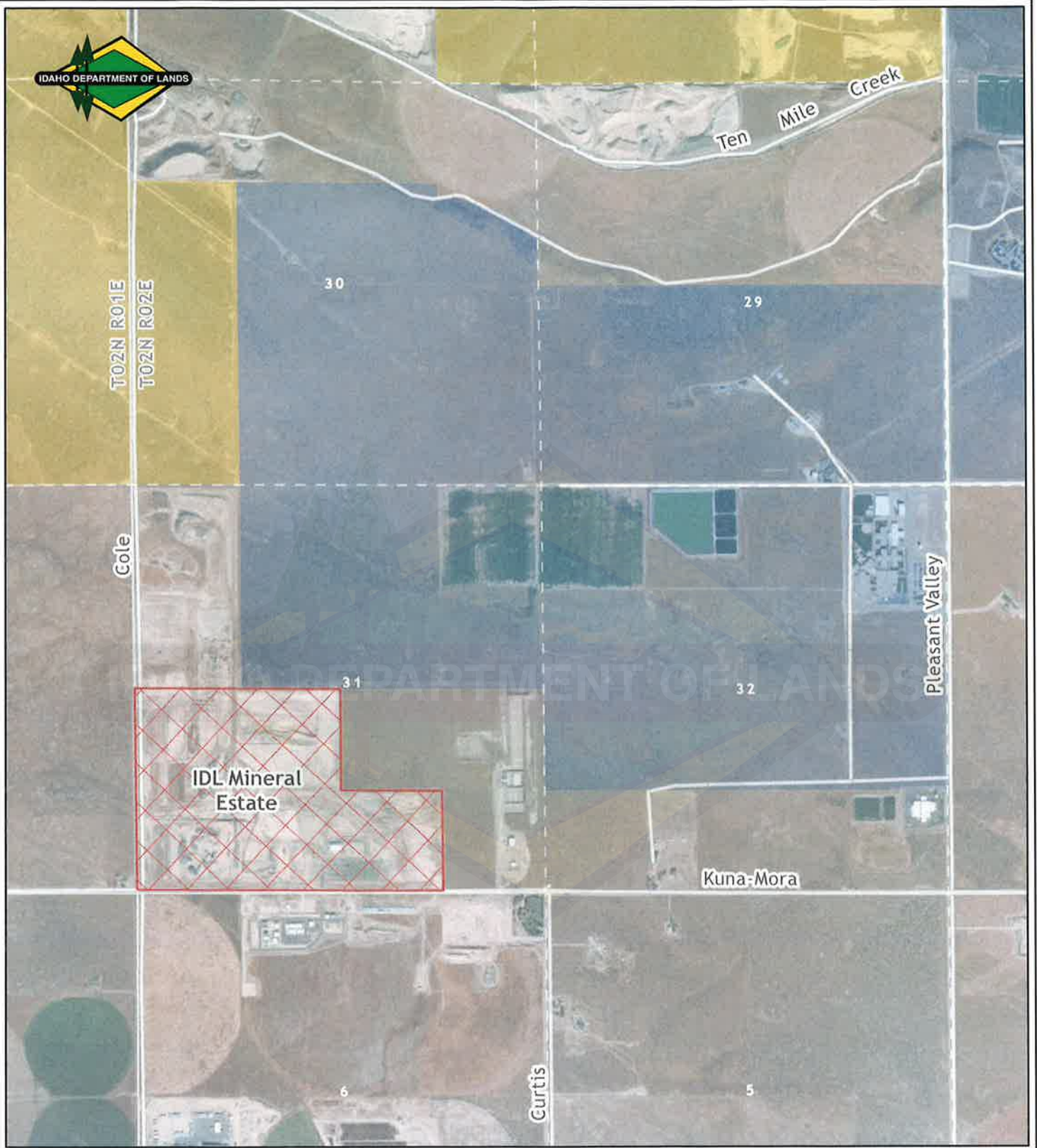
Idaho Department of Lands
 St. Joe Area
 Shoshone County, Idaho
 3/14/2023



Land Exchange
 IDL-Brisbie LLC
 To Be Acquired
 GIS Acreage = 125
 Scale: 1:20,000

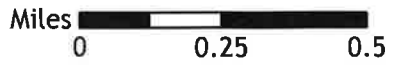


Disclaimer: This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.



-  To Be Disposed
-  Roads
-  BLM
-  Private
-  State

Idaho Department of Lands
 Southwest Area
 Ada County, Idaho
 3/14/2023



Land Exchange
 IDL-Brisbie LLC
 To Be Disposed
 GIS Acreage = 250.12
 Scale: 1:20,000



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VL0314

STATE BOARD OF LAND COMMISSIONERS

March 21, 2023

Regular Agenda

Subject

Request approval to proceed with due diligence for Benewah County land exchange

Question Presented

Shall the Land Board authorize the Department to proceed with due diligence for the Benewah County land exchange?

Background

In February 2022, the Idaho Department of Lands (Department) received an application for a land exchange from Benewah County (County), care of County Commissioner Bob Short (Attachment 1). The proposed exchange would trade approximately 120 acres of County owned timberland for approximately 60 acres of endowment land. All lands involved in this proposed exchange are located in Benewah County. An overview map of the project is included as Attachment 2.

The County's parcels are 15 miles south of St. Maries in Benewah County, in the Tyson Creek drainage where the Department manages 9,000 acres of core endowment timberland. The Benewah County land is surrounded on all sides by existing endowment timberland. A map of the Benewah County parcels is included as Attachment 3.

The approximately 60 acres of School of Science endowment land are located 9 miles south of St. Maries, in Benewah County. The endowment land involved in this exchange is not contiguous. The property includes a 20-acre parcel fronting State Highway 3, commonly known as the Rodeo Grounds, and a nearby 40-acre parcel containing 35 acres of regenerative young timber and a 5-acre rock quarry. There are currently three leases on the endowment land involved in the exchange. The Department will work with the lessees to ensure they are treated fairly throughout the land exchange process. A map of the endowment land is included as Attachment 4.

A meeting was held between the Department and Benewah County Commissioners on February 13, 2023. All three Benewah County Commissioners are supportive of the land exchange and have agreed to split the cost of due diligence evenly with the Department. Both parties desire an equal value exchange, with a maximum of ten percent (10%) difference in land values. This may require some "balancing" during the due diligence process, whereby more or less land than has been previously stated may ultimately be exchanged by either party. Any necessary balancing of the land involved in this proposed land exchange will take place during the appraisal process.

Discussion

This proposed land exchange would improve the long-term value to the endowment and help block up existing endowment timberland.

Specific benefits of the exchange include:

- Return on Asset: While a return on asset (ROA) cannot be finalized until due diligence work is completed, it is anticipated that the long-term ROA for the Benewah County property as timberland will be higher than the lease revenue on the endowment land.
- The proposed land exchange will improve legal and physical access to existing endowment land in the Tyson Creek drainage.
- The proposed land exchange will block up existing endowment land which will provide increased efficiency with regard to forest management and timber harvest activities.

Upon Land Board approval, the next steps for the land exchange would be for the Department to perform due diligence consistent with the following and Attachment 5:

- Order a preliminary title report to review the legal descriptions and the current exceptions to title on the properties.
- Complete a Phase 1 Environmental Site Assessment to review the environmental history of the property. The report is intended to identify actual and potential problems based on a review of historical documentation, regulatory agency databases, and a physical on-site investigation.
- Verify the properties have legal access.
- The properties with merchantable timber will require a timber cruise to determine the species, quality, and quantity of harvestable timber. Sufficient data must be obtained to create a statistically reliable sample for the timber modeling.
- Review the existence of any endangered species at the site. The presence of threatened/endangered species can significantly reduce the value of a property.
- A real estate appraisal will be completed by a Member of the Appraisal Institute (MAI) appraiser to determine the market value for the property. Appraisals will be reviewed by a second MAI appraiser to verify the report meets Uniform Standards of Professional Appraisal Practice (USPAP).
- Review the recorded surveys, verify survey pins are placed at the corners, and determine if there is a need to order a survey.

Based on the review of the due diligence, Department leadership will approve or terminate the land exchange for further consideration. If Department leadership approves, it will be brought back to the Land Board for final approval to complete the transaction.

Recommendation

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

Board Action

Attachments

1. Benewah County LEX Application
2. Overview Map
3. Benewah County Parcel Map
4. Endowment Land Parcel Map
5. Due Diligence Checklist

The logo for the Idaho Department of Lands is centered on the page. It features a stylized mountain range in the background with a green mountain peak and yellow hills. A horizontal banner across the middle contains the text "IDAHO DEPARTMENT OF LANDS" in white, uppercase letters. The entire logo is rendered in a light, semi-transparent gray color.

IDAHO DEPARTMENT OF LANDS

LAND EXCHANGE APPLICATION

The Land Exchange Application process is used by Idaho Department of Lands (IDL) to evaluate land exchange proposals for Endowment Lands. Please provide all information to ensure that the Land Exchange Application is complete. Incomplete applications will be returned to applicant without review.

Exchange Application Instructions:

- Meet with the Deputy Director or designee prior to filing a Land Exchange Application
 - Submit a completed Exchange Application and \$1,000 Application Fee to the Idaho Department of Lands.
- Note: Please read Exchange Application Information carefully for additional terms and conditions prior to filing.

Exchange Application Fee: \$1,000.00 (Nonrefundable)

APPLICANT DATA: The full legal name of the Applicant or the business entity name on file with the Idaho Secretary of State. Certificate of Good Standing must be provided for all business entities.

Applicant or Business Name: BENEWAH COUNTY	Contact Name: BOB SHORT
Street Address: 701 W. COLLEGE AVE	Position or Title: COMMISSIONER
City: ST MARIES	Mailing Address (if different from Street Address): 31054 HIGHWAY 6
State: ID 83861	PO-Box (if applicable): ST MARIES, ID
Email Address(es): benevahbobshortestadmail.com	Zip +4: 83861-8177
Website Address(es):	Work Phone:
Fax: 208-245-3243	Cell/Mobile:
Home Phone: 208-245-3243	
Broker Representation, If applicable Business Name: Broker's Name: Street Address:	Work Phone:
City: _____ State _____	Cell/Mobile:
Email Address:	

The applicant must provide the following information:

- A Property Information Packet that includes the items identified on Attachment A
- Describe and list Idaho Department of Lands parcels on Attachment B.

I hereby certify that I am the Applicant and the above listed broker is my Authorized Representative and that the information contained in the Land Exchange Application is true and correct to the best of my knowledge. I acknowledge that falsification of any information contained herein, or provided herewith, will be grounds for rejection of the Land Exchange Application and forfeiture of any fees paid.

Robert Short
Signature

ROBERT SHORT
Print/Type Name

APRIL 4, 2022
Date

Commissioner
Title (if applicable)

IDL Staff Use Only

Instrument # _____ Project # _____ \$ _____ TC: 104 PCA: 11487 Subsidiary: 3204750

Exchange Application – Complete and in Review Exchange Application Denied

Exchange Application – Incomplete, please complete and resubmit

Deputy Director or Designee Date

LAND EXCHANGE APPLICATION TERMS AND CONDITIONS

(Please read carefully before completing)

IMPORTANT CONSIDERATIONS:

All endowment assets of the State of Idaho must, per the state Constitution, be managed "in such manner as will secure the maximum long term financial return" to the trust beneficiaries. Applicants are encouraged to review the Idaho State Board of Land Commissioner's Asset Management Plan (AMP) available at <http://www.idl.idaho.gov/am/amfiles/122011-AMP-final.pdf> prior to submission of an Application.

An endowment land exchange is subject to the following Idaho Constitution or statutory references:

1. Idaho Constitution - Article IX, Sections 8 and 10
2. Idaho Admissions Act - Section 5 (b)
3. Idaho Code Sections 58-104 (8), 58-138, 58-505

A land exchange is generally defined as an exchange between two owners of like-kind real property (including improvements, if any) where one party exchanges its real property for real property of equivalent value owned by the other party. It is expected that the Applicant is the owner of record of the property proposed for exchange at the time the application is submitted to IDL.

Submission of this application does not guarantee that the land will be exchanged. The Land Board or Director may determine that a land exchange would not be in the best interest of the Endowments at any point prior to Land Board approval and close of escrow.

Prior to filing an Exchange Application, the applicant is required to schedule a pre-application meeting with the Deputy Director or designee.

TRANSACTION COSTS BORNE BY THE APPLICANT

1. Exchange Application Fee: \$1,000.00 The Exchange Application Fee is nonrefundable.
2. Transaction costs are generally borne by the applicant but may be negotiated subject to Asset Management Steering Committee [AMSC] direction. Transaction costs include but are not limited to appraisals, land surveys, Environmental Site Assessment(s) and Property Condition Assessment Report.
3. An administrative fee will be negotiated with each Applicant.
4. All endowment lands will be appraised as though with all purpose legal access.

APPLICATION PROCESS

Each Exchange Application is reviewed on a case by case basis. Evaluation of the application includes but is not limited to an analysis of income potential to the endowment, proposed use and impact to adjacent endowment lands, access, and proximity to existing development, parcel size, and conformance with local regulations.

The application process is initiated with the submittal of a completed Land Exchange Application, non-refundable application fee of \$1,000, and the Property Information Package for the applicant's property. IDL will strive to determine whether or not the Land Exchange Application is accepted, denied or deemed incomplete within thirty (30) calendar days of receipt of the exchange application. The Land Exchange Applicant will be notified in writing of IDL's determination.

Transaction costs borne by the applicant will be negotiated prior to the commencement of due diligence activities. State Land Board approval of the Land Exchange Agreement will be requested after completion of due diligence. Close of escrow will occur after completion and satisfaction of all conditions and provisions in the Land Exchange Agreement.

Cottage Sites

Cottage sites eligible for exchange will be identified by IDL subsequent to the acceptance of the Application and prior to execution of a Land Exchange Agreement. Indicate the inclusion of Cottage Sites for this application on Attachment B.

The majority of the endowment owned cottage sites are currently encumbered by a state land lease and improvements owned by IDL lessees. The exchange is for the land only; current lessees would retain ownership of their improvements.

Applicant's Property

Submit a Property Information Package that includes the following (if applicable):

- 1. Financial Analysis *N/A*
 - a. Identify all sources of Revenue for the Property and Provide two (2) years' Financial Statements
 - b. Provide a rent roll
 - c. Indicate an appropriate Vacancy Rate
 - d. Provide two (2) years' Operating Statements
 - e. List all capital improvements made during the life of the building
 - f. Provide a deferred maintenance schedule and an appropriate reserve account balance
- 2. Market Analysis *N/A*
 - a. Identify supporting and competing properties in the surrounding market area
 - b. List growth industries in the surrounding market area and region
 - c. Provide population and employment projections
- 3. Describe the improvements *N/A*
 - a. Year Built
 - b. Number of Stories
 - c. Gross Land Square Footage
 - d. Gross Building Square Footage
 - e. Gross Rentable Area per BOMA standards
 - f. Describe type of construction for the improvements,
 - g. Attach interior and exterior photos, including aerial photos of the buildings
- 4. Tenant Analysis *N/A*
 - a. Describe the operational objectives of each tenant
 - b. Provide a Lease Abstract for each lease agreement
 - c. Provide a two year lease payment schedule, highlighting defaults, if any
- 5. Property Analysis
 - a. Provide site plan, map of the property and surrounding area, aerial photos and most recent survey of the subject property.
 - b. List any water rights affecting the property *None*
 - c. List all utilities available to the property *None*
 - d. Provide a complete listing of any waste dumps, landfills or other hazardous material issues on or near the applicant's property. *None*
 - e. Provide other data relevant to the use of the site, i.e. timber cruise, site productivity data, site regeneration data *None*

Applicant's property interest offered for Exchange

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Fee Simple/Leased Fee: surface plus subsurface |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | Subsurface Minerals only |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | Surface only |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | Other _____ |

Endowment Land

Parcel	Twp	Rge	Section	Subdivision	Acres	County	Type of Land (forest, range, agriculture, commercial, residential)	Fund (IDL Staff)
A	44N	1W	20	SWNE	40	Beneath	Forest Commercial	
B	44N	1W	21	pts. NWNW South Highway 3	23.4	Beneath	Forest	
C								
D								
E								
F								

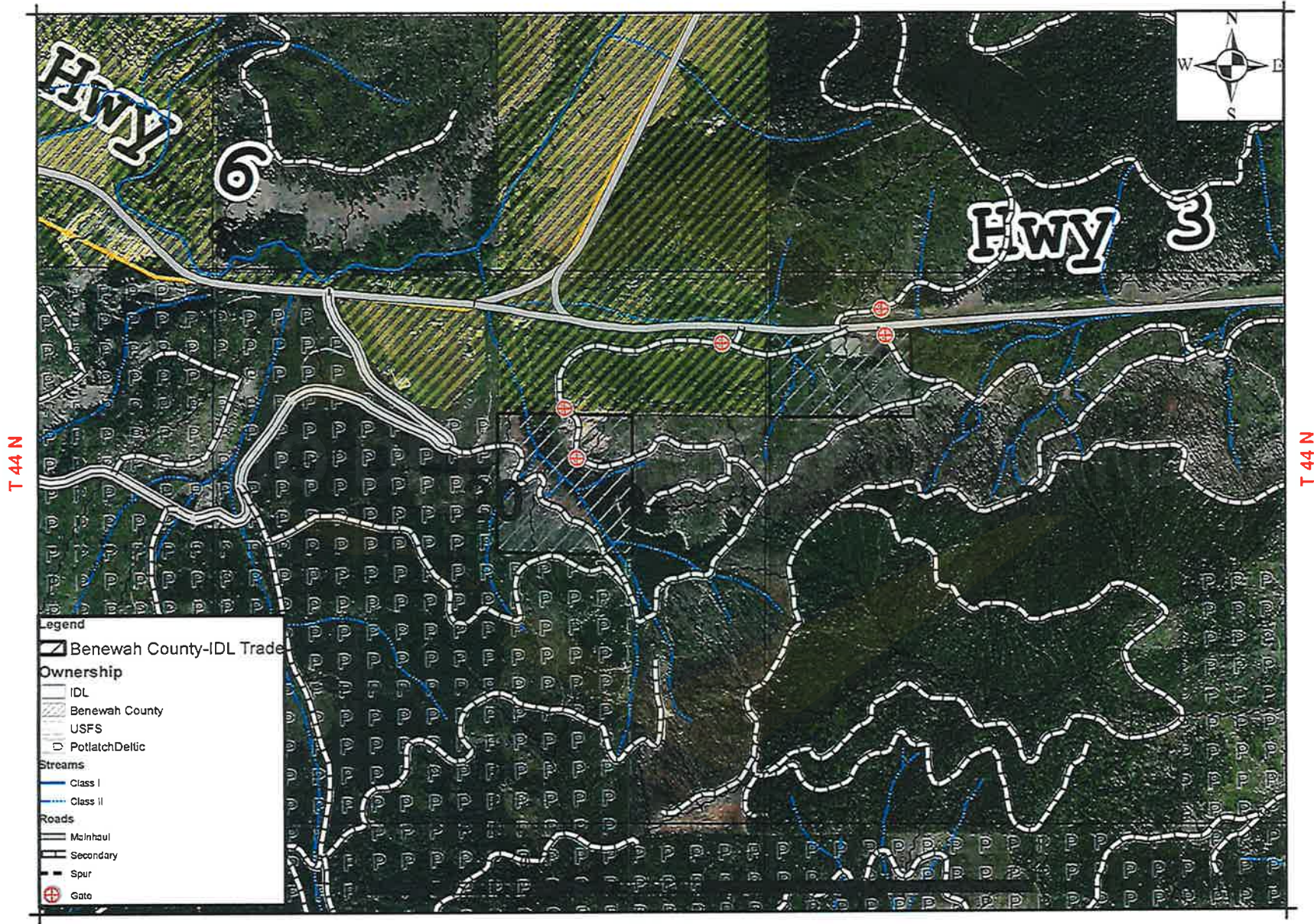
Check this box if Endowment Lands proposed for exchange are leased cottage sites to be identified by IDL at a later date.



Potential IDL-Benewah County
Land Exchange

IDL Parcels-Santa Y

R 01 W

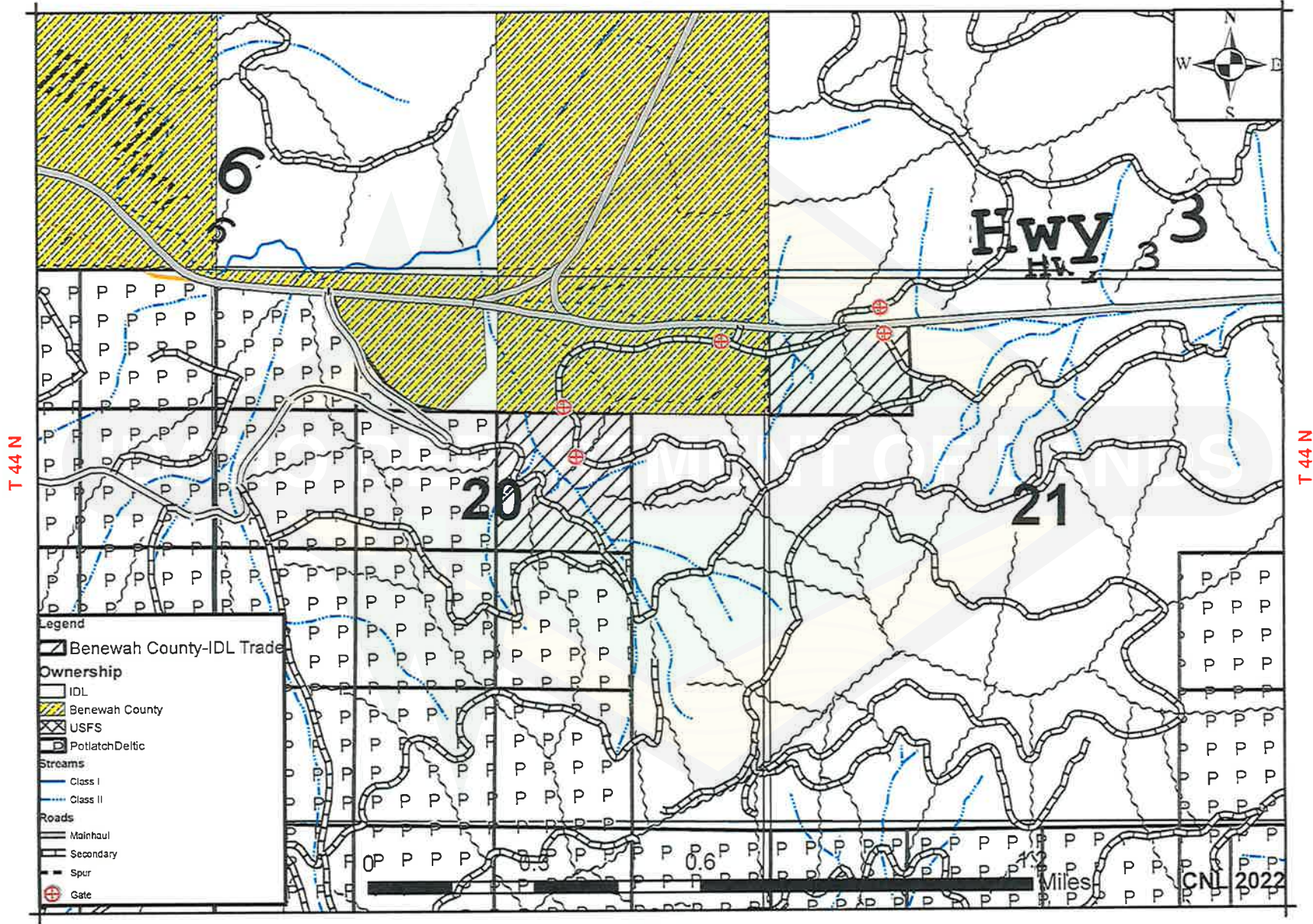


R 01 W

Potential IDL-Benewah County
Land Exchange

IDL Parcels-Santa Y

R 01 W

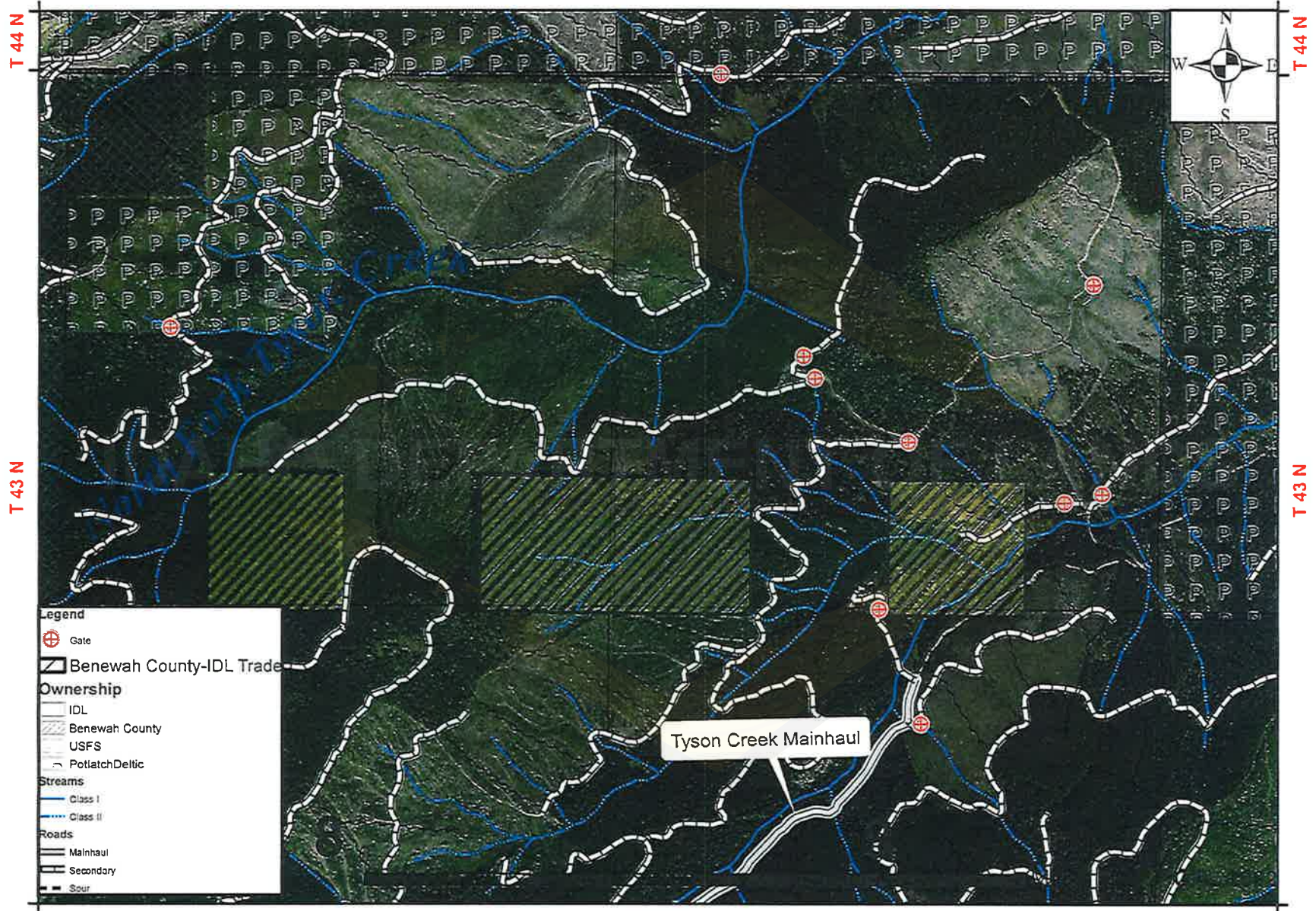


R 01 W

Potential IDL-Benewah County Land Exchange

Benewah County Parcels- Tyson Creek

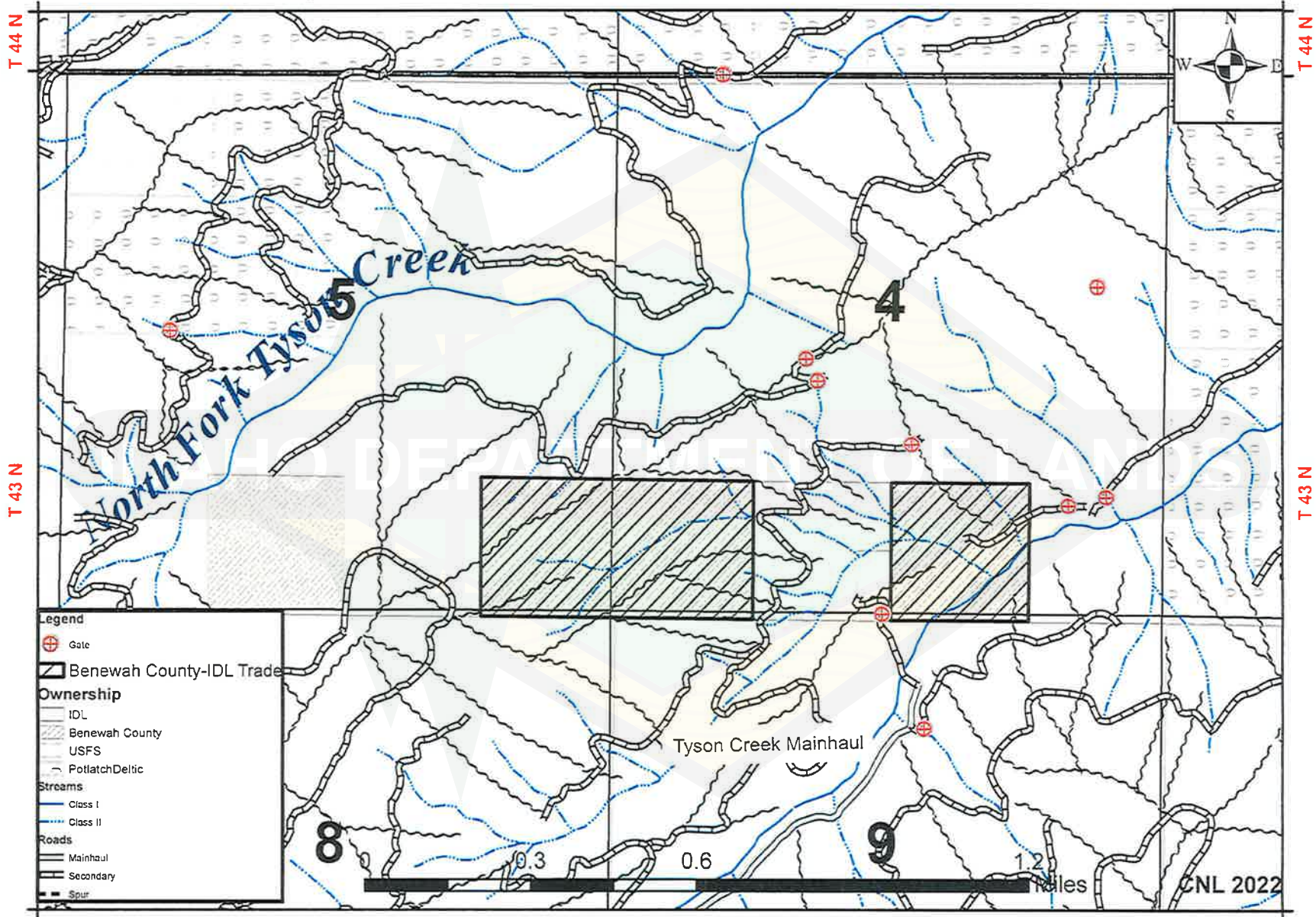
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Potential IDL-Benewah County
Land Exchange

Benewah County Parcels- Tyson Creek

R 01 W



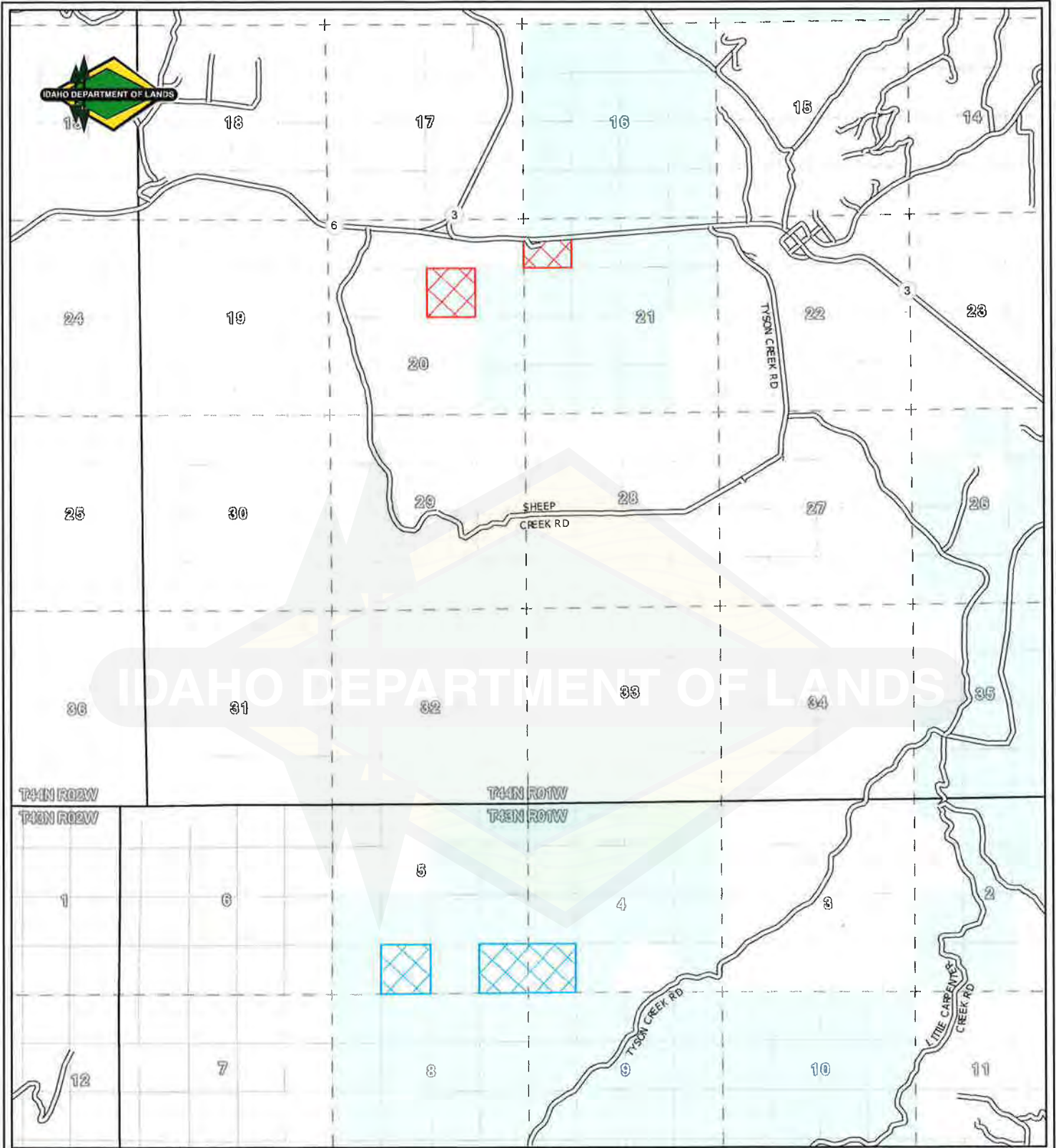
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Proposed Rodeo Rock City Forties Land Exchange

The St. Joe Area and Benewah County Commissioner, Bob Short, have had preliminary discussions regarding a proposed land exchange of one hundred and twenty (120) acres of land owned by Benewah County for sixty-three acres of endowment trust land in Benewah County, Idaho.

The characteristics of each parcel are as follows:

- IDL Parcels
 - Rock Pit Parcel
 - Acres: 40
 - Endowment: School of Science
 - SWNE, Sec 20, T44N, R01W.
 - Contains rock pit currently leased by Benewah County E 09247
 - Expires February 28, 2023.
 - Minimum annual royalty \$340.00 per year or \$0.60 per cubic yard or \$0.45 per ton, whichever is greater.
 - This “rock” is basically harder fill material, not material suitable for crushed aggregate.
 - It has little value to our endowment operations.
 - This pit has become a dumping site in the past.
 - Rodeo Parcel
 - Acres: 23.4
 - Endowment: Capitol Permanent
 - Pts. of the NWNW south of State Hwy 3, T44N, R01W
 - Contains lease M300005 Up River Saddle Club
 - Lease with local saddle club
 - Expires December 31, 2024
 - Current Annual Rent \$440.00
 - A shooting range was proposed (M300010) by the Benewah County Public Gun & Archery Range, Inc. They applied but have been unable to address our concerns regarding a better site plan, environmental planning, etc.
 - Our last formal contact was on March 10, 2020.



-  Acquire
-  Dispose
-  Township
-  Section
-  Subsection
-  USFS
-  Private
-  Endowment

Idaho Department of Lands
 St. Joe Area/District
 Benewah County, Idaho
 3/14/2023



Land Exchange
 IDL-Benewah County
 IDL = 63.64 ac
 Benewah = 119.95 ac
 Scale: 1:42,000



Disclaimer: This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.



31

32

33

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T44N R01W

T43N R01W

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6

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3

IDAHO DEPARTMENT OF LANDS

TYSON CREEK RD

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




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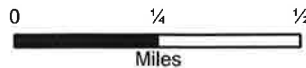
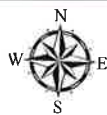
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-  Acquire
-  Township
-  Section
-  USFS
-  Private
-  Endowment

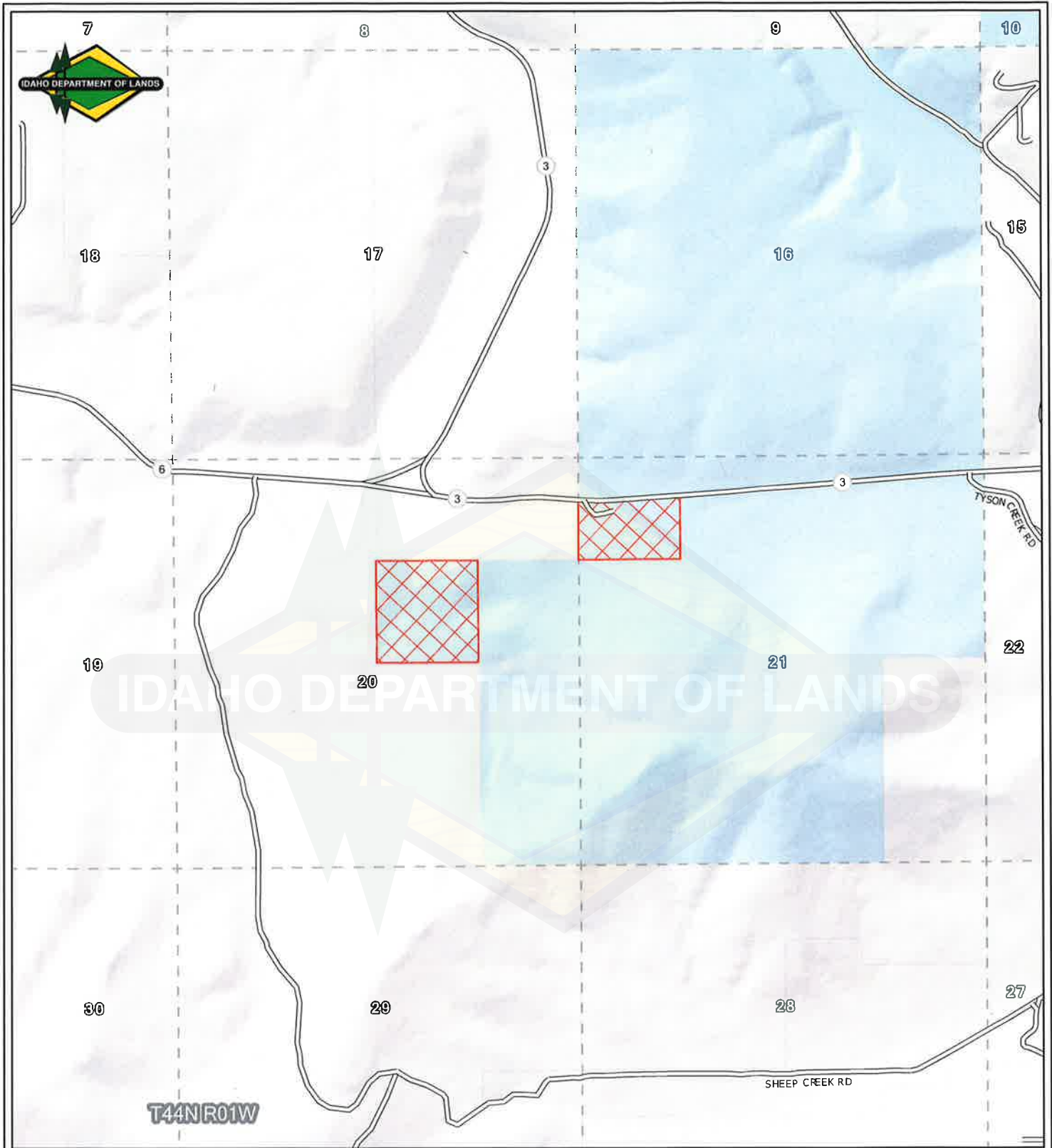
Idaho Department of Lands
 St. Joe Area/District
 Benewah County, Idaho
 3/14/2023








Land Exchange
 IDL-Benewah County
 To Be Acquired
 GIS Acreage = 119.95
 Scale: 1:20,000

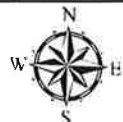
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-  Dispose
-  Township
-  Section
-  Private
-  Endowment

Idaho Department of Lands
 St. Joe Area/District
 Benewah County, Idaho
 4/13/2022



Land Exchange
 IDL-Benewah County
 To Be Disposed
 GIS Acreage = 63.64
 Scale: 1:20,000

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Map by IDL - Benewah County, Idaho Department of Lands, 4/13/2022. Land Exchange Benewah County, ID. Copyright 2022 by IDL.

Due Diligence Checklist

“**Due Diligence**” is a broad term that business, real property professionals and real estate attorneys use. The term is used here to refer to the inspection and investigation of real property being considered for acquisition. Due diligence is conducted to assist the buyer in making an informed purchase decision. Items considered under due diligence vary with each property type. The following checklist is a reference used to identify documents and conditions that should be considered in the purchase of real property.

_____ **Commitment for Title Insurance (All Properties).** A commitment for title insurance (Preliminary Title Report) should be obtained soon after the Purchase Sale Agreement is executed. This document includes the legal description for the property and provides a list of all current exceptions to title on the property such as property owner, unpaid taxes, easements, options to purchase, judgments, mortgages, recorded liens, deed of trust, timber harvest rights, mineral rights, water rights. The title review process is used to determine the condition of the title to be transferred to the buyer at closing, as well as identifying any potential title problems.

_____ **Phase One Environmental Site Assessment (Phase One ESA) (All Properties).** The Phase One ESA provides the buyer an overview of the environmental condition and environmental history of the property. The report is intended to identify actual and potential problems (e.g. contamination by hazardous substances, leaking underground storage tanks, landfills, etc.) based primarily on a review of historical use documentation, regulatory agency databases and a physical on-site investigation. If environmental conditions or potential environmental conditions are discovered during the investigation, the report will generally recommend specific follow-up testing, remediation and/or studies. A Phase One ESA typically does not include specific inspections for asbestos, lead paint, mold, radon, or wetland delineation. The final report has four components including: Records Review; Site Reconnaissance; Interviews with present and past owners, operators, occupants of the property and local government officials; and a Narrative Report.

_____ **Access (All Properties).** Evaluate the adequacy of access and determine whether additional rights may be obtained as part of an exchange or purchase transaction at closing. There are five (5) access classifications:

- 1) **Public Use Access:** A permanent public access typically from a county road, state or Federal highway, which has an approved approach designated for the purpose of which the property is currently being used, or designated for its current zoning. Width of approach needs to be sufficient for the properties designated use.
- 2) **Full Legal Administrative Access:** A designated permanent easement specifically identified for access to property for all management activities and access is transferable.

- 3) **Limited Legal Administrative Access:** A designated temporary or permanent access limited for specific activities that would be non-transferable. (Such as Timber harvest, for maintenance access, irrigation.)
- 4) **Physical Access:** Properties where there is an existing road to or across the property, but no permanent legal access is recorded. The road may be designated on a county map. The existing road may be primitive, in poor condition, or currently unusable.
- 5) **No Access:** Property with no legal or physical access established or identified by a recorded document or a county map.

_____ **Utilities (All Properties).** Identify existing utility infrastructure located on or adjacent to property such as power, water/well, septic/sewer, phone, natural gas, hot water, solar, wind and if they are provided by city services or located on site. Identify the capacity of the utilities; are they major transmission facilities which would encumber future use or development of the property, or are they of a capacity which could enhance the property for future development

_____ **Production Data (All Properties).** Obtain production information associated with the property being considered for purchase. Examples of production data for some property types:

- 1) **Cropland.** Parcel acreage, farmable acres, non-farmable acres, commodities grown, yields, total production, price per unit, and crop rotation. If the property will be acquired subject to a lease; name of tenant, term of lease, and type of lease (i.e. cash or crop share).
- 2) **Timberland.** Total acreage; delineation of acreage used for commercial timber, plantation, non-commercial timberland, and non-stocked; estimated timber volumes by species (i.e. MBF), and mean annual increment (MAI).
- 3) **Rangeland.** Parcel acreage, animal unit months (AUM's) of forage, season of use.
- 4) **Commercial.** Property operating data including cash flow analysis, vacancy rates, operating costs, rent vs. market rent, existing leases and lease terms.

_____ **Mineral Rights (All Properties).** The terms "mineral lands," "mineral," "mineral deposits," "deposit," and "mineral right," as used herein is construed to mean and include all coal, oil, oil shale, gas, phosphate, sodium, asbestos, gold, silver, lead, zinc, copper, antimony, geothermal resources, salable minerals, and all other mineral lands, minerals or deposits of minerals of whatsoever kind or character. This includes "salable minerals," meaning a mineral substance that can be taken from the earth and that has a value in and of itself separate and apart from the earth. The potential of mineral lands should be evaluated on annual rental, the amount of royalty, the basis upon which the royalty shall be computed and such other details as necessary in the interest of the state.

Determine whether the property to be acquired excludes mineral rights. To the extent that the mineral rights have been severed from fee ownership, determine to what extent, if any, those severed rights affect the use and value of the property by the buyer. Prior to purchase, determine who owns the mineral rights and what the owner's intent is regarding use and development of the mineral estate.

_____ **Water Rights (All Properties).** The constitution and statutes of the state of Idaho declare all the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state, and ground waters of the state, to be public waters. A water right is the right to divert the public waters of the state of Idaho and put them to a beneficial use, in accordance with one's priority date. Beneficial uses include such uses as domestic use, irrigation, stock-watering, manufacturing, mining, hydropower, municipal use, aquaculture, recreation, fish and wildlife, among others. The amount of the water right is the amount of water put to beneficial use. Determine the scope and nature of any water rights related to the property. If a property is fully serviced by water and sewer utility service, water rights will not be an issue. If water rights for the property have been separated from the fee interest or come from an off-site source, the purchase and sale agreement must address the transfer of necessary rights to the buyer at closing. The Idaho Department of Water Resources maintains a website to research water rights within the state of Idaho.

_____ **Physical Improvements (All Properties).** Improvements include buildings, fences, ponds, spring developments, and real property fixtures that are permanently part of the land. Improvements are generally attached to, embedded in or permanently resting on the land and cannot be removed without substantially damaging an improvement or the real property with which it is being used. An inventory of physical improvements on the property and who owns or claims to own the improvements will be made prior to requesting an appraisal.

_____ **Approvals and Entitlements (All Properties).** Determine the regulatory status of proposed property, and if it is based on the type or types of uses currently being made of the land. Review the current zoning, potential zoning, areas of impact, proposed future growth, any restrictive covenants or proposed restrictions which would encumber the property and its utilization in its highest and best use. Confirm that the existing use of the property complies with applicable zoning, building and life safety codes. Determine which land use entitlements will be necessary for intended use of the property.

_____ **Personal Property (All Properties).** Identify within the Purchase Sale Agreement what personal or intangible property will be included in the purchase. For example, furniture, trade fixtures, equipment, sprinkler pipe, pumps, etc. that are necessary for the buyer's use of the property. Determine any third party security interest in any of the personal property. Assess the need to purchase or transfer permits or licenses required to operate the property or related equipment and fixtures (e.g. franchises, trademarks, patents, copyrights, liquor licenses, etc.)

_____ **Rights-of-Way (Easement) Impacts (All Properties).** Rights-of-way are temporary or permanent property rights that have been either granted or acquired, for roads, utilities, or public use access. These are often conveyed through an easement and may or may not be recorded. In addition to roads and utilities some more obscure examples include:

- 1.) Conservation easements – limits the amount and type of development that can occur on a property in order to preserve its productive capacity and open character while keeping the property in the landowner's ownership and control.
- 2.) Solar/Scenic easements – protect an owner's view shed or path of sunshine and generally restrict the height of building construction.
- 3.) Airspace easement – permits the area above the surface of property to permit an imposition upon such property from excessive noise, vibration, discomfort, inconvenience, etc. that consequently reduces market value. Generally used for airport impact areas but can also apply to bridges and walkways.
- 4.) Maintenance easement – permits an individual to cross onto the property of another for the purpose of maintaining something owned or controlled by the dominant estate owner, such as, irrigation ditches, canals, culverts, power lines, water lines, etc.

_____ **Endangered Species (All Properties).** The Endangered Species Act of 1973, as amended, is one of the most far-reaching wildlife conservation laws ever enacted by any nation. The presence of threatened/endangered or potentially threatened/endangered species may significantly restrict the development potential, other potential uses, and market value of a property.

_____ **Copies of all leases affecting the property (All Properties).** Review all leases having an effect on the future use of or income from the property. For state lands involved in an exchange, ensure a land exchange addendum is signed by the lessee.

_____ **Appraisals and Appraisal Review (All Properties).** A real estate appraisal is required for all property types to determine the market value for the property or property rights or interest being disposed or acquired. At a minimum the appraisal is prepared in compliance with the *Uniform Standards of Professional Appraisal Practice (USPAP)*. Appraisals will be independently reviewed by IDL or another appraiser to ensure compliance with USPAP and to determine the adequacy and appropriateness of the report.

_____ **Property Boundary Survey (Optional).** Obtain copies of recorded Records of Survey for the property, if available. If a survey is necessary it should be initiated immediately after the Purchase and Sale Agreement has been executed to allow time to address any potential title problems identified by the survey prior to closing.

_____ **Timber Rights (Timberland).** Determine who has the legal right to harvest the timber on a parcel of land. A seller of forestland can choose to include or exclude timber rights as part of a fee ownership sale. Such rights can be severed for a specific period of time or permanently transferred.

_____ **Timber Cruise/Harvest/Road analysis and Check Cruise (Timberland).** Forested properties with merchantable timber being considered for acquisition will require a timber cruise to determine the quality and quantity of harvestable timber. The cruise will identify tree species and measurements within each plot. Sufficient plots must be

measured to obtain a statistically reliable sample for estimated gross volume, defect, piece size, general stand information, net merchantable volume, etc.

_____ **Conservation Reserve Program (Agriculture/Timberland).** Determine if the property is eligible for and currently enrolled in a variety of farm and agriculture programs. What is the impact in ownership change to enrollment eligibility? There are currently five (5) areas which can receive payment, including:

- 1) Wildlife Habitat Incentives (WHIP)
- 2) Wetland Reserve Program (WRP)
- 3) Forestry Incentive Program (FIP)
- 4) Farmland Protection Program (FPP)
- 5) Environmental Quality Incentives Program (EQIP)

_____ **Architecture/Engineering Analysis (Properties with Buildings).** Acquisition of properties with business related structures requires an analysis by architectural and engineering professionals to determine the condition of the building and identify any potential problem areas, such as deferred maintenance and necessary repairs. Such analysis will typically consider, but is not limited to an analysis of: structural integrity; roof, electrical, plumbing and HVAC systems age and condition; Americans with Disabilities Act (ADA), fire and safety code compliance; general service and maintenance logs; parking area requirements and surface age and condition; review of Phase One Environmental Site Assessment; and testing for asbestos, lead paint, or mold issues. If work is performed on improvements prior to closing, obtain copies of any design and construction drawings and contracts and determine whether the seller's rights under those contracts are assignable to the buyer. Ensure proper lien waivers have been obtained by the seller for work performed prior to closing.

STATE BOARD OF LAND COMMISSIONERS

March 21, 2023

Regular Agenda

Subject

Negotiated rulemaking for IDAPA 20.01.01 *Rules of Practice and Procedure Before the State Board of Land Commissioners*

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.01.01 *Rules of Practice and Procedure Before the State Board of Land Commissioners*?

Background

Since IDAPA 20.01.01 governs the practice and procedure in contested cases before the State Board of Land Commissioners (Land Board) and the Idaho Department of Lands (Department), it protects citizens' due process rights.

This rule chapter implements the following statutes passed by the Idaho Legislature:

[Idaho Code § 58-104 State Land Board – Powers and Duties](#)

[Idaho Code § 67-5206\(5\)\(b\) – Promulgation of Rules Implementing Administrative Procedure Act](#)

Discussion

Following Executive Order 2020-01, Zero-Based Regulation, IDAPA 20.01.01 was scheduled to be repealed and replaced in 2022 for review during the 2023 legislative session. The Land Board authorized negotiated rulemaking at its April 19, 2022 regular meeting. The passage of House Bill 629 during the 2022 legislative session prompted the Department to postpone rulemaking on this rule chapter, until the Office of Administrative Hearings was established.

The Department is now prepared to move forward with negotiated rulemaking. With Land Board authorization IDAPA 20.01.01 will be repealed and replaced in 2023 for review during the 2024 legislative session.

The Department seeks to reduce the word count in this rule chapter by incorporating by reference rules under development by the Office of Administrative Hearings and reducing the use of restrictive words.

A proposed timeline for the rulemaking process is provided in Attachment 1.

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*.

Board Action

Attachments

1. Draft rulemaking timeline





Draft Rulemaking Timeline

IDAPA 20.01.01

Rules of Practice and Procedure Before the State Board of Land Commissioners

March 21, 2023	Approval from Land Board to start negotiated rulemaking (regular agenda)
April 7, 2023	Last day to submit <i>Notice of Intent to Promulgate Rules</i> to the Office of the Administrative Rules Coordinator (OARC) for publication in May
April 2023	Post information on IDL website about this rulemaking
May 3, 2023	<i>Notice of Intent to Promulgate Rules</i> publishes in the Idaho Administrative Bulletin; negotiated rulemaking and public comment period begins
May 10, 2023	Negotiated rulemaking public meeting in Boise and via Zoom
May 24, 2023	End of comment period for negotiated rulemaking
June 23, 2023	Last day to submit proposed rule to DFM for the Bulletin Publication in August
July 7, 2023	Last day to submit <i>Notice of Proposed Rule</i> to OAR for the 2024 Legislature
August 2, 2023	Proposed rule publishes in the Idaho Administrative Bulletin and 21-day written public comment period begins
August 16, 2023	Deadline to request a public hearing on proposed rule
August 23, 2023	End of written public comment period on proposed rule
October 17, 2023	Request approval from Land Board to adopt pending rule (regular agenda)
November 9, 2023	Last day to submit <i>Notice of Pending Rule</i> to OARC for publication in December 2023
	Pending rule to be reviewed during the 2024 legislative session.

Note: All dates are subject to change.

STATE BOARD OF LAND COMMISSIONERS

March 21, 2023
Consent Agenda

Subject

Timber License Plate Fund Projects

Question Presented

Shall the Land Board direct the Department to proceed with the recommended educational projects developed with the Idaho Forest Products Commission?

Background

Idaho's timber license plate is established in Idaho Code § 49-417A and has been available since 1997. Twenty-five dollars of each initial fee and fifteen dollars of each renewal fee are deposited in the Idaho Department of Lands fund for reforestation activities or for education. Educational efforts must help build public understanding of reforestation or the management and conservation of forest resources on public and private lands in Idaho. Such funds are to be expended as agreed by the State Board of Land Commissioners (Land Board) upon recommendations developed jointly by the Idaho Department of Lands (Department) and the Idaho Forest Products Commission (IFPC).

Discussion

In calendar year 2022, there were 3,663 timber plates sold, transferred, or renewed, an increase of 12.2% over the prior year. As of March 8, 2023, there is \$51,060.00 of unobligated funds in this account. The Department and IFPC have jointly agreed on a plan to expend \$50,000 on educational efforts for calendar year 2023 (Attachment 1). Fees from new and renewal license plates continue to accrue monthly in the fund. The Department and Idaho Forest Products Commission will only expend money from the fund if available.

Recommendation

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

Board Action

Attachments

1. IFPC/Department Project Recommendations



**IDAHO FOREST
PRODUCTS
COMMISSION**

Post office Box 855
Boise, Idaho 83701
Tel: (208) 334-3292
Toll Free: 800-ID-WOODS
Edu. (208) 334-4061
Fax (208) 334-3449
email: ifpc@idahoforests.org
plt@idahoforests.org
www.idahoforests.org

TO: State Board of Land Commissioners

David Gabrielsen
District 1 - (208) 660-3701

FROM: Jennifer Okerlund - Director, Idaho Forest Products Commission
Dustin Miller – Director, Idaho Department of Lands

Jack A. Buell
District 2 - (208) 245-2501

RE: Timber License Plate Fee Recommendations

Jesse D. Short
District 3 - (208) 848-2301

Idaho’s Timber License Plate has been available since 1997. In the year 2022, a total of 3,663 timber plates were sold, transferred, or renewed. Twenty-five dollars of each initial fee and fifteen dollars of each renewal fee are available for educational efforts or reforestation activities. As of March 8, 2023 there was \$51,060.00 of unobligated funds in this account.

Erika Sussi
District 4 - (208) 271-6591

Trevor Stone
At-Large - (208) 748-2038

Jennifer Okerlund
Director

The following list of educational projects is recommended by the Idaho Forest Products Commission and the Idaho Department of Lands to be supported by Timber License Plate fees as authorized in Section 49-417A, Idaho Code:

Michelle Youngquist
Education Coordinator

1. Arbor Day Billboard Campaign

Background: Arbor Day is a special holiday set aside to appreciate and plant trees. This project would provide an educational statewide billboard campaign in conjunction with the Arbor Day celebration. The billboards would target the general public with a positive message about Idaho forests. This campaign would be part of a statewide Arbor Day 2023 project.

Plate Fees: \$ 15,000
Total Project Estimated Costs: \$ 26,000

2. Seedlings

Background: This project would provide 20,000 seedlings for the Arbor Day 2023 celebration and educational expos. The seedlings are grown at the University of Idaho and packaged with information about reforestation and an educational brochure with information about Arbor Day and Idaho’s forests will also accompany seedlings. The seedlings would be available throughout the state at various points of distribution.

Amount Requested from Timber Plate Fees: \$ 4,000
Total Project Estimated Costs: \$ 14,500

(Over)

3. Arbor Day 2023

Background: Each year the last Friday in April is designed as Arbor Day, a special holiday celebrating trees. The Arbor Day 2023 project includes promotional materials, brochures and posters with information about Idaho's forests and reforestation, a seedling give-away, digital and radio public service announcements, social media postings, a special Arbor Day t-shirt and event at the state historic museum on Arbor Day. There will also be programs for Idaho educators focusing on the many things renewable trees bring to our lives and need for good forest stewardship, management and reforestation.

Amount Requested from Timber Plate Fees: \$ 1,000
Total Project Estimated Costs: \$ 13,500

4. Arbor Day Photo Contest

Background: In 2011, IFPC began a statewide photo contest providing an opportunity for Idaho students to engage in Arbor Day and consider the role trees as a renewable resource play in their daily lives. The project has been a true success with hundreds of 5th to 12th grade students participating each year. The contest was developed with input from the Idaho Department of Education and asks students to show what they see when they ALook to the Forest@ through a photograph and to describe their work in an artist statement. Cash prizes are awarded to the winners of three age categories. One grand prize is honored at the state Arbor Day Celebration where a tree is planted in their honor. Winning photos are used to promote Arbor Day and forest education in Idaho.

Amount Requested from Timber Plate Fees: \$ 500
Total Project Estimated Costs: \$ 1,000

5. Teachers= Sustainable Forest Tour

Background: This project brings provides dozens of educators with an exceptional hands-on opportunity to learn about sustainable forest management and the forest products industry during a forest tour. Its goal is to provide an opportunity for educators to talk directly with the people that grow, manage, harvest and process trees into useful wood products as well as the managers who care for the air, water, soil, fish and wildlife. The 2023 Sustainable Forest Tour is scheduled for the week of June 26-30.

Amount Requested from Timber Plate Fees: \$ 4,500
Total Project Estimated Costs: \$ 45,000

(Over)

6. Project Learning Tree

Background: Project Learning Tree is a nation-wide, award winning environmental education program. PLT is based on the principles of teaching youths how to think, not what to think and preparing students to make wise decisions about resource use and conservation. Since 1994, over 9,600 teachers have participated in PLT workshops with the potential to reach thousands of Idaho students *each* year.

Amount Requested from Timber Plate Fees:	\$ 25,000
Total Project Estimated Costs:	\$ 165,500

Total License Fee Appropriation Request	<u>\$ 50,000</u>
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Coeur d'Alene Staff Headquarters
3284 W. Industrial Loop, Coeur d'Alene, ID 83815
Telephone: Matthew Perkins- (208) 626-1779
Joyce S. Jowdy - (208) 666-8622
Fax No. (208) 769-1524

Memorandum

TO: Dustin T. Miller, Director, IDL
Jennifer Okerlund, Director, IFPC

FROM: Matthew Perkins, Urban & Community Forestry Program Manager

SUBJECT: Arbor Day Funding Request

DATE: February 06, 2023

CC: Craig Foss, State Forester/Forestry & Fire Division Administrator and Archie Gray, Chief, Forestry Assistance Bureau, and Joyce Jowdy, Grants/Contracts Operations Analyst

I am writing to request \$2,000 from the Idaho Timber Special License Plates program to assist Idaho Department of Lands area offices in promoting tree planting on public and private lands in and around Idaho communities. This funding request is for FY 2023, as Timber license plate funds are available.

The Department of Lands will use the \$2,000 to encourage IDL area field offices to help communities plan and conduct local Arbor Day celebrations. Similar projects conducted in past years received outstanding support from IDL field offices and the communities they assisted. Funds were used to purchase trees, Arbor Day T-shirts, and other educational materials for communities throughout Idaho.

The Arbor Day project provides many opportunities for partnerships between urban and rural forestry interests. IDL foresters work with local governments, schools, service clubs, businesses, USFS offices, and forest products companies to plan and conduct local celebrations.

Thank you for your consideration of this request. I will be glad to provide additional information as needed, and look forward to your response.

STATE BOARD OF LAND COMMISSIONERS

March 21, 2023

Consent Agenda

Subject

DI600323, Disclaimer of Interest for the former bed of the Payette River, Boise County, Idaho.

Question Presented

Shall the Land Board approve Disclaimer of Interest DI600323?

Background

Idaho holds title to the beds and banks of navigable waterways below the ordinary high-water mark (OHWM). The State Board of Land Commissioners (Land Board) is the statutorily designated trustee of these lands. When a river moves due to accretion (the natural, gradual process whereby deposited material causes the river to move), title to the riverbed moves as well. These accreted lands are subject to adverse possession by the adjacent upland landowner through a quiet title action. Land Board policy directs the Idaho Department of Lands (Department) to work with these landowners and pursue disclaimers of interest for clearing title to the accreted land.

Discussion

Horseshoe Bend School District #73 has applied for a disclaimer of interest for one parcel of accretion land totaling 11.579 acres, more or less. This parcel is located within the original surveyed river meander lines of the Payette River adjacent to the applicant's deeded property in SE of Section 27 and NE of Section 34, Township 7 North, Range 2 East (Attachment 1-Map).

The Department identified the OHWM on site, which was then surveyed by a licensed surveyor for the applicant. The Department reviewed the survey, deeds, and tax documents (Attachments 2-3), and determined that the subject property is above the OHWM of the Payette River.

Horseshoe Bend School District #73 will grant the State of Idaho an easement 25 feet in width for a public use right-of-way along, and adjacent to, the existing OHWM of the Payette River. In addition, Horseshoe Bend School District #73 will grant the State of Idaho a disclaimer of interest for one parcel of land located below the ordinary high-water mark totaling 0.741 acres.

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.

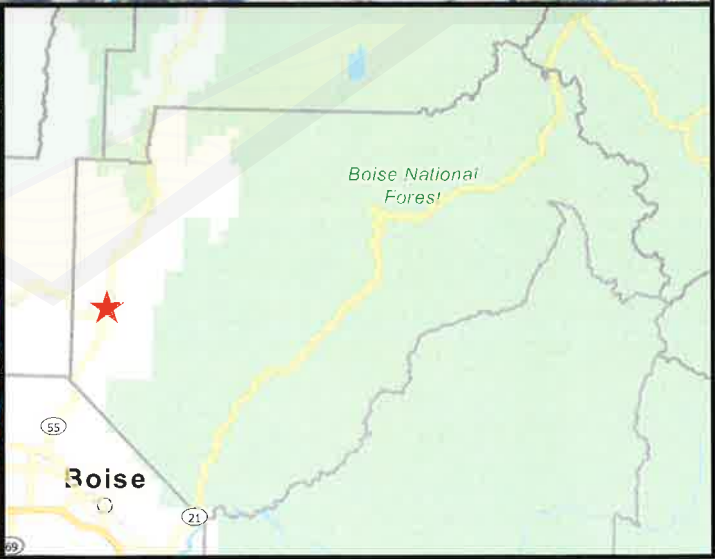
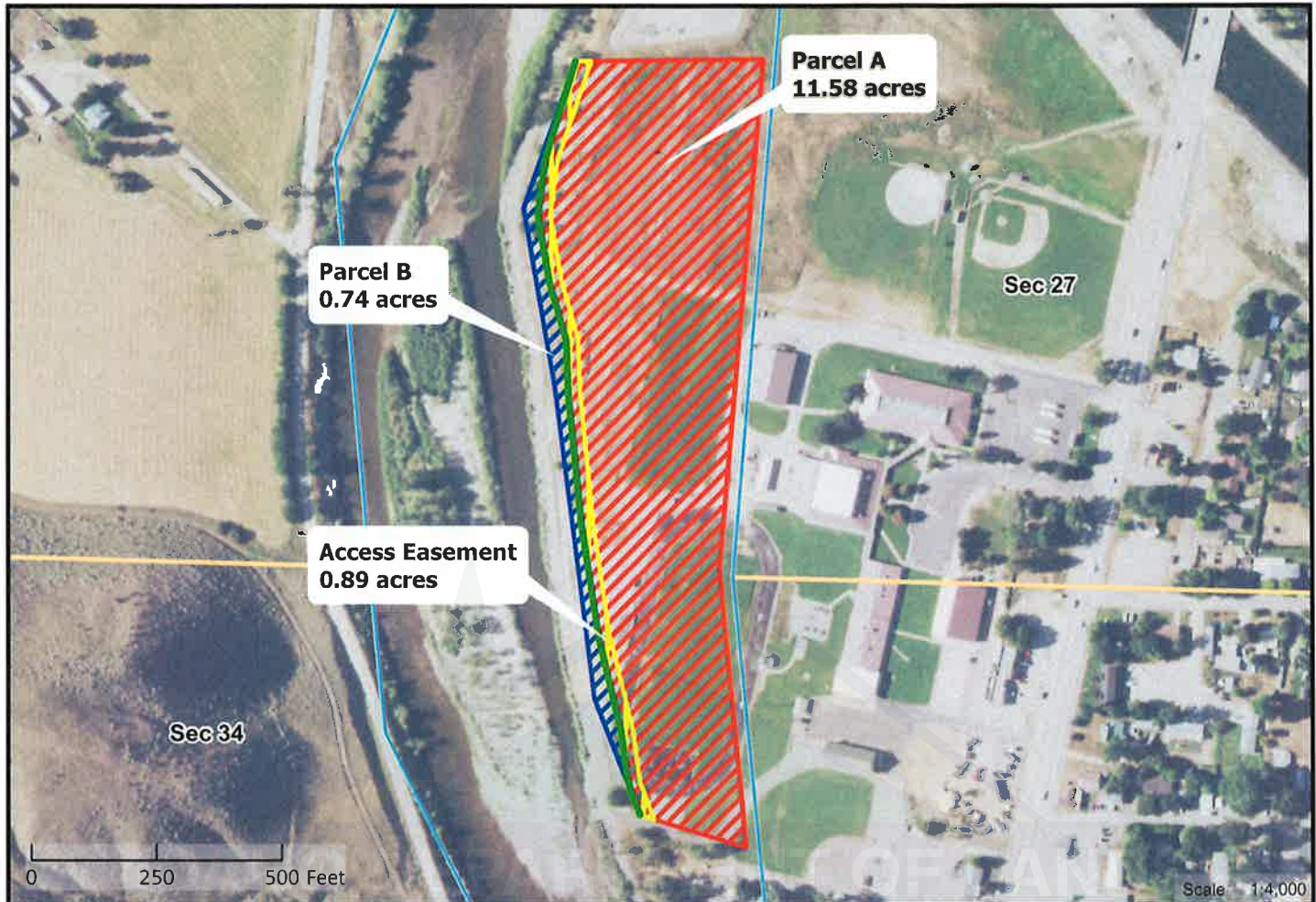
Board Action

Attachments

1. Map
2. Deeds for Riparian Lots
3. Property Tax History



IDAHO DEPARTMENT OF LANDS



- Section
- Ordinary High Water Mark
- Disclaimed BY State
- Disclaimed TO State
- Existing Disclaimers
- Meander Line
- Access Easement

DI600323

Sec. 27, 34 - T07N - R02E



Map Notes

Projection: Idaho Transverse Mercator, NAD 83

Map Notes and Data Sources

Disclaimer:
 This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.

Instrument No. 47445

WARRANTY DEED

request
A.D., 1940

THIS INDENTURE, Made this 26th day of March in the year of our Lord one thousand nine hundred and forty, between LEWARD L. FOLWELL and LOUISE A. FOLWELL, husband and wife of Horseshoe Bend, County of Boise, State of Idaho, the parties of the first part, and Boise County Common School District Number Two near Horseshoe Bend, County of Boise, State of Idaho, the party of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of One Hundred Fifty and no/100 Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to its heirs and assigns forever, all of the following described real estate situated in or near Horseshoe Bend, County of Boise, State of Idaho, to-wit:-

Said land is bound as follows: Beginning at a point which lies S. 13° 00' W. 708 feet and N. 75° 09' west 300 feet from the 1/16 corner in the south side of the Southeast Quarter of Section 27 of Township 7 North of Range 2 E. B. M.; thence N. 75° 09' W. 500 feet; thence N. 12° 49' E. 159.65 feet; thence S. 75° 13' E. 500 feet; thence S. 12° 49' W. 178.7 feet (to the point of beginning). Said land borders the present school ground on the West and is part of Lot 4 of Section 34, in Township 7 N., Rge. 2 E., B. M., Idaho, and contains 1.95 acres.

Said land is sold subject to no liens or taxes of any nature.

TOGETHER, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, its heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand and seals the day and year first above written.

LEWARD L. FOLWELL (SEAL)

LOUISE A. FOLWELL (SEAL)

STATE OF IDAHO }
COUNTY OF BOISE }

On this 26th day of March in the year 1940, before me John A. Fry, a Notary Public in and for said State, personally appeared Leward L. Folwell and Louise A. Folwell, Husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)

JOHN A. FRY
Notary Public for the State of Idaho, residing at
Horseshoe Bend, Idaho. Comm. expires June 16, 1941

STATE OF IDAHO }
COUNTY OF BOISE } SS

I hereby certify that this instrument was filed for record at request of Jno. Fry at 30 minutes past 3 o'clock P.M. this 27th day of March, A.D., 1940 in my office, and duly recorded in book 49 of Deeds at page 205.

KATHERINE M. BROGAN,
Ex-Officio Recorder.

Fees \$1.20.

211—CORPORATION WARRANTY DEED

Printed and for sale by Syme-York Company, Boise

THIS INDENTURE, Made this 21st day of May, in the year of our Lord
one thousand nine hundred and Seventy Three between

HOFF LUMBER COMPANY

a corporation duly organized and existing under the laws of the State of IDAHO

and having its principal office in Idaho at Horseshoe Bend in the County of

Boise, party of the first part, and

ELEMENTARY SCHOOL DISTRICT NO. 73

of Horseshoe Bend, County of Boise, State of

Idaho, party of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of

-----TEN DOLLARS (\$10.00) and other good and valuable DOLLARS,
consideration.

lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt

whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey

and confirm unto the said party of the second part, and to its heirs and assigns forever, all

the following described real estate situated in Horseshoe Bend, County of Boise

State of Idaho, to-wit:-----

Beginning at the East 1/16th corner common to Sections 27 and 34, said point bearing S. 89° 12' W., 1320.93 feet from the section corner common to Sections 26, 27, 34 and 35, T 7 N., R. 2 E., B.M.; thence S. 89° 12' W., 15.50 feet to a point; thence N. 10° 47' E 75.91 feet to a point; thence West 107.90 feet to the real point of beginning; thence continue West 99.50 feet to a point; thence N. 79° 13' W, 915.85 feet to a point; thence S. 9° 05' 30" E., 510.03 feet to a point; thence S. 23° 37' 30" E., 249.65 feet to a point; thence N. 12° 49' E., 143.70 feet to a point; thence S. 79° 13' E 324.40 feet to a point; thence N. 10° 47' E., 200.00 feet to a point; thence N. 79° 13' W., 74.88 feet to a point; thence N. 10° 47' E., 250.00 feet to a point; thence S. 79° 13' E., 316.48 feet to a point; thence S. 10° 47' W., 220.00 feet to a point; thence S. 79° 13' E., 128.00 feet to a point; thence N. 10° 47' E., 330.63 feet to the real point of beginning.

Said parcel contains 7.968 acres more or less, subject to easements of record or in use.

Together with all tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, including all water rights appurtenant to the lands herein conveyed. Subject to all easements of record and rights of way in existence across said premises and reservations contained in United States Patents.

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its heirs and assigns forever. And the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part, its heirs and assigns, against the said party of the first part, and its successors, and against all and

every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Assistant Secretary in pursuance to said resolution the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

HOFF LUMBER COMPANY

By Theodore Hoff Jr.
Its President
Attest Harold E. Payne
Its Assistant Secretary

STATE OF IDAHO, }
COUNTY OF BOISE } ss.

On this 21st day of May in the year 19 73, before me

Robert G. Elordi, a Notary Public in and for the said State,

personally appeared Theodore Hoff Jr., known to me to be the President of the corporation that executed this instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Robert G. Elordi
Notary Public for the State of Idaho,
Residing at Horseshoe Bend, Idaho.

My comm. expires 3/4/76

No. 87151

Corporation Warranty Deed

for _____

— TO —

Dated _____, 19____

STATE OF IDAHO, }
COUNTY OF Boise } ss.

I hereby certify that this instrument was filed for record at request of Edmund Taylor School Dist No. 73

at 15 minutes past 8 o'clock PM, this 19.73 day of May, A.D. 19 73 in my office, and duly recorded in Book 74 of Deeds at page 39

By Janet J. Safford Ex-Officio Recorder
Janet J. Safford Deputy

Fees, \$ 1.00

Mail to Horseshoe Bend, Idaho 83609

SWING-YORK CO., BOISE

QUIT CLAIM DEED

FOR VALUE RECEIVED, HORSESHOE BEND HYDROELECTRIC COMPANY, a Delaware corporation, does hereby convey, release, remise, and forever quit claim unto HORSESHOE BEND SCHOOL DISTRICT NO. 73, whose current address is P.O. Box 116 Horseshoe Bend, Idaho 83629, the following described premises, to-wit: see Exhibit "A" attached hereto and incorporated herein by this reference as though set forth in full, together with all appurtenances thereunto belonging.

DATED this 19th day of March, 1992.

HORSESHOE BEND HYDROELECTRIC COMPANY

By: [Signature]
Its Executive Vice President



STATE OF IDAHO)
County of Ada) ss.

On this 19th day of March, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared David P. Harschi, known to me to be the Executive Vice President of Horseshoe Bend Hydroelectric Company, and known to me to be the person whose name is subscribed to the within instrument and who acknowledged to me that she/he executed the same on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Jean M. Hart
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: 10-15-93

EXHIBIT "A"

A tract of land in the SE $\frac{1}{4}$ of Section 27, T. 7 N., R. 2 E., B.M., Boise County, Idaho, more particularly described as follows:

Commencing at the section corner common to Sections 26, 27, 34 and 35, T. 7 N., R. 2 E., B.M., Boise County, Idaho, thence S. 89°12' W. along the section line common to said Sections 27 and 34, 1,293.94 feet (record - 1,295.60 feet) to a point; thence N. 10°47' E., 1,068.90 feet to a point; thence N. 46°41' W., 47.45 feet to a point on the Power Canal right-of-way, the real point of beginning; thence S. 87°32'30" W., 1,297.39 feet to a point on the high water line of the Payette River; thence S. 17°41'30" W. along said high water line, 316.58 feet to a point; thence S. 11°36' E. along said high water line, 370.78 feet to a point; thence S. 9°05'30" E. along said high water line, 118.24 feet to a point; thence S. 79°13' E., 915.85 feet to a point; thence North 104.00 feet to a point; thence N. 88°38'40" E. 228.30 feet to a point on the westerly right-of-way line of Highway 55; thence N. 10°47' E. along said right-of-way line, 915.34 feet to the real point of beginning. Said tract contains 25.53 acres more or less, subject to easements of record or in use.

Together with all tenements, hereditaments and appurtenances thereto belonging, except sprinkler pipes and pump, or in anywise appertaining, including all water rights appurtenant to the lands herein conveyed.

Subject to all easements of record and rights-of-way in existence across said premises, and reservations contained in United States Patents.

IDAHO DEPARTMENT OF LANDS

EXCEPTING THEREFROM THE FOLLOWING:

A parcel of land being a portion of the SE $\frac{1}{4}$ of Section 27, T. 7 N., R. 2 E., B.M., Boise County, Idaho, more particularly described as follows:

Beginning at an axle marking the Southeast corner of said Section 27;

thence North 89°40'16" West 1291.88 feet along the Southerly boundary of said Section 27 to a point on the centerline of U. S. Highway 55;

thence North 11°12'18" East 1043.52 feet along the centerline of said U. S. Highway 55 to a point;

thence North 69°51'47" West 40.49 feet to an iron pin on the Westerly right-of-way of said U. S. Highway 55 and the Southerly right-of-way of the Horseshoe Bend Hydroelectric Company canal, said point being the REAL POINT OF BEGINNING;

thence continuing along the Southerly right-of-way of said canal the following courses and distances to iron pins:

North 45°24'53" West 236.59 feet;

North 37°59'42" West 46.02 feet;

North 25°37'48" West 120.63 feet;

North 17°31'09" West 305.31 feet;

North 17°41'56" West 115.39 feet to an iron pin on the Southerly right-of-way of the Oregon Short Line Railroad;

Continued

EXHIBIT "A" continued...

thence continuing along the Southerly right of way of said Railroad extended, North 88°32'02" East 168.70 feet to a point on the Easterly right-of-way of said Horseshoe Bend Hydroelectric Company canal;

thence South 12°09'58" East 116.43 feet along the Easterly right-of-way of said canal to an iron pin on the Southerly right-of-way of said Oregon Short Line Rail road;

thence North 88°04'00" East 14.72 feet along the Southerly right-of-way of said Railroad and the Easterly right-of-way of said Canal to an iron pin;

thence continuing along the Easterly right-of-way of said Canal the following courses and distances to iron pins:

South 10°38'51" East 118.32 feet;
South 24°36'07" East 107.28 feet;
South 36°05'11" East 57.20 feet;
South 42°46'16" East 164.79 feet to an iron pin on the Westerly right-of-way of said U. S. Highway 55;

thence South 11°12'18" West 226.49 feet along the Westerly right-of-way of said Highway to the point of beginning, comprising 2.72 acres, more or less.

SUBJECT TO:

All existing easements and road rights-of-way of record or appearing on the above described parcel of land.

END OF EXHIBIT "A"

143096

BOISE COUNTY IDAHO SS
REQUEST OF

Security title

DATE 1 1 11

92 APR -3 PM 1:30

ANNE C. KOLAR

Dale Yorker
DEPUTY

FEES \$9.00



BOISE COUNTY TREASURER
BOISE COUNTY
 PO BOX 1300
 IDAHO CITY ID 83631
 TELEPHONE: (208) 392-4441

TAX HISTORY

PARCEL NUMBER
RPH00000278450

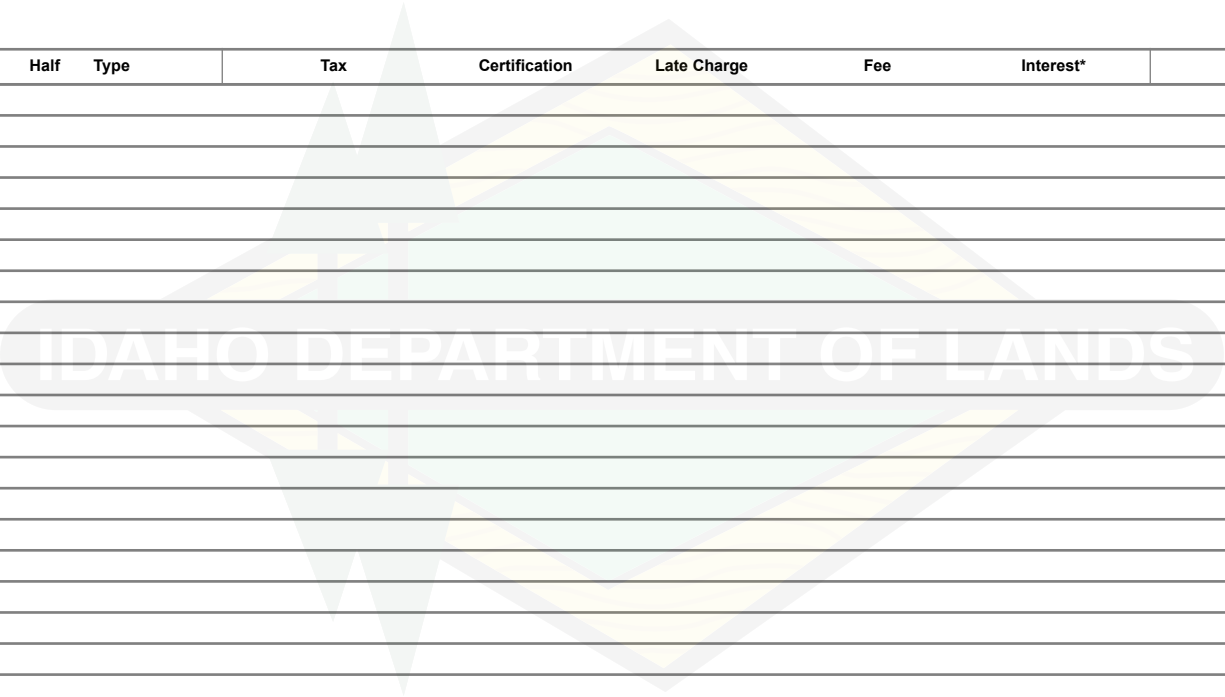
LEGAL DESCRIPTION
 HSB EXEMPT
 TAX 152,156,253,293 & 353
 LESS CANAL
 INST.#143094 & 143096
 SCHOOL

PRIMARY PROPERTY ADDRESS

BOISE COUNTY ELEMENTARY SCHOOL DISTRICT #73
 HORSESHOE BEND ID 83629

BALANCE DUE	INTEREST DATE 02/13/2023
\$ -	BALANCE AS OF 02/13/2023 08:00AM
TOTAL	

Year	Roll	Half	Type	Tax	Certification	Late Charge	Fee	Interest*	TOTAL
2022									
2021									
2020									
2019									
2018									
2017									
2016									
2015									
2014									
2013									
2012									
2011									
2006									
2005									
2004									
2003									
2002									
2001									
2000									
1999									
1998									
1997									





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.

Draft Minutes
State Board of Land Commissioners Regular Meeting
February 21, 2023

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, February 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 9:00 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 in person at the physical location.

[Editor's note: the Discussion portions, if any, for agenda items may be 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 2023

Discussion: Governor Little asked if the Wildcat timber sale was the one with the bridge on it. Director Miller replied yes. Referring to the map, Governor Little asked about the star right in the middle of Valley County and said he did not think there was state land there. Director Miller responded that was a ton sale named Fools Gold Ton. Mr. Jeremy Shawver added that sale is in the McCall (Payette Lakes) supervisory area and offered to confirm it is endowment land.

Superintendent Critchfield: My question is not related specifically to this graph, but to all the information you presented on the timber sales. Dustin, you made the comment when you looked at the graph on page three, the monthly lumber and stumpage price, that you were hoping to see that climb. This is a question about the function of this group, decisions that we make here,

does that impact that, or are the graphs determined by market factors that are unrelated to decisions here? What is the cooperation or the connection between these two things?

Director Miller: Governor and Superintendent Critchfield, thank you for the question. We are at the mercy of the market on much of this. If you look at the graph, how volatile the timber market, the lumber market has been, you see our stumpage price kind of tick along there. The gaps there in the red are times when we had no sales in a particular month. Given the high lumber prices, our six-month average price has trended up. Adding more volume to the market is always a good thing as long as there are purchasers out there that are able to buy it. We are trending up towards 328 million board feet as part of a five-year ramp up in our forest asset management plan from 247 million board feet. We will be taking a look at the next forest asset management plan that will push that number even higher and put more wood out there on the market. Right now, the Department provides roughly 30% of the total stumpage volume for the entire industry in Idaho. We are a big player and the Land Board plays a huge role in ensuring that we are implementing the right plans and policies to keep those lines going in the right direction. When we bring our annual sales plan and or our updated forest asset management plan, that is an opportunity for the Land Board to make some decisions, to bless that plan, make changes to the plan, and allow us to put more volume on the market and thus more income for the endowments.

B. Leases and Permits – January 2023

Discussion: Controller Woolf pointed out on the bottom of page 2, the \$183,000 Real Estate Services figure and asked how that revenue was generated. Director Miller answered that revenue comes from funds paid to the Department by proponents when real estate transactions are closed. Some money came from recent Voluntary Auction for Ownership (VAFO) sales.

Status Updates

C. Land Bank Fund

Discussion: Governor Little asked what interest the Land Bank Fund is receiving. Director Miller said he would research and provide the percentage following the meeting.

D. Legislative Summary

Discussion: Governor Little clarified that the Department's rules were held, not tabled, by the House committee; tabled is different than held. Director Miller confirmed that the rules were held and will have further action by the committee.

E. Resource Protection and Assistance Report

Discussion: Controller Woolf inquired about the buoy situation on the Coeur d'Alene River. Mr. Thomas recalled that issue arose a few years back, and in the interim, the area office has continued discussions with the county. The county has jurisdiction over the buoys, not the Department of Lands, and everyone continues to cooperate.

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. My name is Chris Anton, I am the Manager of Investments for the Endowment Fund Investment Board. It is nice to meet all of you and I look forward to building relationships with you. I will be here every month, providing an update on the performance of the endowment fund.

As you can see in your report, financial markets moved higher in January as Europe was helped by significantly lower natural gas prices. China finally began to reopen as it relaxed COVID-Zero policies and the U.S. continued to experience moderating inflation and a resilient labor market. The fund was up 5.2% during the month, which left us up 8.1% fiscal year-to-date. Financial markets were closed on Monday [2/20], but through Friday [2/17] the fund was up 7.7%. We are in about the same place we were at the end of January. The improvement in business sentiment is certainly welcome, but it remains to be seen how quickly inflation will cool and how long the Federal Reserve will maintain its restrictive monetary policies. Inflation did cool slightly in January. The annual rate for headline inflation dropped from 6.5% in December to 6.4% in January. Inflation is moving down but we have a long way to go to reach the Federal Reserve's goal of 2%. Investors seem to be anticipating that the Federal Reserve will cut rates soon. However, the Federal Reserve insists that they are going to keep rates strong and at the current high levels through the end of 2023. That dynamic is very important because the longer rates stay at an elevated level, the greater the probability the economy will slow and we could move into a recession.

In terms of activities by the Investment Board, we had a meeting last Thursday. We reviewed Callan's annual capital markets assumptions and looked at our asset allocation. The Investment Board elected to keep our asset allocation the same as it has been. Our next meeting will be in May. For those of you who are new to the Land Board, our board typically appears before the Land Board twice a year in May and November. We provide a semi-annual and an annual report. It is an opportunity for the Land Board to get to know our board members as well.

The second part of the report, exhibit B, provides more detail on how the fund did by sub asset category and how each of the investment managers performed. The green and red colors do not indicate whether we are up or down, they indicate whether we are better than the benchmark. The Governor requested this, and I think it is a helpful tool. If it is green, it means that the managers have performed better than their respective benchmark. If it is red, they have performed worse than their benchmark. If you buy the benchmark in an index form, it is less expensive than hiring an active manager. We want to know that they are earning their keep and they are outperforming their respective benchmark. For fiscal year-to-date, that has happened.

Controller Woolf: Thank you, Mr. Anton, are there any concerns of any of the fund managers, how things are going and proceeding forward? Do you or your board have any concerns.

Mr. Anton: One of the managers that we have really kept a close eye on is Sands Capital. They are a large cap growth manager. As the Federal Reserve has increased the interest rates, growth stocks have come under considerable pressure, and they more than the growth index. They were down almost 50% last year. If you look at the second page of that report, you will see fiscal year-to-date, they are up 15.1%. They were up 23% last week, finally starting to improve. If you look at the fiscal year-to-date, or the last three years, they are still about 0.9% below their benchmark. We are keeping a close eye on Sands.

Governor Little: How often do you mark the real estate to market?

Mr. Anton: Every quarter. Real estate managers conduct a full appraisal of their properties every quarter.

Controller Woolf: One more for Mr. Anton, the second from the bottom, the CBRE Core Partners, is that a real estate fund? It is on page 2.

Mr. Anton: Yes, Governor, Controller Woolf, that is correct. It is an outstanding fund. If you look at relative to benchmark, however, they do not look that great. Part of the problem was we were in the process of transitioning from the UBS Trumbull Property fund into the CBRE fund. As we have all seen, the public REIT markets have taken write downs as mortgage rates have gone up. The private funds, to the Governor's point, there is a lag because they do their appraisals quarterly. As we started to transition into CBRE, the timing was not great because they had write downs in the fourth quarter, right at the time we were halfway through the transition. We have confidence in the fund long term, but their initial performance does not look spectacular.

Secretary of State McGrane: Looking at all the benchmarks, why is our real estate performing so poorly relative to its benchmark compared to others? There may be good justification, I am just not familiar.

Mr. Anton: Governor, Secretary McGrane, the benchmark is what they call the Odyssey index; it is an equity real estate fund with fairly low leverage. There are different levels of leverage in the real estate fund. Historically, we had two real estate funds, the DWS RREEF America II, which is a core fund that is consistent with the benchmark, and the UBS Trumbull Property fund that I referenced earlier. That was about half of our real estate, and they were in a leveraged loan fund. They would loan up to 95% of the property and they would take some of the equity upside. The challenge has been, as all these private capital, private credit funds have developed, that they just have not been able to generate any new business, and that is why we are transitioning away from them. To your specific question, the reason we are less than the benchmark is because that is not an equity fund, it is a loan fund and therefore has lower performance. That is half of our real estate performance and therefore it is more conservative and has lower returns.

Consent—Action Item(s)

3. Approval of Draft Minutes – December 20, 2022 Regular Meeting (Boise)

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

Regular—Action Item(s)

4. Approval of Elk Hyde Timber Sale – Presented by Jeremy Shawver, Section Manager-Timber Sales

Recommendation: Approve the Elk Hyde Timber Sale.

Discussion: None.

Board Action: A motion was made by Controller Woolf that the Land Board approve the Elk Hyde Timber Sale as recommended. Superintendent Critchfield seconded the motion. The motion carried on a vote of 5-0.

Information

None

Executive Session

None

There being no further business before the Land Board, at 9:37 a.m. a motion to adjourn was made by Controller Woolf. Superintendent Critchfield seconded the motion. The motion carried on a vote of 5-0.

IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

March 21, 2023

Trust Land Revenue

Timber Sales

During February 2023, the Department of Lands sold seven endowment timber sales at auction. Four sales had competitive bidding. The net sale value represents a 9% up bid over the appraised value.

The final fiscal year 2022 timber sale sold successfully. On its third attempt at auction, Wildcat Cedar sold as appraised to Stella-Jones on February 28th.

TIMBER SALE AUCTIONS								
Sale Name	Area	Sawlog MBF	Cedar Prod MBF	Pulp MBF	Appraised Net Value	Sale Net Value	Net \$/MBF	Purchaser
Roundup	POL	4,210			\$ 1,349,260.00	\$ 1,349,260.00	\$320.49	IFG Timber LLC
Deep Clean Cedar	POL	1,005			\$ 429,738.00	\$ 448,871.00	\$446.64	IFG Timber LLC
Twisted Cedar	SJ	5,935	180		\$ 1,842,799.50	\$ 1,842,799.50	\$301.36	Stella-Jones
Whiskey 7	CLW	710			\$ 167,704.50	\$ 171,892.00	\$242.10	IFG Timber LLC
Democrat Ridge	CLW	8,510			\$ 917,558.00	\$ 1,412,461.00	\$165.98	IFG Timber LLC
Doug Fir Meadows	POL	4,095			\$ 737,088.50	\$ 885,185.00	\$216.16	IFG Timber LLC
Wildcat Cedar	PL	7,190	265		\$ 1,668,745.00	\$ 1,668,745.00	\$223.84	Stella-Jones
Endowment		31,655	445	0	\$ 7,112,893.50	\$ 7,779,213.50	\$242.34	

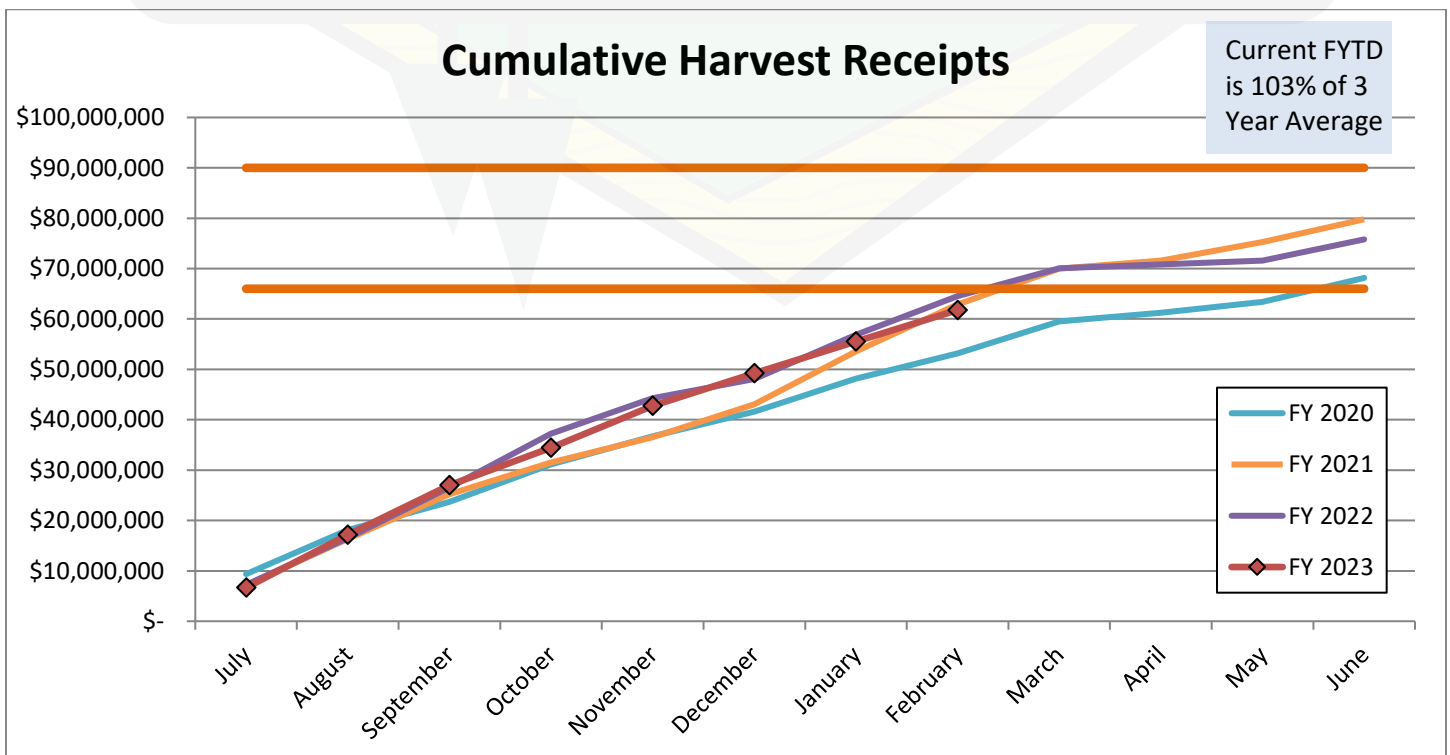
PROPOSED TIMBER SALES FOR AUCTION				
Sale Name	Volume MBF	Advertised Net Value	Area	Estimated Auction Date
North Operations				
Davies Glades Cedar	16,660	\$ 3,624,286.00	St. Joe	3/1/2023
Cherry Pit	5,485	\$ 1,396,253.00	POND	3/22/2023
Muddy Water Cedar	4,000	\$ 1,265,796.50	PL	3/23/2023
Mineral Flats	6,050	\$ 2,011,734.00	PL	3/23/2023
TOTALS	32,195	\$ 8,298,069.50		
South Operations				
Fools Gold Ton	4,305	\$ 439,117	PAY	3/2/2023
West Mud Ton	1,680	\$ 247,550	PAY	3/21/2023
Big Cat OSR Cedar	715	\$ 147,845	MC	3/29/2023
TOTALS	6,700	\$ 834,512		

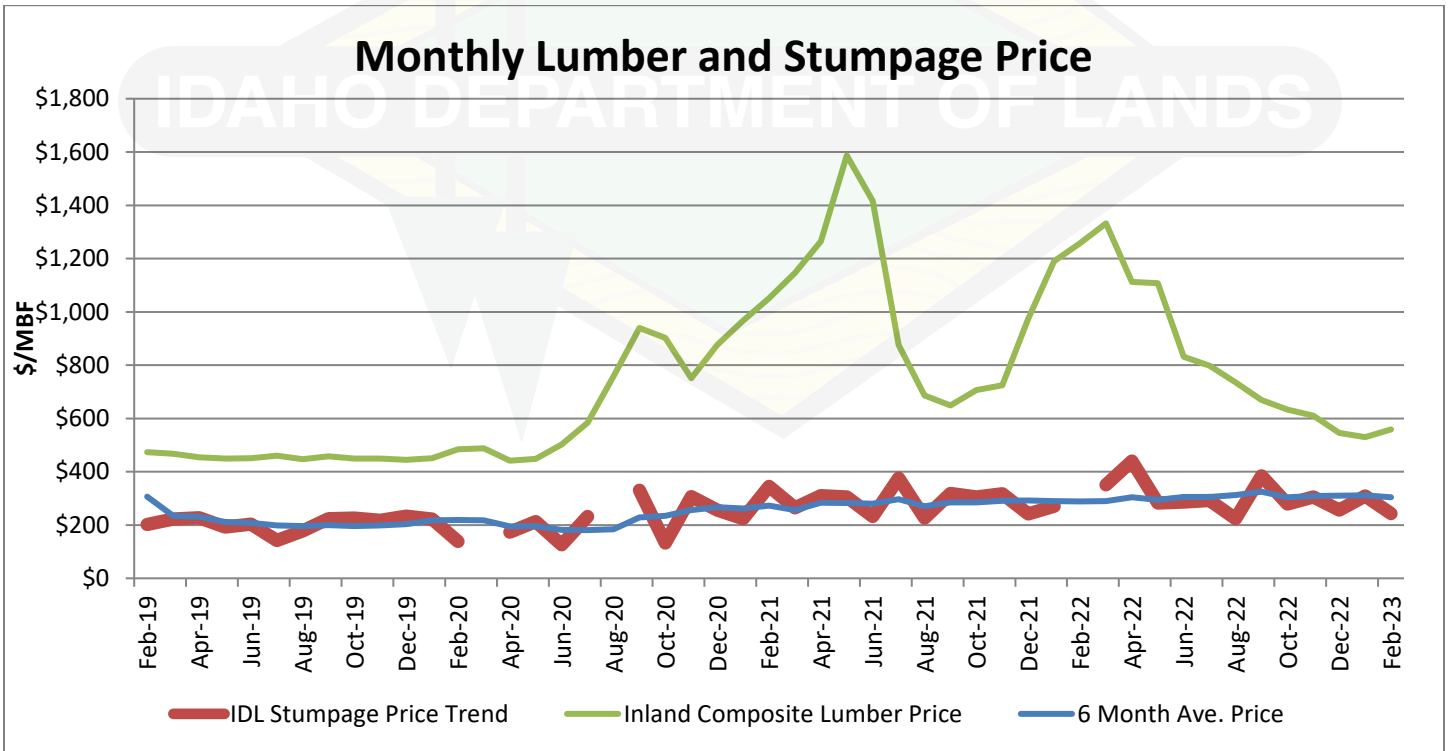
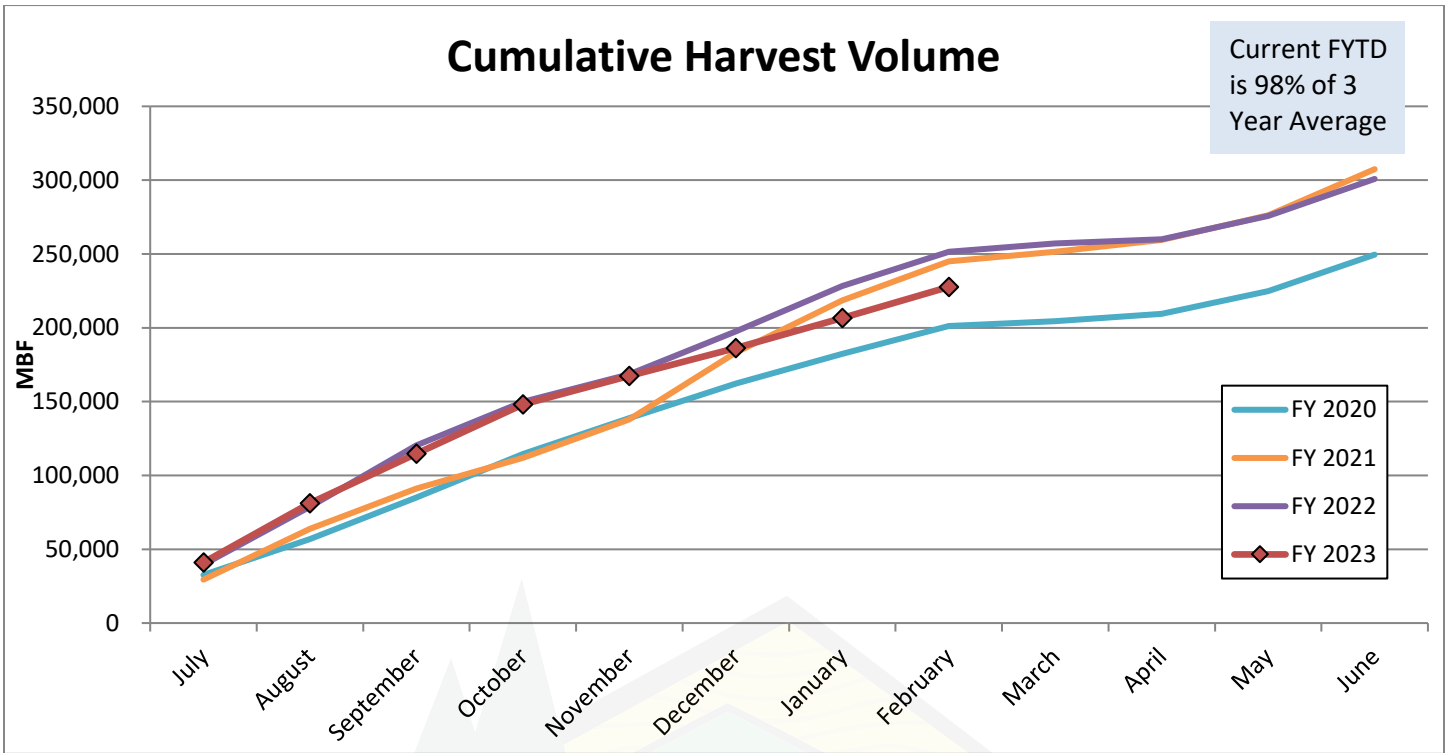
VOLUME UNDER CONTRACT as of February 28, 2023				
	Public School	Pooled	Total	3 Year Avg.
Active Contracts			145	163
Total Residual MBF Equivalent	312,648	150,159	462,807	535,286
Estimated residual value	\$90,659,120	\$44,950,401	\$135,609,521	\$137,892,411
Residual Value (\$/MBF)	\$289.97	\$299.35	\$293.02	\$257.61

	TIMBER HARVEST RECEIPTS				
	February		FY to date	March Projected	
	Stumpage	Interest	Harvest Receipts	Stumpage	Interest
Public School	\$ 3,310,462.24	\$ 281,701.40	\$ 37,624,454.58	\$ 2,692,531.91	\$ 195,879.68
Pooled	\$ 2,535,971.65	\$ 126,187.45	\$ 24,143,687.45	\$ 3,127,962.24	\$ 174,533.63
General Fund	\$ 0.31	\$ 0.00	\$ 244.08	\$ 0.31	\$ 0.00
TOTALS	\$ 5,846,434.20	\$ 407,888.85	\$ 61,768,386.11	\$ 5,820,494.46	\$ 370,413.31

	Status of FY2023 Timber Sale Program					
	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of February 28, 2023	87,015	30,188	117,203	7,789	191	7,980
Currently Advertised	39,854	12,696	52,550	1,122	178	1,300
In Review	26,633	13,146	39,779	6,502	2,058	8,560
Did Not Sell*	0	0	0	0	0	0
TOTALS	153,502	56,030	209,532	15,413	2,427	17,840
FY2023 Sales Plan			326,000			20,000
Percent to Date			64%			89%

* After three attempts at auction.

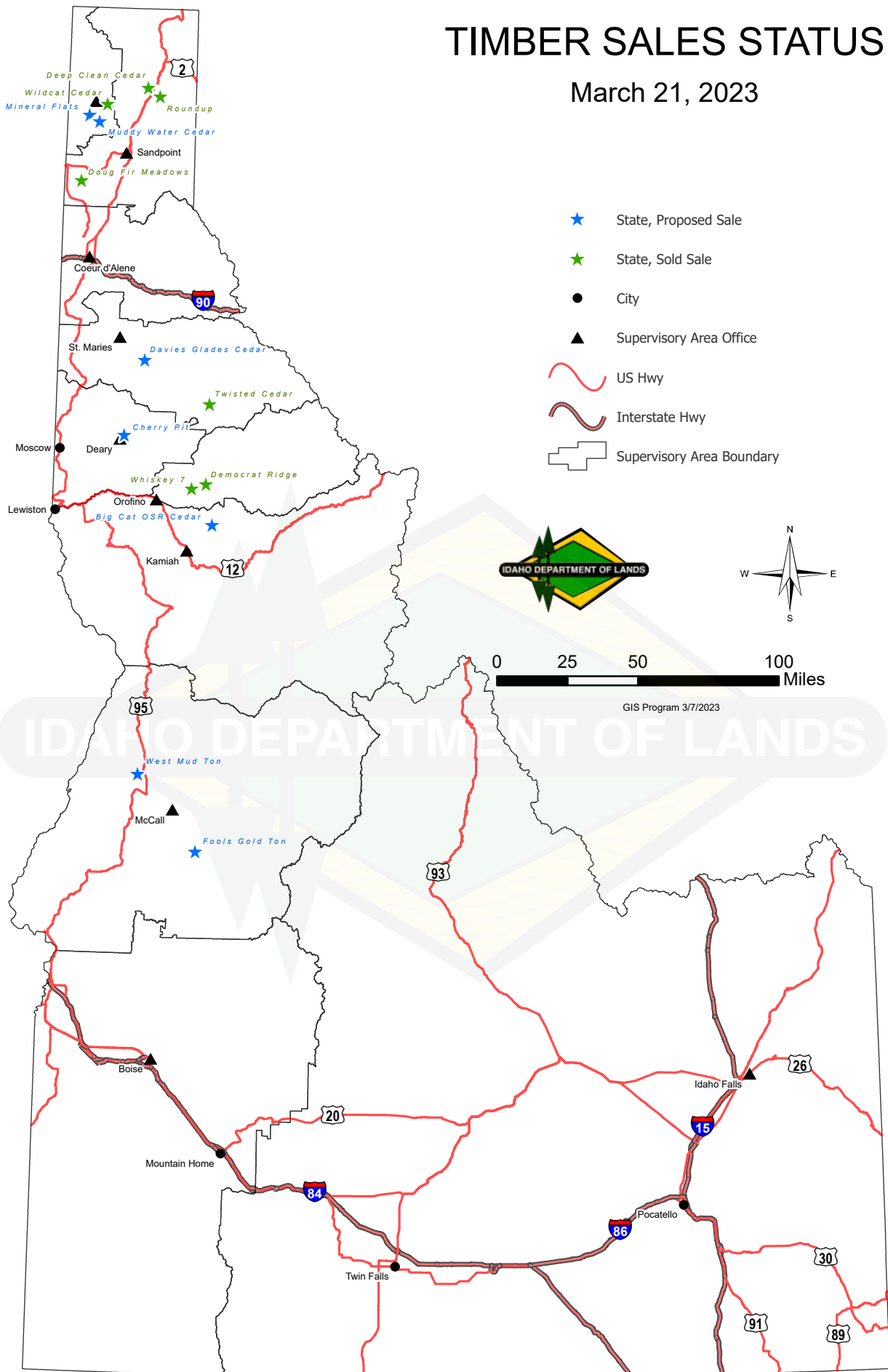




February 2023 6-month average price is \$303.68.
 February 2022 6-month average price was \$288.22.

TIMBER SALES STATUS

March 21, 2023



STATE BOARD OF LAND COMMISSIONERS

March 21, 2023

Endowment Transactions

Leases and Permits

FISCAL YEAR 2023 – LEASING & PERMITTING TRANSACTIONS BY MONTH – through February 28, 2023													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
SURFACE													
Agriculture	-	1	-	-	1	-	-	-					2
<i>Assignments</i>	-	-	-	-	-	-	-	-					0
Communication Sites	-	-	-	1	-	-	-	1					2
<i>Assignments</i>	1	2	-	-	-	-	-	-					3
Grazing	-	-	-	7	1	-	-	3					11
<i>Assignments</i>	3	2	-	1	-	-	5	2					13
Residential	-	4	-	1	-	-	-	2					7
<i>Assignments</i>	-	-	-	-	-	-	-	-					0
COMMERCIAL													
Alternative Energy	-	-	-	-	1	-	-	-					1
Industrial	-	-	-	-	-	-	-	7					7
Military	-	-	-	-	-	-	-	-					0
Office/Retail	1	-	-	-	-	-	-	-					1
Recreation	-	-	-	-	-	-	-	1					1
OTHER													
Conservation	-	-	-	2	-	-	-	-					2
Geothermal	-	-	-	-	-	-	-	-					0
Minerals	2	2	1	-	-	-	-	4					9
<i>Assignments</i>	1	-	-	-	-	-	1	-					2
Non-Comm Recreation	-	-	-	-	-	-	-	-					0
Oil & Gas	-	-	-	-	-	-	-	1					1
PERMITS													
Land Use Permits	6	5	4	6	2	3	7	5					38
TOTAL INSTRUMENTS	14	16	5	18	5	3	13	26	0	0	0	0	100

Real Estate

FISCAL YEAR 2023 – REAL ESTATE TRANSACTIONS BY MONTH – through February 28, 2023													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
Deeds Acquired	-	-	-	-	-	-	7	-					7
Deeds Granted	-	-	5	3	1	1	-	-					10
Deeds Granted - Surplus	-	-	-	-	-	-	-	-					0
Easements Acquired	-	1	-	-	-	-	-	-					1
Easements Granted	2	1	-	-	-	-	-	-					3

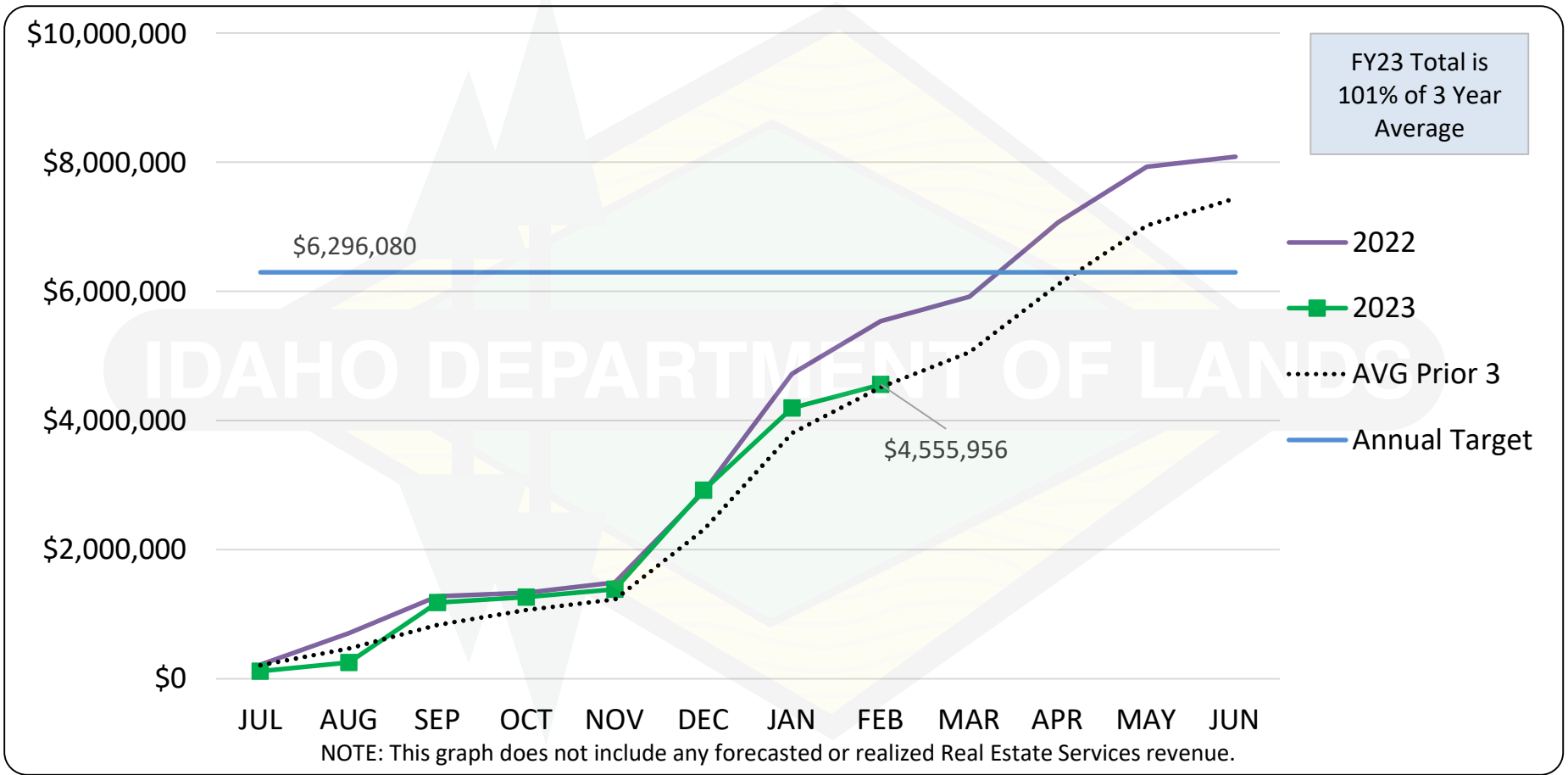
TRUST LAND MANAGEMENT DIVISION
FY2023 GROSS REVENUE (non-timber) - ACTUAL AND FORECASTED
through February 28, 2023

	ACTUAL RECEIPTS AS OF 2.28.2023	REVENUE EXPECTED BY 2.28.2023**	REVENUE EXPECTED BY 06.30.2023
SURFACE			
AGRICULTURE	\$ 496,812	\$ 505,000	\$ 505,000
COMMUNICATION SITES	\$ 928,153	\$ 852,199	\$ 1,009,239
GRAZING	\$ 50,047	\$ 28,000	\$ 1,870,000
RESIDENTIAL LEASES	\$ 786,110	\$ 935,373	\$ 1,095,851
COMMERCIAL			
COMMERCIAL ENERGY RESOURCES	\$ 26,420	\$ 47,763	\$ 47,763
COMMERCIAL INDUSTRIAL	\$ 129,704	\$ 67,460	\$ 74,504
COMMERCIAL MILITARY FACILITIES	\$ 168,078	\$ 21,590	\$ 91,117
COMMERCIAL OFFICE/RETAIL LEASES	\$ 729,385	\$ 476,352	\$ 527,352
COMMERCIAL RECREATION	\$ 1,097,726	\$ 831,144	\$ 899,978
OTHER			
CONSERVATION LEASES	\$ 70,285	\$ 65,000	\$ 65,000
GEOTHERMAL	\$ (6,339)	\$ -	\$ -
MINERAL LEASES	\$ 75,054	\$ 105,403	\$ 105,403
OIL AND GAS LEASES	\$ 4,522	\$ 2,774	\$ 4,874
Sub Total	\$ 4,555,956	\$ 3,938,057	\$ 6,296,081
REAL ESTATE SERVICES	\$ 183,632 *		
Grand Total	\$ 4,739,588		

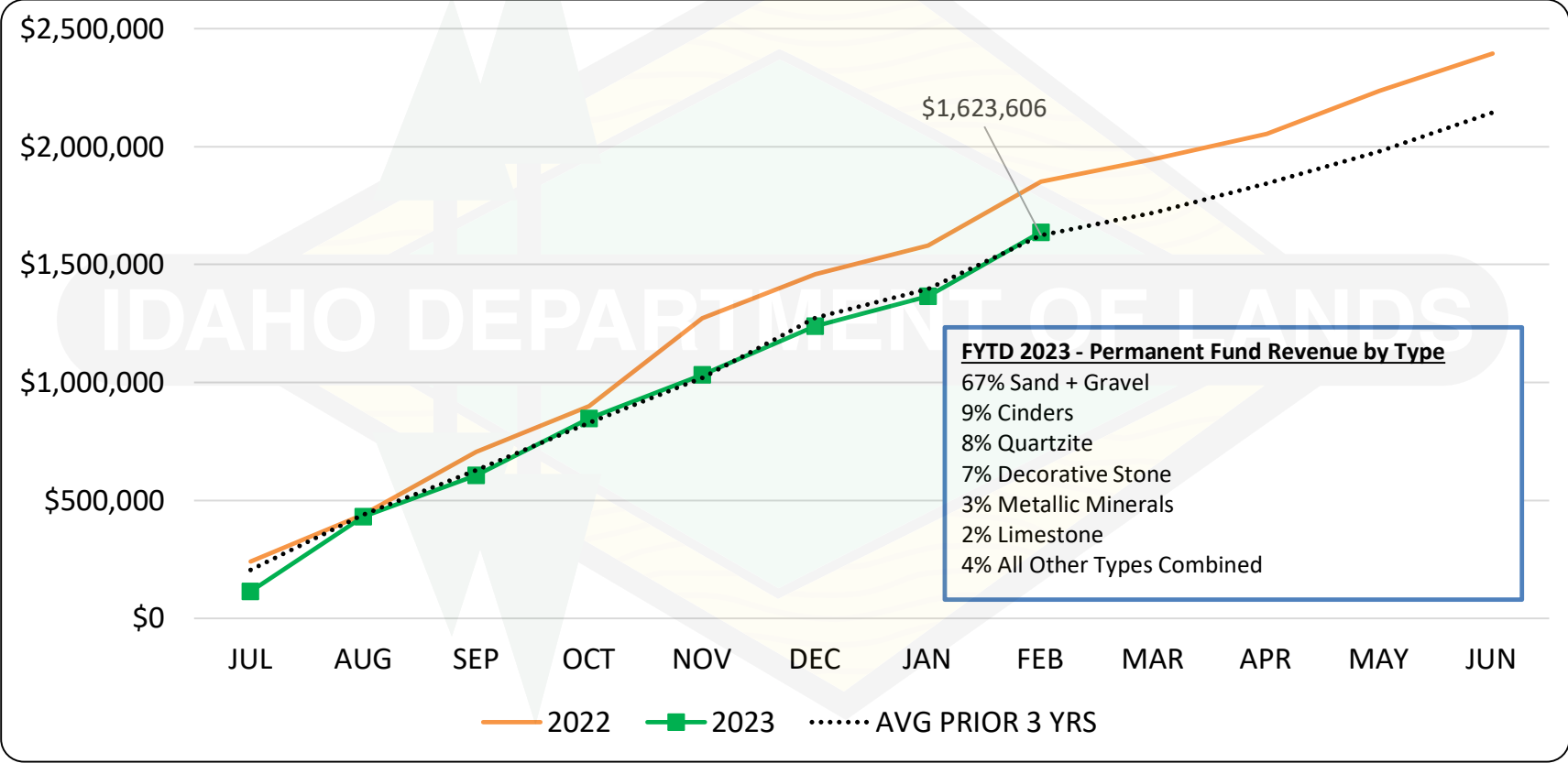
* This category is not included in the annual forecast.

** These figures are based on "normal" timing of revenue/billing throughout the year.

Cumulative Trust Land Program Receipts Earnings Reserve - All Programs excluding Timber FY 2022 - FYTD 2023



Cumulative Trust Land Permanent Fund Revenue/Royalties
 (Does NOT include Land Bank or Timber Program Revenue)
 FY2022 - FYTD2023



STATE BOARD OF LAND COMMISSIONERS

March 21, 2023
2023 Legislative Summary

Status of legislation monitored by the Department of Lands

IDL Pending Rules

Non-Fee Rules

[Docket 20-0214-2201](#) – Rules for Selling Forest Products on State-Owned Endowment Lands

Status Senate Resources and Environment – approved. House Resources and Conservation – held to future date.

Fee Rules

[Docket 20-0317-2201](#) – Rules Governing Leases on State-Owned Navigable Waterways

Status Senate Resources and Environment – approved. House Resources and Conservation – approved.

IDL Budget

[H0277 APPROPRIATIONS – ENDOWMENT FUND INVESTMENT BOARD](#) – Relates to the appropriation to the Endowment Fund Investment Board for fiscal year 2024.

Status House – passed 65-1-4. Senate – Third Reading.

[S1117 APPROPRIATIONS – DEPARTMENT OF LANDS](#) – Relates to the appropriation to the Department of Lands for fiscal year 2023.

Status Senate – passed 23-10-2. House – Third Reading.

[S1123 APPROPRIATIONS – FUND CORRECTION](#) – Relates to the appropriation to various agencies to correct the fund source for fiscal year 2023.

Status Senate – passed 34-0-1. House – passed 68-0-2.

[S1174 APPROPRIATIONS – DEPARTMENT OF LANDS](#) – Relates to the appropriation to the Department of Lands for fiscal years 2023 and 2024.

Status Senate – referred for Printing.

IDL Legislation

[H0120 OIL AND GAS](#) – Amends and repeals existing law to revise provisions regarding the Oil and Gas Conservation Commission, spacing units, oil and gas wells, the integration of tracts, reporting requirements, public data, confidentiality of well and trade information, rules, and royalties and to provide for minimum surface use bonds.

Status House – passed 62-6-2. Senate Resources hearing on March 20th.

Other Legislation Being Monitored

Endowment Land

[S1049 ENDOWMENT LAND](#) – Adds to existing law to provide for notice of restriction, regulation, and prohibition on endowment land and to provide for punishment and violations.

Status Senate – passed 25-9-1. House – passed 54-15-1.

Miscellaneous

[H0012 STATE GOVERNMENT](#) – Adds to existing law to prohibit state agencies from donating to or sponsoring a nongovernmental event or organization, to provide exceptions, and to provide a penalty.

Status Referred to House State Affairs.

[H0014 HUMAN RESOURCES](#) – Amends existing law to provide for advancements in pay based on certain factors and to provide for retention bonuses in certain circumstances.

Status House – returned to House Commerce and Human Resources.

[H0017 STATE PERSONNEL SYSTEM](#) – Amends existing law to revise the definition of "overtime work."

Status LAW.

[H0043 FISH AND GAME](#) – Amends existing law to prohibit interference with certain lands, highways, and navigable streams.

Status Referred to House Ways and Means.

[H0091aa STATE GOVERNMENT](#) – Adds to existing law to prohibit the state government and its employees from paying membership fees or dues with public funds and to provide exemptions.

Status House – failed 31-38-1.

[H0097 STATE CONTROLLER](#) – Amends and adds to existing law to provide that all state officers and agencies shall report agreements entered into to the State Controller.

Status House – passed 69-0-1. Senate – passed 34-0-1.

[H0170aaS STATE GOVERNMENT](#) – Adds to existing law to prohibit state agencies from donating to or sponsoring a nongovernmental event or organization, to provide exceptions, and to provide a penalty.

Status House – passed 55-14-1. Senate – Amended, filed for First Reading.

[H0174 ADMINISTRATIVE PROCEDURE ACT](#) – Adds to existing law to provide that agency policy statements and guidance documents shall not have the force and effect of law.

Status Referred to House State Affairs.

[H0206 ADMINISTRATIVE RULES](#) – Amends, repeals, and adds to existing law to revise provisions regarding the legislative review of administrative rules.

Status House – passed 59-11-0. Referred to Senate State Affairs.

[HCR003 NATURAL RESOURCE ISSUES STUDY](#) – States findings of the Legislature and authorizes the Legislative Council to appoint a committee to undertake and complete a study of natural resource issues.

Status House – adopted 60-7-3. Senate – 10th Order.

[S1001 DEPARTMENT OF ADMINISTRATION](#) – Repeals existing law relating to procedures for state-owned dwellings.

Status Senate – passed 34-0-1. Referred to House State Affairs.

[S1021 PRIEST LAKE](#) – Amends existing law to prohibit certain outlet control structures.

Status Senate – passed 27-7-1. House – passed 63-7-0.



Thomas J. Wilford :: Chairman
Jerry F. Aldape Irving Littman
Bob Donaldson Richelle A. Sugiyama
Joseph Forney Chuck Winder
Steven C. Harris Brian Yeargain

Chris J. Anton :: Manager of Investments

Monthly Report to the Board of Land Commissioners

Investment performance through February 28, 2023

Month: -2.1% Fiscal year: 5.8%

The rally in January transitioned into a modest sell-off in February as investors became increasingly concerned that the Federal Reserve and other central banks would keep interest rates higher for longer due to strong labor markets, resilient consumer demand and stubborn inflation. The U.S. employment report showed a stunning increase of 517,000 jobs, retail sales remained strong and inflation data was hotter than anticipated. Government bonds sold-off with the yield on the 10-year U.S. Treasury climbing 0.43% to 3.94%. These factors combined with uninspiring Q4 earnings and erosion of future earnings estimates also pushed equities lower.

Status of endowment fund reserves

Distributions for FY2022 and FY2023 are well secured.

Significant actions of the Endowment Fund Investment Board

None.

Compliance/legal issues, areas of concern

Material deviations from Investment Policy: None.

Material legal issues: None.

Changes in board membership or agency staffing: None.

Upcoming issues/events

Compensation Committee – April 6, 2023

Land Board Audit Committee – April 25, 2023

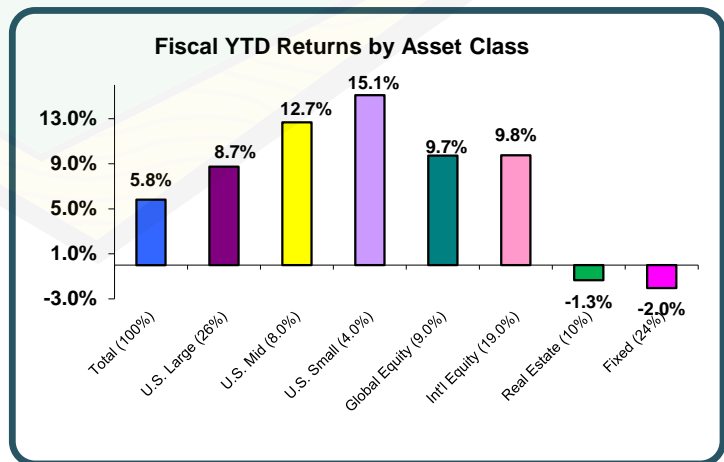
Board Meeting – May 16, 2023

	Month	FYTD
Beginning Value of Fund	2,908,774,515	\$ 2,723,562,805
Distributions to Beneficiaries	(8,359,583)	(67,126,664)
Land Revenue net of IDL Expenses	(5,806,006)	36,420,994
Change in Market Value net of Investment Mgt. Expenses	(47,436,112)	154,315,679
Current Value of Fund	\$ 2,847,172,814	\$ 2,847,172,814

	Current Month	Calendar Y-T-D	Fiscal Y-T-D	One Year	Three Year	Five Year	Ten Year
Gross Returns							
Total Fund	-2.1%	2.9%	5.8%	-6.3%	7.3%	6.4%	7.7%
Total Fund Benchmark*	-2.4%	2.9%	4.8%	-5.6%	6.6%	5.7%	7.2%
Total Fixed	-2.2%	1.0%	-2.0%	-9.7%	-3.2%	0.9%	1.2%
BBG U.S. Agg. (Ag)	-2.6%	0.4%	-2.6%	-9.7%	-3.1%	0.9%	1.1%
Total Equity	-2.3%	5.1%	10.0%	-6.4%	11.4%	8.2%	10.1%
57% R3 29% Ax 14% AC	-2.7%	4.3%	7.1%	-7.7%	9.6%	6.7%	9.3%
Domestic Equity	-2.1%	5.2%	10.3%	-6.7%	12.9%	9.6%	12.0%
Russell 3000 (R3)	-2.3%	4.4%	6.9%	-8.1%	11.8%	9.4%	11.9%
Global Equity	-3.2%	3.6%	9.7%	-6.1%	10.5%	7.9%	7.6%
MSCI ACWI (AC)	-2.9%	4.1%	6.5%	-8.3%	8.8%	5.8%	7.9%
Int'l. Equity	-2.3%	5.8%	9.8%	-6.0%	9.0%	5.7%	6.1%
MSCI ACWI ex-US (Ax)	-3.5%	4.3%	7.4%	-7.2%	5.3%	1.6%	3.9%
Real Estate			-1.3%	4.8%	7.8%	7.6%	

* Benchmark:38% Russell 3000 19% ACWI ex-US 9% AC 24% BB Agg. 10% OD

	Mkt Value	Allocation
Domestic Equity	\$ 1,071.1	37.6%
Large Cap	721.0	25.3%
Mid Cap	227.4	8.0%
Small Cap	122.7	4.3%
Global Equity	270.8	9.5%
Int'l Equity	566.0	19.9%
Fixed Income	645.3	22.7%
Real Estate	289.7	10.2%
Cash	5.7	0.2%
Total Fund	\$ 2,847.2	100.0%

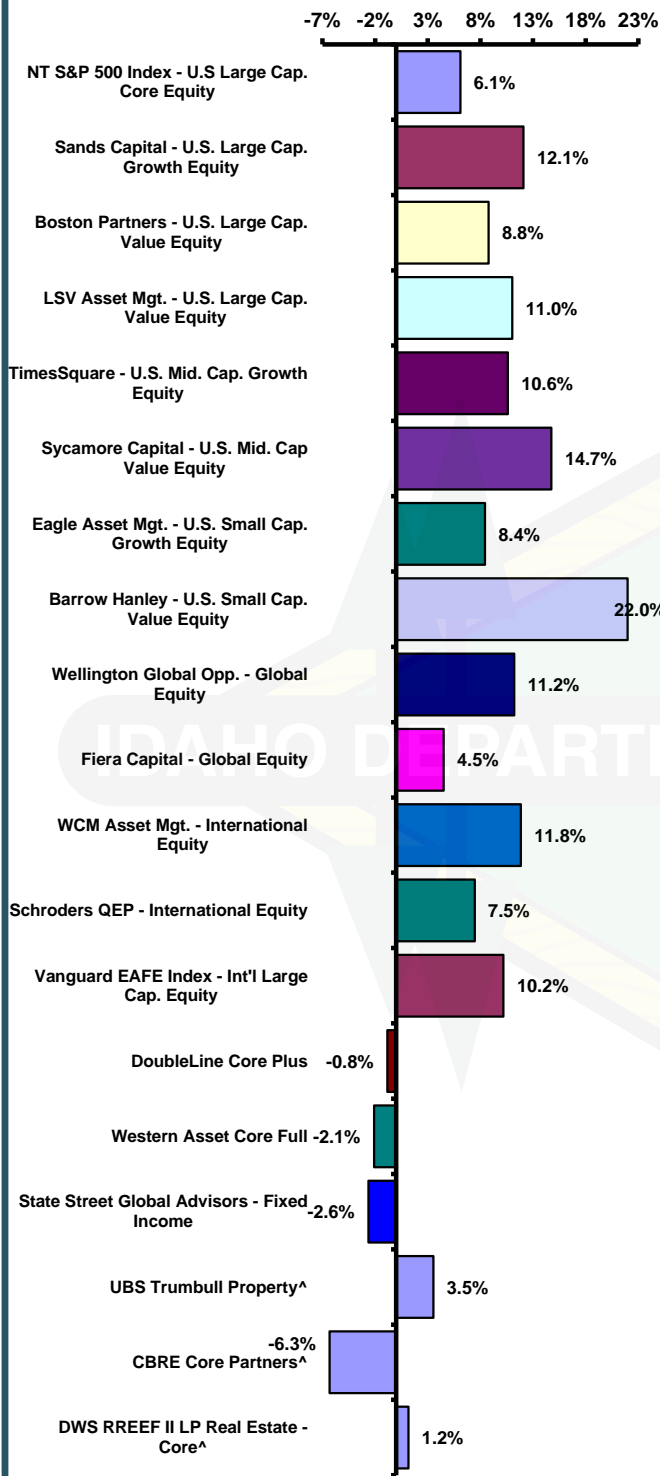


Endowment Fund Staff Comments:

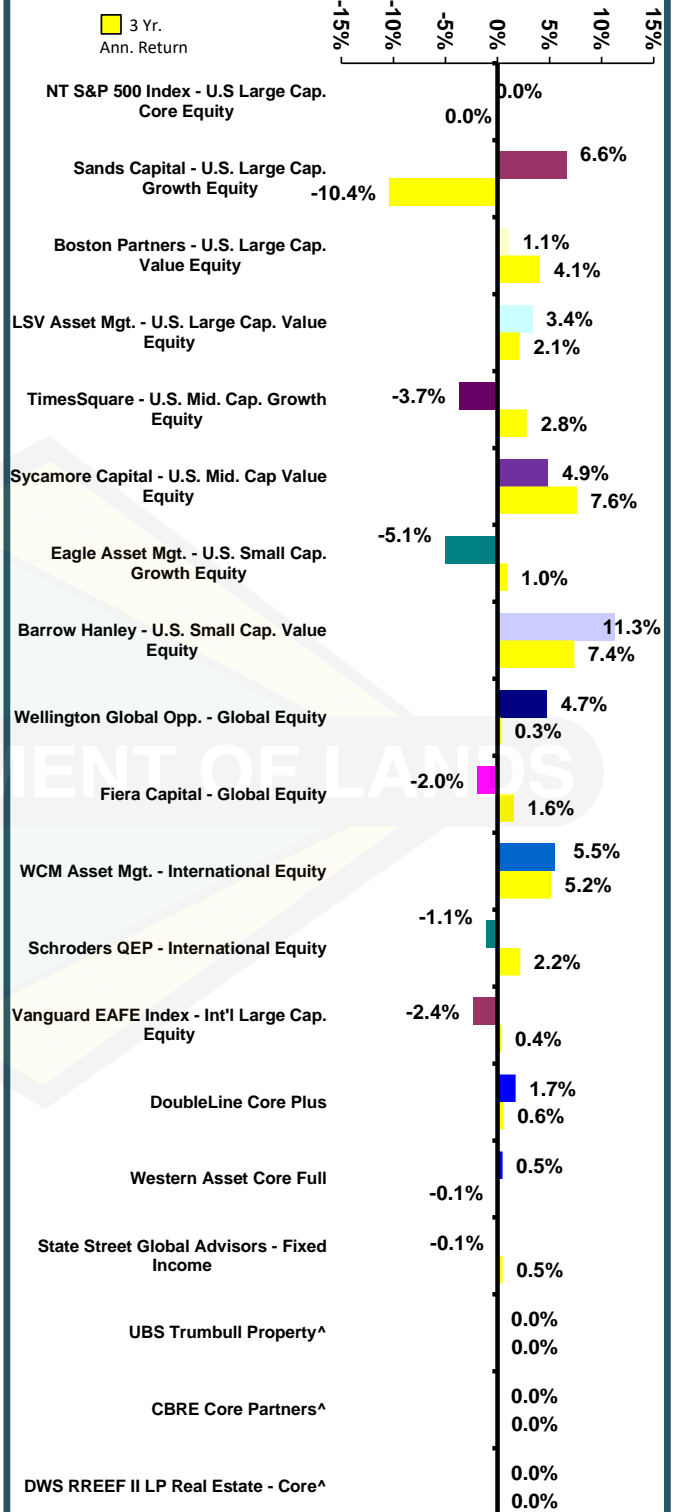
The rally in January transitioned into a modest sell-off in February as investors became increasingly concerned that the Federal Reserve and other central banks would keep interest rates higher for longer due to strong labor markets, resilient consumer demand and stubborn inflation. The U.S. employment report showed a stunning increase of 517,000 jobs, retail sales remained strong and inflation data was hotter than anticipated. Government bonds sold-off with the yield on the 10-year U.S. Treasury climbing 0.43% to 3.94%. These factors combined with uninspiring Q4 earnings and erosion of future earnings estimates also pushed equities lower.

INVESTMENT REPORT

FYTD Manager Returns



Manager Relative Returns Fiscal YTD and 3-Yr Ave*



^ Most recent valuation. * I-T-D

STATE BOARD OF LAND COMMISSIONERS

March 21, 2023
Information Agenda

Subject

AUM Grazing Lease Rate for Calendar Year 2024

Background

In 1993, the State Board of Land Commissioners (Land Board) adopted a formula to determine the annual grazing fee for leases on state endowment trust land. The formula is based upon four indices used to approximate the value of forage on state endowment trust land and is applied on an Animal Unit per Month (AUM) basis. These indices include prices received for beef cattle, forage values, and the price of inputs to produce beef cattle. The indices are published each December and January by the USDA National Agricultural Statistics Service (NASS) and reflect information gathered for the previous 12-month period.

Discussion

Based on the most recent indices reported, the grazing fee for 2024 will be **\$6.56 per AUM**. The new rate represents a decrease of approximately 10% from the 2023 AUM rate of \$7.28. The primary drivers of this decrease were due to a significant increase in the cost of inputs.

Formula value changes are as follows:

Value	% Change
FVI – Forage Value Index	Increase of 3%
BCPI – Beef Cattle Price Index	Increase of 19%
PPI – Prices Paid Index	Increase of 29%
IDFVI – Idaho Forage Value Index	No change

All grazing lessees will be notified of the 2024 rate within 6 months of the new rate taking effect in accordance with IDAPA 20.03.14.041.

The AUM fee formula, as approved by the Land Board, states that if the previous 12-month (October 1 - September 30) average lamb price is less than or equal to 70% of the price for calves under 500 pounds during the same period, the sheep AUM rate will be reduced 25%. Price data will be reviewed in October 2023 to determine if the lamb and calf price difference is sufficient to result in a lower AUM rate for sheep operators in 2024. Current price trends show that a reduction will likely not be necessary.

Attachments

1. 2024 AUM Rate Calculation

2024 AUM Rate Calculation

Land Board Adopted AUM Formula:

$$\text{IDFVI}_{t+2} = -6.92 + (0.13 \times \text{FVI}_t) + (0.60 \times \text{BCPI}_t) - (0.33 \times \text{PPI}_t) + (0.74 \times \text{IDFVI}_t)$$

$$\text{AUM Rate} = \text{IDFVI}_{t+2}/100 \times 1.70$$

Where

IDFVI ($t+2$) is the predicted value of the Idaho Forage Value Index for the year the grazing fee is to be set;

FVI $_t$ is the most recent published Forage Value Index for the 11 western states;

BCPI $_t$ is the most recent published Prices Received for Beef Cattle Index for the 11 western states;

PPI $_t$ is the most recent published Prices Paid Index for the United States;

IDFVI $_t$ is the most recent published value for the Forage Value Index for Idaho.

2024 Indices and Calculation

Forage Value Index (FVI)	=	616
Beef Cattle Price Index (BCPI)	=	571
Prices Paid Index (PPI)	=	1347
Idaho FVI (IDFVI)	=	560

$$\begin{aligned} \text{2024 IDFVI:} & -6.92 + (.13 \times 616) + (.6 \times 571) - (.33 \times 1347) + (.74 \times 560) \\ & = 385.65 \end{aligned}$$

$$\begin{aligned} \text{2024 Fee} & = 385.65/100 \times \$1.70 \text{ Base Value} \\ & = \$6.56/\text{AUM} \end{aligned}$$

STATE BOARD OF LAND COMMISSIONERS

March 21, 2023
Information Agenda

Subject

Delegation of Authority for Disclaimers of Interest

Background

Idaho holds title to the beds and banks of navigable waterways below the ordinary high-water mark (OHWM). The State Board of Land Commissioners (Land Board) is the statutorily designated trustee of these lands. When a river moves due to accretion (the natural, gradual process whereby deposited material causes the river to move), title to the riverbed moves as well. Since the state does not have clear title to these lands, these accreted lands are subject to adverse possession by the adjacent upland landowner through a quiet title action. Land Board policy from 1984 directs the Idaho Department of Lands (Department) to work with landowners to pursue disclaimers of interest (disclaimer) for clearing title to the accreted land. See Attachment 1, Disclaimer of Interest Procedures.

Discussion

In recent years, the number of disclaimer requests from landowners has increased. Current Land Board policy is to present each disclaimer to the Land Board as a Consent Agenda item. In seeking greater efficiency, the Department worked with the Office of the Attorney General to research whether disclaimers could be processed without Land Board action.

Idaho Code § 58-119(1) provides that the Department shall have power "To exercise, under the general control and supervision of the state board of land commissioners all the rights, powers and duties vested by law in the state board of land commissioners, except the supervision of public investments [EFIB], the administration of the Carey Act and the administration of chapter 26, title 42, Idaho Code." Under that provision, the Land Board could delegate its authority regarding disclaimers to the Department.

Idaho Code § 58-119A further clarifies the authority for the Department to issue disclaimers without obtaining formal approval from the Land Board: "The department of lands may enter into an agreement with an owner of land adjacent to accreted land along a navigable river for the issuance of a disclaimer of interest as to the accreted land by the state in exchange for a reservation of a public use right-of-way along the navigable river. Any proposed agreement that seeks to reserve a public use right-of-way in excess of, or less than, a width of twenty-five (25) feet shall be approved by the state board of land commissioners prior to finalization of the agreement."

In the proposed revised process, the Department would maintain the current research and field inspection tasks required for the disclaimer process. The Department would utilize its website to provide appropriate transparency regarding potential disclaimers. The Department would coordinate the disclaimer process, where possible, to allow for public access to the rights-of-way received.

Rather than presenting each disclaimer to the Land Board, the Director would approve or deny each disclaimer, unless the proposed public use right-of-way is less than or greater than twenty-five (25) feet, in which case Land Board approval would be required. The Director may also seek Land Board approval if it is determined that the circumstances surrounding a disclaimer of interest warrant this action. These circumstances might include:

- Existing structures (non-agricultural) in the proposed disclaimer area
- Public inquiries or media questions to the Department regarding the proposed disclaimer

Attachments

1. Disclaimer of Interest Procedures

The logo for the Idaho Department of Lands is centered on the page. It features a stylized mountain range in the background with a sun or starburst at the top. In the foreground, there is a large, light-colored diamond shape containing a smaller, darker diamond. A horizontal banner with rounded ends is superimposed over the center of the diamond, containing the text "IDAHO DEPARTMENT OF LANDS" in a bold, white, sans-serif font.

IDAHO DEPARTMENT OF LANDS



Disclaimer of Interest Procedures

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

I. Disclaimer of Interest Procedures

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Section 5 – Legal Authorities

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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I. Authorities and Statutes

Idaho Admissions Act of July 3, 1890

Idaho Code § 58-12, Idaho Code, Public Trust Doctrine

Idaho Code § 73-116, Common Law in Force

Idaho Code § 58-104, Idaho Land Board - Powers and Duties

Idaho Code § 58-119A, Reservation of Public Use Right-of-Way for Disclaimers of Interest

Idaho Code § 58-132, Extension and Declaration of Powers and Duties of State Board of Land Commissioners

Idaho Code § 58-601, Rights of Way for Ditches and Reservoirs

Idaho Code § 36-1601, Public Waters – Highways for Recreation

II. Case Law

Pollard v. Hagen, 44 U.S. 212, (1844) (All new states enter the union under equal footing. Therefore, all of the states own the lands beneath the navigable rivers and lakes.)

Shively v. Bowlby, 152 U.S. 1, (1894) (State obtained title to lands below ordinary high water mark of navigable bodies of water at statehood.)

Illinois Central Railway Co. v. Illinois, 146 U.S. 387 (1892) (State as administrator of trust of beds of navigable bodies of water does not have power to abdicate its role as trustee in favor of private parties.)

Scott v. Lattig, 227 U.S. 229, 33 S.Ct. 242 (1913) (Snake River is navigable and state owns the bed. This case reaffirmed the equal footing doctrine in Idaho.)

Callahan v. Price, 26 Idaho 745, 146 P.2d 732 (1915) (Salmon River is navigable, and establishes the idea of the public trust doctrine in Idaho.)

Northern Pacific RR Co. v. Hirzel, 29 Idaho 438, 161 P.2d 854 (1916) (Snake and Clearwater Rivers are navigable for title purposes, and “public lands” in article 9, section 8 of the Idaho Constitution does not include the beds of navigable waterways.)

Burrus v. Rutledge, 34 Idaho 606, 202 P.2d 1067 (1921) (Public has rights on water despite ownership of lands beneath the water.)

Smith v. Long, 76 Idaho 265, 281 P.2d 483 (1955) (The meander line is not intended as either a boundary line or a determination of the ordinary high water mark.)

Hayden Lake Protective Association, Inc. v. Dalton Gardens Irrigation District et al, Kootenai County, Judge Spear (1962) (Ordinary high water mark of Hayden Lake is 2239 feet above sea level.)

Rutledge v. State, 94 Idaho 121,482 P.2d 515 (1971) (Formerly submerged lands of the State may be acquired by adverse possession.)

West v. Smith, 95 Idaho 550, 511 P.2d 1326 (1973) (Riparian landowners have unobstructed access to the navigable waters along all points of riparian land.)

Southern Idaho Fish and Game v. Picabo Livestock, 96 Idaho 360, 528 P.2d 1295 (1974) (Test for navigability for public right of way; Court decision essentially codified in § 36-1601.)

Ritter v. Standal, 98 Idaho 446, 566 P.2d 769 (1977) (Authority of State Board of Land Commissioners over navigable waters is affirmed.)

Heckman Ranches, Inc. v. State, 99 Idaho 793, 589 P.2d 540 (1979) (Determining ordinary high water mark, agricultural purposes does not mean grazing.)

Kootenai Environmental Alliance, Inc., Appellant v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983) (Public Trust Doctrine is affirmed and further defined in Idaho.)

Idaho Forest Industries, Inc. v. State, 112 Idaho 512, 733 P.2d 733 (1987) (Public trust arises only in land below natural high water mark of navigable waters.)

Erickson v. State, 132 Idaho 208, 970 P.2d 1 (1998) (State is the presumed owner of property below the ordinary high water mark, so burden of proof for an adverse claim of ownership is upon the adjacent upland owner.)

Idaho v. United States, 533 U.S. 262, 121 S.Ct. 2135 U.S. (2001) (Coeur d'Alene tribe owns the lower one-third of Lake Coeur d'Alene and the St. Joe River inside the reservation boundaries.)

City of Coeur d'Alene v. Lake Coeur d'Alene Property Owners Association et al, 143 Idaho 443, 147 P.3d 75 (2006) (Elevation of Lake Coeur d'Alene is no higher than 2128 at all points on the lake, and public may use the lakebed below this elevation.)

III. Land Board Directives

September 11, 1984 Department shall issue disclaimers of interest instead of a quit claim deed for formerly submerged lands that are now above the ordinary high water mark (Attachment 1).

October 21, 1997 The fee for a disclaimer of interest is the greater of \$600 or the actual cost of processing the application. (Attachment 2).

June 12, 2007 Department shall reserve a 25-foot wide public use right-of-way along navigable rivers when issuing Disclaimers of Interest, while allowing the Department to propose alternatives to the Land Board due to unusual circumstances. Alternatives to the 25-foot wide public use right-of-way will be presented to the Land Board for approval (Attachment 3).

IV. Attorney General Opinions

Attorney General Opinion 07-1, Clarifies state's role in managing public trust lands, the legal basis for that role, and how it applies to the 25-foot public use easement reserved in disclaimers of interest (Attachment 4).

V. Interagency Agreements

Memorandum of Understanding, Idaho Department of Water Resources and Idaho Department of Lands (Attachment 5).



Section 10 – Navigable Waters Ownership

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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II. Movements of Navigable Waters	6
III. Clearing Title on, or Adjacent to, Navigable Waters	7
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I. Ownership and Title

A. Navigability for Title

The State of Idaho owns the beds and banks of all navigable waters below the Ordinary High Water Mark (OHWM), assuming the waterways were navigable at the time of statehood (Attachment 6). These sovereign lands were acquired by virtue of the Equal Footing Doctrine established by the Pollard v. Hagen case and included in the Idaho Admissions Act. Navigable waters are administered by the Idaho Department of Lands (IDL) for the benefit of the public in accordance with the Public Trust Doctrine. The Shively v. Bowlby case established that states obtain title to navigable waters at statehood. The Scott v. Lattig and Callahan v. Price cases established the Equal Footing Doctrine and the Public Trust Doctrine in Idaho. The Public Trust Doctrine was further defined in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc. (KEA), and is now in statute as Idaho Code § 58-12. The courts, however, are the final arbiters of the Public Trust Doctrine (KEA). All lakes and streams that are navigable for title purposes are also navigable as a right-of-way. While IDL has a list of waterways considered navigable, the list is not set in stone. The criteria for navigable waters includes its use for commerce or navigation at or prior to statehood. Only the Land Board, the courts, or a combination of the two, have the authority to change the list of navigable waterways.

The concept of public trust lands derives from a law instituted by the Roman Emperor Justinian in 530 A.D. The law stated that running water, the sea, and consequently the shores of the sea were common to all mankind. This concept was carried forward into English Law and then to the original 13 states, or colonies at the time. Idaho Code § 73-116 incorporates the Common Law of England into Idaho Code. The KEA case used common law principles in discussing the Public Trust Doctrine.

B. Meander Lines

Meander lines are shown on the land records system as a heavy, dashed, blue line. They are from the original surveys of navigable waters. These surveys were conducted from about 1867 to the early 1900's. Many surveys were done by the United States General Land Office (GLO).

These survey lines are general representations of the meandering nature of the shorelines, thus the term meander lines. They are also called GLO lines. The meander lines also allowed upland lot sizes to be determined for the public land surveys needed prior to orderly settlement. The Government Lots were thus established along navigable waters. Meander lines are not ownership lines, as established in the Smith v. Long case. The Bureau of Land Management (BLM) has copies of the original surveys and survey notes that are often helpful for studying the GLO lines. The state only owns those lands below the current ordinary high water mark of navigable streams. Generally speaking, the ownership moves with the rivers, and the actual ordinary high water mark is the ownership boundary.

C. Navigability for Right-of-Way

Some streams were declared navigable as a right-of-way after statehood. The State of Idaho does not claim ownership of the beds and banks of these navigable waters, but they may be navigated by the public without interference from the underlying and adjacent landowners. This is affirmed by the Burrus v. Rutledge case. Eagle Creek (Shoshone County), Pritchard Creek (Shoshone County), and Silver Creek (Blaine County) are the only three streams with this designation (Attachment 6), and all three are a result of legal actions. Southern Idaho Fish and Game v. Picabo Livestock is the landmark case for navigability as a right of way, and it was later placed in statute as Idaho Code § 36-1601. Further designations may only be done by order of the State Board of Land Commissioners or by court order.

II. Movements of Navigable Waters

Navigable waters, especially rivers, have changed locations since statehood and since the original meander lines were surveyed. Navigable waters move either through accretion or avulsion. The law presumes accretion unless substantive evidence of avulsion can be provided. Different types of rivers and different geological settings influence how and when rivers move around, so the breaking point between accretion and avulsion cannot be defined with precision.

A. Accretion

Accretion is a natural movement that generally occurs as material is deposited on the inside of a river bed and material is eroded on the outside of a river bend. The ownership of the river and adjacent uplands moves with the river through accretion.

B. Avulsion

Avulsion is a sudden change of course in a river, often from a catastrophic flood. The old channel is abandoned, and a new channel is cut through former upland areas. A remnant of upland should exist between the old and new channels. The ownership lines do not change if avulsion occurs, so the state does not have clear title to the new segment of river channel. Claims of avulsion have to be dealt with on a case by case basis.

III. Clearing Title on, or Adjacent to, Navigable Waters

Two methods exist for a landowner to clear title to property when the location of the meander lines and the actual OHWM of a navigable lake or stream are different:

1. Quiet Title action through the courts; and
2. Disclaimer of Interest from the Idaho Department of Lands (Attachment 7). See Section 15.

The reason for the difference in location may be movement of the river or inaccuracies in the establishment of the meander lines. Either reason should be handled the same. IDL prefers to clear up title issues through disclaimers of interest when possible. This preference, however, should not result in IDL approving a Disclaimer of Interest that is not sufficiently protective of the public trust. The Illinois Central Railway Co. v. Illinois established that the state cannot abdicate its role as public trustee in favor of private parties.

IV. Islands

Islands create some of the more interesting situations that can arise concerning ownership of navigable rivers. An island in this discussion is limited to an area that is above the OHWM but is surrounded by riverbed. Gravel or sand bars that are present during low flow, but are covered during ordinary high water, are not islands because they are completely below the OHWM. Islands are classified as two different types, and how they are treated during the disclaimer process will vary accordingly.

A. Islands Present Before Statehood

If an island was present before statehood then it usually belongs to the federal government. These islands should be meandered or described in the original GLO surveys. The Bureau of Land Management is often the land management agency in charge of such islands. Some islands in the Snake, Boise, and Payette Rivers are still owned by the BLM. If the island was large enough to be settled, like Eagle Island on the Boise River, then the island has become private land through various federal homestead or settlement acts.

B. Islands Formed After Statehood

If an island formed after statehood, then it belongs to the state unless one of two things has occurred. One exception is when the river moves through avulsion and creates an island. As described earlier, ownership lines do not change if avulsion occurs. A newly created island would continue to be owned by the prior upland landowner. The river may simply extend a new arm out and around a parcel of former upland. The other exception is if a landowner has been paying taxes on an island and either occupying it or farming it for a number of years. This latter exception should be carefully applied. Paying taxes alone does not guarantee private ownership. Using an island for a private hunting preserve does not constitute occupancy.

Growing crops for many years indicates that private ownership is a possibility. Generally speaking, this situation may come up when the river actually did move through avulsion. Since

the state's interest is mainly the area below the OHWM, gaining clear title and pedestrian easements may be worth ceding ownership of the island and avoiding a legal fight. Consultation with the Program Manager is advised.





Section 15 – Processing Disclaimers of Interest

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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I. Why Disclaimers of Interest Are Used

- A. Through the disclaimer process, IDL has an opportunity to determine where the state ownership of navigable waters is located. As established in the Rutledge v. State case, former public trust lands are subject to adverse possession by adjacent upland landowners if the public trust lands have lost their public trust values. Essentially, if the public trust lands are no longer within or below the ordinary high water mark (OHWM), then they may not be public trust lands anymore. The title to these lands is clouded, and the current location of the public trust lands must be identified in order to clear the title to the adjacent uplands and the river.

- B. Disclaimers do not have the expense and uncertainty of adverse possession or quiet title actions, which is why IDL prefers to use disclaimers. Deeds and quit claim deeds were issued in the past and can be found on the land records system. Since IDL does not necessarily own the lands, however, that is no longer considered an appropriate method for clearing the titles. It also brings into question the Land Board’s requirement to auction land instead of just disposing of it. The doctrine of accretion, reliction, and avulsion governs ownership along rivers and only adjacent landowners generally have a legal claim to uplands that have been formed through accretion. The Land Board directed IDL to use disclaimers on September 11, 1984 (Attachment 1).

II. Tools Used for Disclaimers

A. Disclaimer of Uplands to Adjacent Upland Landowners

Uplands that lie within the original surveyed meander lines, but above the current OHWM, may be disclaimed from IDL to the legal owner of the adjacent upland property. If two or more upland owners claim the same accretion land, they must sort out their differences before IDL will process a disclaimer. A written letter, quit claim deed, or other documentation is needed to ensure that the parties involved have reached agreement on the new boundaries. Generally, the $\frac{1}{4}$ - $\frac{1}{4}$ lot lines are extended across the accretion land to divide it between adjacent landowners. In some situations, a boundary line perpendicular to the river is a more equitable solution. When an entire former river channel is surrounded by two different landowners, splitting the accretion land down the middle may be the best solution. While department personnel can offer their opinion on the most logical division of accretion land, the department must not take sides in any dispute between upland owners. The department should only get involved if a landowner attempts to claim ownership of land below the OHWM.

B. Acquired Disclaimer of Interest

Portions of the current river below the current OHWM that lie outside the original meander line will be disclaimed from the adjacent upland landowner to the state. This is done in conjunction with the other type of disclaimer described above.

C. 25 Foot Public Easements

Since statehood, alterations of navigable waters have resulted from artificial means such as dikes, fill, irrigation diversions, and dams. These actions have diminished the public trust lands, and the identification of the OHWM is not a straightforward task. The IDL will, however, often use the existing OHWM providing the requesting party will grant a 25 foot public use right of way along and adjacent to the existing ordinary high water mark along rivers (Attachment 3). The reservation of this easement is also allowed by Idaho Code § 58-119A. This easement is generally not reserved along navigable lakes. It is also generally not reserved along rivers with an artificial high water mark due to a downstream dam. IDL must be the recipient of the easement, pursuant to Attorney General Opinion No. 07-1.

The easement may differ in dimension or location, or it may not be reserved at all in certain circumstances. These exceptions must be carefully weighed against the needs of the public trust and should be in the minority of situations. Moving greenbelts away from the river for the convenience of a developer is not sufficient reason for diminishing the public trust. Any deviation from the 25 foot easement must be thoroughly documented by the Area Office and this information must be included in the Land Board Memo.

Although landowners often argue that public trails past their houses will increase crime and devalue their properties, numerous studies cited by the National Park Service, other states and municipalities, and other governmental and private entities have shown that the opposite is true. Well designed and maintained trail systems increase nearby property values and have lower crime rates than the adjacent urban areas.

D. Conservation Easements

These easements can sometimes be used to settle disagreements over where the OHWM is located, or other issues associated with a disclaimer. For example, the easement could cover an area next to the river that exhibits public trust characteristics, such as a cottonwood grove, pond, slough, or wetland, and evidence regarding the location of the OHWM is unclear. Under a conservation easement, the land remains privately owned, but the easement requires that the land remain in a natural condition. Public access is often allowed, albeit from the 25 foot easement and not across the landowners undisputed uplands. IDL must be the recipient of the easement, pursuant to Attorney General Opinion No. 07-1. These easements are not very common, and consultation with the Program Manager is suggested.

III. Disclaimer Requests

A. Identify Supervisory Area

Requesting parties should be directed to contact the appropriate IDL Supervisory Area Office to determine if the subject property qualifies for a disclaimer. Disclaimers are initiated by landowners and are voluntary. If the property had a disclaimer in the past, in most cases a new disclaimer is not necessary. The wording of the prior disclaimer should specifically state that the ownership lines will move with the river in the future.

B. Application

If Area personnel determine a subject land parcel qualifies for a disclaimer of interest, and the requesting party is interested in pursuing the disclaimer, the Area will supply them with an Application For Disclaimer of Interest. No other work should be done on the disclaimer until a completed application and the nonrefundable application fee of \$300 is received by the Area. In most cases, a site visit is not needed prior to receiving a completed application and the application fee. The name on the application must be the owner of record for the upland property.

C. Time Recording

After the completed form and \$300 application fee are received, the Area will place copies of the form and deposit slip in the LMR Document Exchange and request a disclaimer number and a project number. All time spent on the disclaimer will then be coded on employee time sheets to the project number under the Public Trust PCA. The project

number will be used through the end of the disclaimer process. The total time spent will be used to help determine any processing costs due by the requestor in excess of the base \$600 fee (\$300 application fee and minimum \$300 final processing fee).

D. Preliminary Office Review

Area personnel will examine the IDL land records and other available resources such as aerial photos, prior recorded surveys, and adjacent disclaimers. An office meeting with the applicant should be held to review the data and make a preliminary determination. This determination should include uplands that IDL would disclaim to the applicant, riverbed that the applicant would disclaim to IDL, the 25 foot public use right-of-way the applicant would grant to IDL, and the fees must also be discussed during this meeting. All of the requesting party's contiguous land adjacent to the river should be included in the disclaimer process.

The requesting party must be informed that the subject property will require a survey by a licensed surveyor, and an IDL representative must determine the location of the OHWM.

E. Field Survey of the OHWM

An IDL representative will visit the site with the surveyor to establish the OHWM. The angle points where the OHWM survey begins and ends and where the OHWM changes bearing are the only points that need to be surveyed. The requesting party may accompany the surveyor, but they are not required to be present. The OHWM can be marked with stakes or flagging during this site visit, and the surveyor can follow up independently with the actual survey and placement of monuments or pins. See Section 30 of these Procedures for more details concerning the identification of the OHWM.

F. Survey Requirements

The surveyor will need to prepare a record of survey, and a metes and bounds description, which show:

1. The present OHWM and the original meander line as surveyed by the GLO and tied to the nearest section or quarter corner.
2. Upland areas within the original meander lines to be disclaimed from the state to the property owner. The size of the area in acres must be determined;
3. Current riverbed outside the original meander lines to be disclaimed from the property owner to the state. If possible, the acres to be acquired by the state should be determined;
4. 25 foot wide public use right-of-way dedicated to IDL;
5. Conservation easements dedicated to IDL;

IV. Final Application Package

In addition to the application form and initial \$300 fee, a complete final application package for a disclaimer of interest will be reviewed by Area staff and must contain the following:

A. Letter of Request

A letter of request for the Disclaimer of Interest including the acreage of accretion land requested and the exact name and address requested to appear on the disclaimer. This must be the owner of record for the adjacent uplands; and

B. Survey and Legal Description

A full size copy of the record of survey and a copy of the legal descriptions as identified in Subsection III.F, Survey Requirements. A digital copy of the legal descriptions (MS Word) and survey (PDF) will be required; and

C. Tax Payment History

Tax payment history for the last five years, if available; and

D. Proof of Ownership

Proof of ownership of the upland property adjacent to the area to be disclaimed. A copy of the last deed of record is preferable.

V. Approval/Denial Process

A. Area Approval or Rejection

Area personnel should carefully review the survey for discrepancies between what was determined on the ground and what the survey indicates. Area personnel will then submit legal descriptions to Land Records staff for accuracy validation. Survey errors or inaccuracies must be corrected by the applicant prior to the application moving forward. Area personnel will send a letter to the applicant requesting corrections or additional information required.

Once the Area has determined that an application package is complete and contains all the information in Subsection IV, they will prepare a draft Land Board Memo with attachments and draft the disclaimer and/or easement documents. The application package, draft documents, and proof of the \$300 application fee will then be forwarded to the Program Manager.

B. Approval/Review by Program Manager

The Program Manager will review the disclaimer application package and draft documents for consistency with the Land Board policy and these procedures. The project number will also be used by the Program Manager for time reporting. The application package will then

be sent to the Attorney General's office for review. Once the package has been through legal review, the Program Manager will then schedule the disclaimer for the next available Land Board meeting. The Program Manager will request from Fiscal a total of the time and cost spent on the project number to help determine what the final processing fee should be. Four hours of the Technical Records Specialist's time should be added for final document preparation, mailing, signatures, and recordation. The final amount shall be inserted into the Board Memo. The total minimum cost of a disclaimer is \$600. Since a \$300 application fee has already been paid, the final processing fee will be a minimum of \$300.

If the disclaimer application package is complete, the Program Manager will forward it to the Director's staff for inclusion on the Land Board agenda.

C. Bureau Action

Following approval by the Land Board, the Program Manager will request that the Area obtain a recorded Record of Survey to include as an attachment to the disclaimer(s) and/or easement. The Program Manager will then submit the application package to the Technical Records Specialist for final execution. The Technical Records Specialist will use the project code for time sheet entry. The Technical Records Specialist will then include the disclaimer in the action log and send two original acquired easements, two originals of land being disclaimed to IDL if applicable, and a draft of the disclaimer from IDL to the applicant. All original documents must be signed and notarized by the applicant and returned to IDL along with the final processing fee as per the approved Board Memo.

After the signed documents and processing fee are received by IDL the two original documents will be sent to the approving authorities for signature.

The fully signed documents will then be recorded by The Technical Records Specialist in the county where the disclaimer property is located. If more than one document has been signed, all the documents must be recorded simultaneously. Following recordation, support staff will scan for land records updating. One original will be returned to the applicant, and the other will be retained by the Bureau. A copy of the final documents will be forwarded to the Area office.

The Technical Records Specialist will close out the project number and give a final summary to the Program Manager electronically. The Program Manager will use the compiled information on Disclaimers to adjust these procedures or provide training as needed.



Section 30 – Identifying the Ordinary High Water Mark

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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I. Definitions

Many terms are used to describe the boundaries of state ownership on navigable waters, but “ordinary high water mark” (OHWM) is the term that must be consistently used when discussing disclaimers. This is not the water level in summer. It is not the “average” high water mark. It is not generally considered a flood level unless development has encroached on the river. It can only be firmly established by examining evidence in the field. The Idaho Supreme Court in Heckman Ranches, Inc. v. State defined the OHWM as **“the line which the water impresses upon the soil for sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes”**. The Heckman Ranches case defined agricultural purposes used in this context as raising agricultural crops and not just grazing livestock. This definition of OHWM is also incorporated into similar definitions in Idaho Code and the administrative rules:

“The high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.” (Idaho Code § 58-1302(c), and IDAPA 20.03.04.010.23)

“... the line that water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by man's activity, the natural or ordinary high water mark shall be located where it would have been if no alteration had occurred.” (Idaho Code § 58-1202(2))

The term "natural or ordinary high water mark" as herein used shall be defined to be the line which the water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (Idaho Code § 58-104(9))

II. Identifying the Ordinary High Water Mark

An important concept to remember is that the OHWM is not strictly determined by any one thing. It is determined by a preponderance of evidence, which can be quite varied on rivers. This evidence includes:

1. Agricultural use, as in growing crops, often indicates land is above the OHWM.
2. Sandy or gravelly areas without well developed A and B soil horizons can suggest the area is below the OHWM. Steep rivers in a canyon will often have a scour line on the banks that has stripped the soils and exposed mostly rock. The OHWM is often the highest scour line, as per the definitions in statute and rule.
3. Small, or large, steps in the riverbank may mark the OHWM.
4. Vegetation, especially naturally occurring perennial vegetation, may or may not be useful. Grasses and small willows will often grow all the way down to the low water line, and thus may not be very useful. Plants associated with upland environments may be helpful, but ponderosa pines have been observed happily growing below the ordinary high water mark of large rivers. The river may not stay at the high stage long enough to drown the trees. A large number and variety of upland plants, however, may indicate the area is above the OHWM. Annuals are generally not very indicative.

In a straight, fast stretch of river, the OHWM may often be located near the base of mature cottonwoods, willow trees, or other large deciduous trees. In backwater areas or wide, slow stretches, many large trees may be located below the OHWM. A large number of small cottonwood seedlings or saplings may indicate an area is below the OHWM. Research into cottonwood regeneration indicates that these trees most often reproduce in sandy areas exposed by running water.

5. Lichen lines on the trunks of larger trees, when present, may indicate water levels that are sustained during high water. If high water persists long enough, it will kill off the submerged lichen on the trunk. After the water recedes, a discernable horizontal line may be left on the tree trunk. These lines can also sometimes be seen on fence posts or other objects with lichen. The lines are especially helpful during the summer following an ordinary high water flow.
6. Moss on rocks or riprap along a shoreline may also have a discernable line created by consistent levels of high water. Bridge piers or abutments can also be used. The moss will grow where the rock or concrete has been submerged long enough for the moss to grow. The moss may dry out between inundations, but it is just dormant. The moss often stops growing at a depth where the scouring action is too great for it to stay put, or where the water depths are too great for it to grow. More than one moss line may be present. The

OHWL may be one of the higher moss lines, and not one of the lower moss lines.

7. Flood debris is an important line of evidence. Grass, driftwood, sticks, garbage, and other flotsam often accumulate at the OHWM. Extreme flood events may, however, carry debris higher than the OHWM.
8. Fences may also be considered evidence of the OHWM, especially old fence lines. Fences are often put up to define ownership boundaries, and they are often located at the edge of arable fields near the river.
9. If an easement will be part of the disclaimer package, then the location of the OHWM may be influenced by where a path could reasonably be constructed. The Public Trust Doctrine partly governs the decisions regarding the OHWM.
10. The top of an old dike could be a good place to locate the OHWM, and then the dike can be used for a greenbelt or pedestrian access. Newly constructed dikes could be ignored, as per Idaho Code § 58-1202(2).
11. Anecdotal evidence can sometimes be helpful. Local residents may have a good idea of how high the river usually gets.
12. Flow gauge records can be used, but correlation between the OHWM at a disclaimer location and a specific, preferably nearby, gauging station would be needed. The gauge should be close to the area of interest so the two locations will be more likely to experience the same high water timing and conditions. If major tributaries are between the disclaimer location and the gauge, then the two locations could have different high flow timing or conditions. The best data is available at <http://waterdata.usgs.gov/id/nwis/current?type=flow>. Data tables can be downloaded into excel and analyzed to determine what appears to be an ordinary high flow. The highest daily peak flow (peak streamflow) in a given year is the best data to use. If direct observations of rivers can be made at a specific location and at the suspected ordinary high flows, then the flow recorded from that gauge and the OHWM at that location can be correlated. The flows that correlate to an OHWM on Idaho rivers often have a recurrence interval of four (4) to seven (7) years.
13. Some dam controlled rivers, such as the Lower Boise, do have a designated discharge for ordinary high water. It is 6,500 cubic feet per second (cfs) as measured at the Glenwood Bridge. This flow was determined by the U.S. Army Corps of Engineers as the level required to maintain a free flowing channel in the Lower Boise River. It is also the level used by the Idaho Department of Water Resources for determining where Stream Channel Alteration Permits may be needed. For reference, flood stage on the Lower Boise is 7,000 cfs. The 10-year flood event is 7,200 cfs, the 50-year flood event is 11,000 cfs, and the 100-year flood event is 16,600 cfs.
14. Air photos may be used to help determine the current location of the OHWM, and the evolution of the OHWM through time. The Boise River has the best catalogue of photos. It was flown in 1996 when the river ran at the designated ordinary high water of 6,500 cfs. If flowing water covers ground in those photos, then it should probably be below the OHWM.

Standing water in fields or riparian areas, however, may or may not be below the OHWM. Most river air photos are not flown during high water, but they can still be used to identify where scouring flows appeared to exist during high water. The entire state was photographed recently with high resolution color orthophotography. These can be compared with past air photos to determine how the river is moving over time, or what encroachments may be helping the river to move. The photos can also be used to help determine if past river movements were through avulsion or accretion. If you anticipate a substantial number of disclaimer requests in the future, then you may want to consider contacting other agencies and having some photos taken at an approximation of ordinary high water. The USGS Earth Explorer website has a huge volume of aerial imagery: <https://earthexplorer.usgs.gov/>

15. IDL's land records system with the orthophoto overlay is an important tool for determining how the current location of the river compares with the original surveys. They also indicate what areas have already been addressed by disclaimers or quit claim deeds. These previous disclaimers could be used as starting points if they are adjacent to the parcel of interest, and if the previously marked OHWM has not moved since that disclaimer was completed. The datasheets must also be examined to determine if ownership has been handled through deeds in the past. Not all of these appear on the map view.
16. Arcview maps with GCDBs and state land records on top of recent color orthophotos are good maps to use in the field. GPS locations of angle points can later be overlaid on the same map.
17. 7.5 minute topographic maps and other maps can be useful to see topographic contours and how rivers have changed over time. They are also used for the location map in the Land Board package.
18. Previous surveys from the county recorder's office.
19. County assessor maps can also be used to gather information. These records are most helpful when determining who is eligible to acquire accretion land. County parcel boundaries and the fact that someone has paid taxes on current riverbed are not the strongest pieces of information for determining the location of the OHWM. Navigable waters are generally not subject to adverse possession, and counties will let a landowner pay taxes on anything they wish. Unless a landowner tells the county otherwise, they could pay dozens of years of taxes on land that they do not own. It does not prove ownership, and the counties do not give refunds after such mistakes are identified.
20. Public use of the area should be documented. This has been used in past court cases to justify public easements.

III. Inspection Report

An inspection report is required for inspections identifying the ordinary high water mark. This report may be needed to defend the disclaimer. Also, if the landowner chooses to not go forward with a disclaimer, the notes can be saved for later use. It is common for these properties to change hands, and new owners often come in with a new request. Having the prior documentation on hand will save a lot of time and effort in processing the new disclaimer request. If a few years elapse between a survey of the OHWM and the submittal of a complete disclaimer package, the survey pins should be relocated in the field to make sure nothing substantive has changed. Movements of 20 feet or more within a few years is not unusual.

A. Ordinary High Water Mark

Two things should be documented:

1. The approximate location of the OHWM on an air photo or map. GPS points can be taken and then imported later onto an orthophoto base. This can then be compared with the survey when it is received. This will allow IDL to check if the location of the OHWM was changed after being flagged with the surveyor.
2. The evidence used to establish the OHWM along the property. If the landowner does not believe the OHWM was properly established, this information can be used to explain why the OHWM was established. The information can also be used, if needed, to defend IDL's decisions in a quiet title action.

B. Land Uses

Land uses of the former and current riverbed should also be documented. Improvements, pastures, croplands, irrigation influences, wetlands, and other features can help determine what should be considered upland or riverbed. Land uses can also influence what the state or the landowner wants to claim ownership of.

STATE BOARD OF LAND COMMISSIONERS

September 11, 1984

SUBJECT

Issuance of a disclaimer for non-state lands lying between
meander line survey ^{and} ordinary high water mark.

AUTHORITY

Idaho Code Section 6-402

DISCUSSION

The state lacks a substantive claim to title of lands lying above the ordinary high water mark and below the meander line as surveyed in the GLO surveys. The issuance of Quit Claim Deeds to these lands may indicate on the surface that the State has an interest which is being disposed of contrary to laws covering disposal of state lands. When these deeds are platted on official plats indication is also made that state interests may have been disposed of improperly.

RECOMMENDATION

The department recommends that when Quit Claim Deeds are requested for lands to which the state has no claim of title, the state issue a disclaimer instead of a Quit Claim Deed specific to those lands above the ordinary high water mark.

BOARD ACTION

Approved. SEP 11 1984

STATE BOARD OF LAND COMMISSIONERS
October 21, 1997

SUBJECT

This is a request to increase the administrative fees charged for processing disclaimer of interest requests for accretion land along navigable rivers and lakes.

RECOMMENDATION

The department recommends that the minimum fees for disclaimers of interest be raised from \$200.00 to \$600.00 effective November 1, 1997; however, the fee could be greater if the department incurs costs in excess of \$600.00. This is for non endowment land that lies between the ordinary high water mark and the meander lines established by the original surveys by the General Land Office, the predecessor to the Bureau of Land Management.

OVERVIEW

The department began issuing quitclaim deeds for accretion lands to adjacent landowners in 1975 for \$10.00 which was the deed fee in use at that time. This process continued until 1984 when the department presented to the Land Board a proposal to issue disclaimers of interest rather than quitclaim deeds. This was done to clarify that the department was not conveying a property interest and, in doing so, bypassing the laws pertaining to disposal of state lands as outlined in Idaho Code, Title 58-313. This proposal was approved on September 11, 1984. The department established a policy at that time to charge a \$200.00 fee or the cost of the inspection, whichever is greater. In the intervening 13 years, the largest amount an applicant paid for a disclaimer of interest was \$400.00.

The department is currently developing a policy (Operations Memorandum) for processing disclaimers of interest. In doing so, it is necessary to review the existing fee structure which has been in operation for 13 years. In 1984, the only document that the department prepared was the disclaimer of interest which was issued to the applicant. Now, there is also one and, sometimes two acquired easements for unimproved pedestrian access or an improved greenbelt easement to be prepared by the department. Most of the time there is also a disclaimer of interest for a portion of the current river bed to be disclaimed to the state from the applicant which is usually prepared by department personnel. In addition, in some cases a conservation easement is also prepared in cooperation with the Idaho Fish and Game Department. That adds up to a lot more department personnel time involved in inspecting the properties and preparing the necessary documents.

IDAHO STATE BOARD OF LAND COMMISSIONERS
Request to Increase Administrative Fees for Processing
Disclaimers of Interest for Accretion Land
October 21, 1997
Prepared: October 8, 1997 (8:53a.m.)
Page 1 of 2

The work that goes into preparing and completing a disclaimer of interest request can be fairly simple to complex depending on 1.) the number of documents to be prepared; 2.) the completeness and accuracy of the survey provided by the applicant and the surveyor; 3.) the number of individuals that have to be contacted during the preparation of the documents, i.e., the applicant, the surveyor, an attorney, a title company representative, etc. After doing some research and questioning of the usual people ordinarily involved in processing a disclaimer of interest application, it appears that the administrative costs accumulated in the processing of an average request ranges between \$500.00 and \$700.00.

The action the department takes in issuing these disclaimers of interest are extremely helpful to the adjacent landowner in clearing title to their property as title companies require some sort of documentation that they (the landowner) have clear title to their property before they can build on it or sell it. If the landowner had to go through a quiet title process through the court system, it would be considerably more expensive. Department staff believe the fees should be related to the costs we have in preparing the disclaimer request versus producing revenue since the properties are not endowment land. The disclaimer of interest is a much better process than a quiet title suit in the courts for clearing title to properties which the state has no property rights.

BOARD ACTION

APPROVED OCT 21 1997

IDAHO DEPARTMENT OF LANDS

ATTACHMENTS

1. Copy of Land Board Minutes dated September 11, 1984

DFM

DFM:mh
September 30, 1997

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IDAHO STATE BOARD OF LAND COMMISSIONERS
Request to Increase Administrative Fees for Processing
Disclaimers of Interest for Accretion Land
October 21, 1997
Prepared: October 8, 1997 (8:53a.m.)
Page 2 of 2

STATE BOARD OF LAND COMMISSIONERS
June 12, 2007
Regular Agenda

SUBJECT

Adoption of a formal policy regarding the reservation of a 25-foot wide public use right-of-way in exchange for disclaimers of interest along navigable rivers.

BACKGROUND

The State owns the beds and banks of navigable rivers below the ordinary high water mark (OHWM). The OHWM, however, is not a permanently fixed location. Many of the navigable rivers have changed course since the original meander surveys in the 19th and 20th centuries. Where the course of the river has changed and the former riverbed is now dry uplands, the land no longer retains public trust values and the State no longer has an interest in retaining title to these lands. The State should, however, protect the public trust by maintaining public access along the existing bed of the river.

Prior to September 11, 1984 the Department issued quit claim deeds for former riverbeds. On the above date the State Board of Land Commissioners (Land Board) directed the Department to issue disclaimers of interest instead of quit claim deeds when clearing title to former riverbeds. In 1986 the Department began reserving 25-foot wide public access easements along the upland side of the newly surveyed ordinary high water marks. This practice has continued on most disclaimers issued statewide. (Refer to Attachment 6, Issuance History for River Disclaimers.) Disclaimers are initiated by landowners and are voluntary. Both parties must agree on the terms of the disclaimer.

The easement reservation began along the Boise River. The popularity of the greenbelt system, and rapid growth in the 1980's, dictated that the Department attempt to protect the public trust values of the river, while simultaneously helping to clear ownership and make way for riverside development. The law governing riparian and littoral rights indicates that rivers or lakes cannot be diked, diverted, or filled in, and then claimed by an adjacent owner as private uplands. These activities have historically taken place along the Boise River and have clouded the exact location of the OHWM. In addition, dam construction upstream has altered the historic flow patterns, further complicating the establishment of the correct OHWM. Most other rivers in the State have these same issues of bank alteration and changed high water marks. These uncertainties underscore the give and take of the disclaimer process.

DISCUSSION

The Department's current practice in resolving ownership issues is to generally accept the current location of the river, as defined by the OHWM identified by Department personnel. In exchange for accepting the current location of the river, a 25-foot wide public use right-of-way is reserved to the State or a local municipality on the upland adjacent to the OHWM. This serves to protect the public trust values associated with rivers, by providing river access to the public. In some instances the easement differs in dimension or location based on site specific facts. In a few extraordinary circumstances, the easement is not reserved at all. These rare exceptions are carefully weighed by the Department against the needs of the public trust.

Land Board records reveal no indication of a specific adopted policy related to the reservation of public easements, in conjunction with disclaimers of interest, along navigable rivers. What is apparent, however, is that Land Board members from the 1980's up through the present have vigorously supported the easement reservation associated with disclaimers. Land Board members routinely ask if the easement reservation is part of the disclaimer package.

Perhaps the greatest benefit of the easement reservation process has been the establishment of a greenbelt from Lucky Peak Dam to the City of Eagle; the envy of many other western states. As title to other lands adjacent to navigable rivers are cleared up throughout Idaho, other residents can enjoy the same benefits. After 20 years of successful implementation of this practice, the Department requests that the Land Board adopt a formal policy that directs the Department to reserve a 25-foot wide public use right-of-way when issuing disclaimers of interest.

This item was last before the Land Board at the March 13, 2007 meeting (Attachment 1). The Land Board directed the Department to seek an Attorney General's opinion regarding the policy of asking for a 25-foot wide public use right-of-way from the riparian landowner, who seeks a Disclaimer of Interest on the former public trust property as a condition of the State of Idaho granting the disclaimer.

RECOMMENDATION

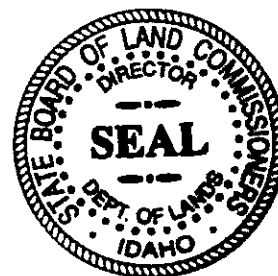
Consistent with the recommendation as presented at the March 13, 2007 Board meeting, direct the Department to reserve a 25-foot wide public use right-of-way along navigable rivers when issuing Disclaimers of Interest, while allowing the Department to propose alternatives to the Land Board due to unusual circumstances. Alternatives to the 25-foot wide public use right-of-way will be presented to the Land Board for approval.

BOARD ACTION

A motion was made by Attorney General Wasden to move the adoption of the suggested formal policy regarding reservation of a 25-foot wide public use right-of-way along navigable rivers. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 3-2, with Governor Otter and Superintendent Luna voting nay.

ATTACHMENTS

1. March 13, 2007 Land Board Memorandum
2. March 23, 2007 Letter from Judy Peavey Derr, President, Foundation for Ada/Canyon Trail Systems
3. April 17, 2007 Letter from Tom Dale, Chair, Community Planning Association
4. May 25, 2007 Email from Brian Hoff
5. June 3, 2007 Letter from Stephanie Burgess, Meridian
6. Issuance History for River Disclaimers
7. Attorney General Opinion No. 07-1, May 7, 2007





STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

ATTORNEY GENERAL OPINION NO. 07-1

To: George Bacon, Director
Idaho Department of Lands
STATEHOUSE MAIL

Per Request for Attorney General's Opinion

INTRODUCTION

At the March 13, 2007, meeting of the State Board of Land Commissioners ("Board"), a formal Attorney General's opinion was requested regarding the legal basis for the Board's practice of requiring a 25-foot public easement in exchange for a disclaimer of the State's ownership of formerly submerged lands.

QUESTIONS PRESENTED

You ask the following questions:

1. What is the Board's role with respect to management of submerged lands?
2. What are the legal principles that establish the State's interest to lands adjacent to navigable streams?
3. What is the legal basis for the Board's long-standing practice of requiring the exchange of a 25-foot public use easement for the grant of a disclaimer of the State's interest to formerly submerged lands?
4. Does the exchange of a 25-foot public use easement for the grant of a disclaimer of the State's interest to formerly submerged lands constitute a taking of private property for a public purpose?

CONCLUSIONS

1. The State of Idaho received title to the submerged lands underlying navigable water bodies below the ordinary high water mark (“OHWM”) under the Equal Footing Doctrine upon statehood. Submerged lands are held in trust by the State for the benefit of the public. The Board was statutorily designated as the trustee of submerged lands within Idaho.

2. The legal principles of accretion, reliction and avulsion govern the ownership of submerged and formerly submerged lands below and adjacent to navigable waterways.

3. The legal basis for the Board’s long-standing practice of requiring the exchange of a 25-foot public use easement for the grant of a disclaimer of the State’s interest in formerly submerged lands is in the nature of the settlement of a private boundary dispute based upon competing proprietary claims.

4. The exchange of a 25-foot public use easement for the grant of a disclaimer of the State’s interest in formerly submerged lands does not constitute a taking of private property for a public purpose without just compensation because the easement represents valuable consideration for the State’s relinquishment of its claim to ownership of the parcel of land in dispute.

ANALYSIS

A. Under the Public Trust Doctrine, the Board Serves as a Trustee With a Fiduciary Responsibility to Assure Public Access to the Beds and Banks of Navigable Waterways

Under the Equal Footing Doctrine,¹ the State obtained title to the beds and banks of navigable water bodies upon its admission into the Union in 1890. The power to direct, control and dispose of submerged lands is vested in the Board pursuant to Idaho Code § 58-104(9). The State’s ownership and the Board’s management responsibilities are not without limitation. In Kootenai Environmental Alliance v. Panhandle Yacht Club, 105 Idaho 622, 671 P.2d 1085 (1983) (“KEA”), the Idaho Supreme Court ruled that Idaho’s submerged lands are subject to the common law Public Trust Doctrine. In KEA,

¹ The Idaho Admission Act provides that Idaho was “admitted into the Union on an equal footing with the original states in all respects whatever.” Idaho Admission Act, ch. 656, § 1, 26 Stat. 215 (1890). The United States Supreme Court in Shively v. Bowlby, 152 U.S. 1, 14 S. Ct. 548, 38 L. Ed. 331 (1894), determined that one aspect of admission of a state on equal footing with the original states was the title to the beds of navigable waters below the OHWM.

the Idaho Supreme Court reviewed the common law history of the Public Trust Doctrine and its application in various other jurisdictions to synthesize the parameters of the Public Trust Doctrine to be applied in Idaho.

The Public Trust Doctrine requires that the State, through the Board, hold title to the beds and banks of navigable water bodies below the OHWM for the use and benefit of the public. 105 Idaho at 625, 671 P.2d at 1088. The beneficial uses reserved to the public historically included navigation, commerce and fishing. *Id.* More recently, courts have recognized a broader range of public uses including public recreational activities such as fishing, hunting and swimming. *Id.*² Courts have recognized that the public trust is dynamic and can expand with the development and recognition of new public uses. *Id.*

The core element of the State's public trust responsibility is that, as trustee on behalf of the public, the State may not abdicate its responsibility for submerged lands in favor of private parties. *Id.* Nor can the Board dispose of public trust lands unless explicitly authorized by the legislature. Under the Lake Protection Act, title 58, chapter 13, Idaho Code, the Board is limited to approving encroachments or issuing leases on the submerged lands of navigable lakes consistent with the Public Trust Doctrine. However, such encroachments must be in aid of commerce, navigation and recreation and must not substantially impair the public interest in the remaining submerged lands and waters. 105 Idaho at 626, 671 P.2d at 1089.

From Massachusetts, Wisconsin and California, the Idaho Supreme Court fashioned the remaining factors for determining whether the alienation of state-owned submerged lands violates the Public Trust Doctrine. From Massachusetts jurisprudence, the Idaho Supreme Court chose the following requirement:

[P]ublic trust resources may only be alienated or impaired through open and visible actions, where the public is *in fact* informed of the proposed action and has substantial opportunity to respond to the proposed action before a final decision is made thereon.

105 Idaho at 628, 671 P.2d at 1091.

² Idaho's legislature recognized this broad scope of interests to be protected in the enactment of the Lake Protection Act, title 58, chapter 13, Idaho Code. Idaho Code § 58-1301 states in pertinent part that: "The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment."

From Wisconsin jurisprudence, the Idaho Supreme Court established that the final determination whether an alienation or impairment of state-owned submerged lands violates the Public Trust Doctrine will be made by the judiciary. 105 Idaho at 629, 671 P.2d at 1092. In so doing, the court will not supplant its judgment for that of the State, but will take a “close look” at the State’s action. *Id.* In determining whether the State’s action violates the public trust, the court will weigh the effect of the proposed project on the public trust resources impacted such as navigation, fishing, recreation or commerce. *Id.* The court will also look at the impact of the proposed project along with the cumulative impact of the existing impediments to full use of the public trust resource on the specific public trust resources impacted by the alienation or impairment. 105 Idaho at 629-30, 671 P.2d at 1092-93.

Examining California law, the Idaho Supreme Court determined that the allocation of public trust resources could be subject to future modification based on changed circumstances. The court determined that even where the State has appropriately allocated a public trust resource to a private use, a change in circumstances could change the validity of the allocation of that public trust resource. 105 Idaho at 631, 671 P.2d at 1094. Therefore, the grant of a private use to the State’s submerged lands remains subject to the Public Trust Doctrine. *Id.* The State’s alienation or impairment of the formerly submerged beds and banks must take into account the highly dynamic nature of the boundary lines along navigable rivers and the difficulty of drawing a firm boundary line. The following analysis sets forth the legal and factual complexities inherent in evaluating State ownership of the beds and banks of navigable waterways below the OHWM. These complexities add uncertainty to the Board’s exercise of its fiduciary responsibility as trustee of the public trust.

B. The Ownership of the State’s Public Trust Resources Cannot Easily Be Factually or Legally Ascertained

As previously noted, the State owns the beds and banks of presently or formerly submerged lands that were part of navigable waterways below the OHWM at the time the State was admitted into the Union. Idaho Forest Industries, Inc. v. Hayden Lake Watershed Improvement District, 112 Idaho 512, 733 P.2d 733 (1987) (“IFI”). The location of the OHWM was established by Idaho common law in Raide v. Dollar, 34 Idaho 682, 203 P. 469 (1921). In Dollar, the court determined that:

The high water mark of the river, not subject to tide, is the line which the river impresses on the soil by covering it for sufficient periods to deprive it of vegetation and to destroy its value for agriculture.

34 Idaho at 689, 203 P. at 471. This standard was subsequently codified at Idaho Code § 58-104(9) which provides in pertinent part:

The term “natural or ordinary high water mark” as herein used shall be defined to be the line which the water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

Thus, determining the State’s ownership is predicated upon the physical location of the line that water impresses on the soil by covering it for sufficient periods to deprive it of vegetation at the time of statehood. Because of man’s modification of river flows and intervening hydrologic events, establishment of the OHWM is highly complex and difficult.

Original government land surveys used meander lines as a surveying technique to determine the approximate acreage of upland lots abutting navigable rivers and lakes. The meander line in a government survey was used because it was virtually impossible to survey the actual OHWM along a river. Meander lines are an approximation of the OHWM along a navigable river. However, the meander line is not intended as either a boundary line or a determination of the OHWM. Smith v. Long, 76 Idaho 265, 281 P.2d 483 (1955).

An owner of riparian property may attempt to prove that the State does not own title to property because it is above the OHWM. In addition, a riparian owner may also attempt to prove that they have acquired ownership of formerly submerged lands under the theory of accretion. Accretion has been defined as the addition of riparian property by the gradual deposit, by water, of solid material causing to become dry land what was previously covered by water. Aldape v. Akins, 105 Idaho 254, 668 P.2d 130 (1983). The adjoining riparian owner acquires title to alluvial deposits between the water and the land bordering thereon. Nesbitt v. Wolfkiel, 100 Idaho 396, 398, 598 P.2d 1046, 1048 (1979). The law presumes a change in the submerged lands occurred as a result of accretion, but the presumption may be rebutted by evidence that the change that occurred was avulsive.³ *Id.*

Formerly submerged lands of the State may also be acquired by adverse possession. Rutledge v. State, 94 Idaho 121, 482 P.2d 515 (1971). However, in order for formerly submerged lands to be adversely possessed, the lands must have lost their value

³ Avulsion is the sudden and perceptible loss to land by the action of water or a sudden change in the bed or the course of a stream. Joplin v. Kitchens, 87 Idaho 530, 394 P.2d 313 (1964). If avulsion is the cause of the shift in the river’s bed, title remains as before the change of course. *Id.*

as a public trust resource. 94 Idaho at 123, 482 P.2d at 517. This can occur where the formerly submerged lands have dried up and been put to a public use over a long period of time. *Id.* In Rutledge, for example, the former bed of the river had been developed as a motel property. 94 Idaho at 121, 482 P.2d at 515.

There is a defense, however, to a claim of title to the formerly submerged lands under a claim of adverse possession. In IFI, Justice Huntley's concurrence⁴ cited with approval the principle that man-made alterations below the OHWM will not result in the loss of public trust resources. Justice Huntley noted that the Rutledge case only addressed adverse possession resulting from natural forces without the contribution of man-made alterations to the natural river system. 112 Idaho at 521, 733 P.2d at 742. In establishing the rationale for this precedent, Justice Huntley stated that if artificial modification of river systems could result in adverse possession: "the state would be left vulnerable to surreptitious drain and fill operations which would destroy important wetlands and rob Idahoans of the associated resources and values." *Id.* Relating this precedent to the public trust obligation, Justice Huntley noted that:

If we held otherwise, adverse claimants could accomplish by wrongful, unilateral action what the state itself could not accomplish by voluntary conveyance, namely the alienation of public trust land for purely private purposes.

Id.

C. The Board's Long-Standing Practice of Requiring the Exchange of a 25-Foot Public Use Right-of-Way for the Grant of a Disclaimer of the State's Interest to Formerly Submerged Lands is a Programmatic Means of Resolving Boundary Disputes Consistent With the Board's Fiduciary Duty to Protect Public Trust Lands

Given the complexity and expense of resolving disputes between the State and riparian owners, the Board often chooses to compromise disputes relative to the State ownership of submerged land.⁵ The State's disclaimer process provides a legally

⁴ Justice Huntley's concurring opinion was joined in by Justices Donaldson and Bistline. Therefore, the concurring opinion is binding precedent.

⁵ The Board does not always choose to compromise disputes regarding the ownership of claimed submerged lands. In those cases, the Board does not enter into the disclaimer process. Examples where the State has litigated its ownership of submerged lands include: Erickson v. State, 132 Idaho 208, 970 P.2d 1 (1998) (the State contested an allegation of the OHWM of Lake Coeur d'Alene below 2128'); Idaho Forest Industries, Inc. v. Hayden Lake Watershed Improvement District, 112 Idaho 512, 733 P.2d 733 (1987) (the State challenged the ownership of portions of Hayden Lake); State of Idaho v. U.S.

defensible means of resolving disputed claims between the riparian owner and the Board. Claims to the State's formerly submerged lands constitute an expansion of the adjoining riparian owner's property, not a contraction of the riparian owner's claim to title. The State in its role as the trustee exercising its fiduciary responsibility to the citizens of the State of Idaho must ensure that the public trust asset is not compromised. Thus, the Board adopted the policy of requiring a 25-foot public right-of-way when disclaiming title to formerly submerged lands. The right-of-way preserves the public trust value while providing clear title to the adjoining landowner.

The Department's disclaimer policy is analogous to the resolution of a private boundary dispute by two contiguous real property owners. The Idaho Supreme Court has consistently recognized the validity of agreements between adjoining property owners to establish a disputed property line by agreement. In Downing v. Boehringer, 82 Idaho 52, 349 P.2d 306 (1960), the Idaho Supreme Court explained the doctrine of boundary agreement as follows:

[W]here the location of a true boundary line on the ground is unknown to either of the parties, and is uncertain or in dispute, [the] coterminous owners [of the parcels involved] may orally agree upon a boundary line. When such an agreement is executed and actual possession is taken under it, the parties and those claiming under them are bound thereby.

82 Idaho at 56, 349 P.2d at 308.

In boundary by agreement, the parties forego litigation in the form of a quiet title action or adverse possession action and compromise on the appropriate boundary. The compromise may involve the payment of compensation or a compromise dividing the disputed property line along an agreed allocated basis.

The same may be said of the Department's disclaimer process. A dispute exists as to the exact location of coterminous properties, with the riparian owner holding title to the landward parcel and the State holding title to the waterward parcel. The owner of the riparian parcel seeks for various reasons to establish title to formerly submerged State

Department of the Interior, No. 97-0426-BLW (D. Idaho 2002) (Deer Flat Refuge) (the State challenged the federal government's ownership of federal reserve water rights); Heckman Ranches, Inc. v. State, 99 Idaho 793, 589 P.2d 540 (1979) (State challenged contention of the OHWM of the Salmon River). These cases constitute a significant commitment of State resources both in terms of cost and time. These cases also include only those which have been subject to substantial litigation. The Department administratively denies ownership of State-owned submerged lands which are not challenged through the courts.

lands.⁶ If the Department determines that the disclaimer sought is not of a significant importance, the disclaimer process goes forward. As compensation for the uncertainty in locating the precise demarcation between State-owned submerged lands and contiguous riparian land, the State receives compensation in the form of a 25-foot public use easement. If the riparian owner does not agree that the compensation sought by the Department is fair, the riparian owner is under no obligation to complete the disclaimer process.

The Board's long-standing practice of requiring the exchange of a 25-foot public use right-of-way for the grant of a disclaimer of the State's interest to formerly submerged lands is a legitimate compromise in settlement of a disputed property line between adjacent property owners. It is a voluntary agreement entered into between willing parties to resolve a disputed boundary line. It does not constitute a claim by the State against the riparian owner, nor does it represent the Department or the Board acting in its regulatory capacity. Rather, it represents the Board exercising its proprietary interest to State submerged lands.

D. The Exchange of a 25-Foot Public Use Right-of-Way for the Grant of a Disclaimer of the State's Interest to Formerly Submerged Lands Does not Constitute a Taking of Private Property for a Public Purpose

The Takings Clause of the Fifth Amendment provides: "Nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. The aim of the clause is to prevent the government "from forcing some people alone to bear the public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49, 80 S. Ct. 1563, 1569, 4 L. Ed. 2d 1554 (1960).

A taking can occur directly through the exercise of the governmental power of eminent domain. *See, e.g., United States v. 564.54 Acres of Land*, 441 U.S. 506, 99 S. Ct. 1854, 60 L. Ed. 2d 435 (1979). A taking can also occur indirectly when the government acts in a manner which causes an inverse condemnation. First English Evangelical Lutheran Church of Glendale v. Los Angeles County, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed. 2d 250 (1987). Inverse condemnation can occur in two manners. Inverse condemnation can occur through a direct physical invasion of a party's property known as a physical taking. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982). In addition, inverse condemnation can occur by virtue of the government's restriction on land use through its regulatory

⁶ Historically, parties seeking disclaimers have done so to clear title to facilitate lending or sale or to establish an ownership interest for purposes of subdivision.

authority. Penn Central Transportation Company v. New York City, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978).

As previously noted, the Board's long-standing practice of requiring an exchange of a 25-foot public use easement for the granting of a disclaimer of the State's interest to formerly submerged lands is an exercise of the State's proprietary role as the owner of the State's public trust resource.⁷ Therefore, cases relating to takings based upon the State's regulatory authority are inapplicable.

Since these lands were formerly submerged lands, they remain impressed with the public trust. Actions to protect the public trust are not the imposition of state regulation over private parties. The State is giving up its interest to formerly submerged lands over which it could exert a claim. In doing so, the State retains the right of public access over a small portion of those formerly submerged lands thereby satisfying its fiduciary role to the public. The Board's policy requiring the exchange of a 25-foot public use easement in exchange for a disclaimer constitutes the settlement of the State's claim to title to formerly submerged lands. The riparian owner gains unencumbered title to the State's formerly submerged lands. The State satisfies its fiduciary responsibility under the public trust by providing public access but surrenders its legally cognizable defenses to the riparian owner's claim to title. A riparian owner that enters into a disclaimer agreement with the State has entered into a legally binding contractual agreement regarding the coterminous boundary of the riparian land and public trust land. This agreement is not a regulatory function and therefore cannot constitute a taking of private property for a public purpose.

CONCLUSION

The Board has a fiduciary responsibility under the Public Trust Doctrine to maintain public access to the submerged lands underlying navigable waterways. Private interests may attempt to claim formerly submerged lands. However, due to the complexity of the legal and factual prerequisites to a claim of title, the Board is justified in requiring compensation in the form of a 25-foot public use right-of-way from the party claiming title. This compensation is a settlement of a disputed boundary and does not constitute the taking of private property for a public purpose. The Board is acting in a proprietary capacity in compromising a disputed claim to public trust resources.

⁷ Courts have recognized that takings cannot occur by the State's exercise of its proprietary powers founded on the Public Trust Doctrine. See Marine One, Inc. v. Manatee County, 898 F.2d 1490 (11th Cir. 1990) (rescission of marine construction permits was exercise of the state's proprietary interest in submerged lands and therefore not a taking of private property).

AUTHORITIES CONSIDERED

1. United States Constitution:

Fifth Amendment.

2. United States Statute:

Idaho Admission Act, ch. 656, § 1, 26 Stat. 215 (1890).

3. Idaho Code:

§ 58-104(9).

§ 58-1301.

Title 58, chapter 13.

4. U.S. Supreme Court Cases:

Armstrong v. United States, 364 U.S. 40, 80 S. Ct. 1563, 4 L. Ed. 2d 1554 (1960).

First English Evangelical Lutheran Church of Glendale v. Los Angeles County, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed. 2d 250 (1987).

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982).

Penn Central Transportation Company v. New York City, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978).

Shively v. Bowlby, 152 U.S. 1, 14 S. Ct. 548, 38 L. Ed. 331 (1894).

United States v. 564.54 Acres of Land, 441 U.S. 506, 99 S. Ct. 1854, 60 L. Ed. 2d 435 (1979).

5. Idaho Cases:

Aldape v. Akins, 105 Idaho 254, 668 P.2d 130 (1983).

Downing v. Boehringer, 82 Idaho 52, 349 P.2d 306 (1960).

Erickson v. State, 132 Idaho 208, 970 P.2d 1 (1998).

Heckman Ranches, Inc. v. State, 99 Idaho 793, 589 P.2d 540 (1979).

Idaho Forest Industries, Inc. v. Hayden Lake Watershed Improvement District, 112 Idaho 512, 733 P.2d 733 (1987).

Joplin v. Kitchens, 87 Idaho 530, 394 P.2d 313 (1964).

Kootenai Environmental Alliance v. Panhandle Yacht Club, 105 Idaho 622, 671 P.2d 1085 (1983).

Nesbitt v. Wolfkiel, 100 Idaho 396, 598 P.2d 1046 (1979).

Raide v. Dollar, 34 Idaho 682, 203 P. 469 (1921).

Rutledge v. State, 94 Idaho 121, 482 P.2d 515 (1971).

Smith v. Long, 76 Idaho 265, 281 P.2d 483 (1955).

State of Idaho v. U.S. Department of the Interior, No. 97-0426-BLW (D. Idaho 2002).

6. **Other Cases:**

Marine One, Inc. v. Manatee County, 898 F.2d 1490 (11th Cir. 1990).

DATED this 7th day of May, 2007.



LAWRENCE G. WASDEN
Attorney General

Analysis by:

C. NICHOLAS KREMA
Deputy Attorney General
Department of Lands

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE IDAHO DEPARTMENT OF WATER RESOURCES
AND THE IDAHO DEPARTMENT OF LANDS**

**RELATIVE TO FOREST PRACTICES,
NAVIGABLE WATERS, THE IDAHO DREDGE AND PLACER MINING ACT
AND
THE STREAM CHANNEL PROTECTION ACT**

This Memorandum of Understanding (MOU) is entered into by the Idaho Department of Lands (IDL) and the Idaho Department of Water Resources (IDWR). The provisions contained in this MOU pertain to stream channel alterations, in conjunction with forest practices and dredge and placer mining, which impact navigable waters, endowment lands and/or non-federal forestlands. This MOU supercedes the amended Memorandum of Understanding dated July 9, 2002.

I. PURPOSE:

It is the policy of the State of Idaho to protect the lands, lakes, streams, and rivers within the State of Idaho, and the State of Idaho acquired title upon statehood to the bed of all navigable waters, and endowment lands.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The State Board of Land Commissioners, through IDL, has authority under the Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code, to regulate forest practices; and has authority under the Idaho Dredge and Placer Mining Act, Title 47, Chapter 13, Idaho Code, to protect lands, lakes and streams from damage resulting from dredge and placer mining.

IDWR has authority under Title 42, Chapter 38, Idaho Code, to regulate the alteration of stream channels for the health, safety and welfare of the public and to protect stream channels from alteration for protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality; and has authority under Title 58, Chapter 4, Idaho Code, to interpose any objections to timber sales on state land because of any interference with the conservation of the irrigation water of any watershed.

Silviculture activities including discharges of dredge and fill material for construction and maintenance of forest roads are not prohibited by or subject to regulation under Section 404 of the Clean Water Act and its implementing regulations. *See* 33 U.S.C. § 1344; 33 C.F.R. Part 323. This exemption does not relieve IDL from obtaining other approvals required under the Clean Water Act regulations.

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The responsibilities of IDWR and IDL must be coordinated to provide service to the citizens of Idaho, to administer the policies of the State and to avoid waste and duplication of effort.

III. INTER-AGENCY PROCEDURES:

IDWR and IDL shall, annually, hold IDWR Regional – IDL Area level meetings in the spring at the respective IDL Supervisory Area Offices. The Idaho Department of Environmental Quality, Idaho Department of Fish and Game (Regional Fishery Biologist), and the US Army Corps of Engineers will be invited to attend these spring meetings. Combination of these Area meetings for efficiency reasons is encouraged when endorsed by both IDL and IDWR.

The purpose of the annual meetings is to exchange information on programs, inform each other of pending activities as provided for in sections of this agreement and to discuss matters pertaining to the accomplishment of mutual objectives of stream channel protection.

IDWR and IDL staff shall meet and develop an Administrative Procedures and Guidance Document relative to the Forest Practices Act and the Stream Channel Protection Act to be used as a guide to field staff and to provide a list of principal contacts. Each Department and their respective staff will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each Department will carry out its separate activities in a coordinated and mutually beneficial manner.

IV. OPERATIONS ON ENDOWMENT OR PUBLIC TRUST LANDS:

IDAHO DEPARTMENT OF WATER RESOURCES SHALL:

a. Consider IDL activities that are reviewed at the annual spring meetings or follow-up notification, that meet the requirements of the Forest Practices Act, the Stream Channel Protection Act, and IDAPA 37.03.07, as complying with IDWR procedural requirement for such activities. Any IDL activities (including but not limited to Section V.a. of this MOU) presented at the meeting will not require submission of a Stream Channel Alteration Permit application. IDWR reserves the right to comment on the timing and methods used to complete these projects, to ensure channel stability, for the protection of fish and wildlife habitat, water quality, aquatic life, recreation, and aesthetic beauty.

b. Provide to IDL a copy of all joint applications for permits to alter a stream channel within 20-work days from receipt, in PDF electronic format, which would alter streams on or adjacent to endowment lands, on or adjacent to lands administered by IDL or occupying the beds of navigable streams or beds of lakes and non-federal reservoirs. Notify IDL of activities on non-state lands, which develop subsequent to the annual

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spring meetings that may affect IDL lands, streams or programs. IDL shall consider this notification as meeting the intent of Sections 42-3803 and 42-3804, Idaho Code.

c. Upon request, furnish to IDL copies of all drawing, maps, and specifications relating to applications submitted to IDWR.

d. Include special terms and conditions in permits, which will affect endowment lands or state owned beds of navigable streams as requested by IDL.

e. Provide assistance in identifying the ordinary high water mark on navigable rivers for establishment of jurisdiction purposes for the Stream Channel Protection Act and for title purposes. IDWR and IDL recognize that rivers are dynamic and established land surveys do not always reflect the mean or ordinary high water mark under the Stream Channel Protection Act.

f. Comment to IDL regarding approval under the Stream Channel Protection Act after receiving comments solicited from other agencies in connection with proposals to alter or occupy beds of navigable rivers or as part of dredge and placer mining activities and refer applications or applicants desiring a permit to alter or occupy beds or waters of navigable lakes, non-federal reservoirs, located on navigable rivers to IDL.

g. Upon request by IDL, deny a permit which IDL determines will adversely affect endowment lands.

h. Inform IDL of law, rule and policy changes relating to the Stream Channel Protection Act and provide training to IDL employees concerning Stream Channel Alteration requirements as necessary.

IDAHO DEPARTMENT OF LANDS SHALL:

a. Meet or exceed the procedural requirement of IDWR Stream Channel Alteration Rules and Regulations and Minimum Standards (Rules), adopted by the Idaho Water Resource Board (IWRB), to protect stream channels on State of Idaho Lands and on other lands administered by IDL.

b. Provide maps to IDWR Regional Stream Channel Coordinator at the annual meetings. These maps will identify predetermined areas, including stream name and legal description, where IDL activities may have an effect on stream channels. Such activities may include, but are not limited to, proposed timber sales, mining operations, roads, culverts, bridge construction, maintenance projects, stream channel restoration projects and fishery habitat improvement projects.

c. Provide a Joint Application for Permit (IDWR form No. 3804B) to IDWR for activities not covered under either the IDAPA 37.03.07.055 or .064 proposed to be

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carried out in protected reaches of streams designated in an IWRB adopted comprehensive river plan. For example, stream channel relocation and reconstruction activities require filing a Joint Application for Permit.

d. Notify, in writing, IDWR Regional Stream Channel Specialist or Regional Manager of activities that develop subsequent to the annual meeting that are located in or will likely affect a perennial stream channel, including applications for lease or easements in navigable waters or endowment lands.

e. Review and comment on IDWR annual Recreational Suction Dredging Permit and Attachments and consider it as an activity jointly authorized, review and comment on other Joint Applications submitted and accept an application to IDWR to alter a stream channel as an application to IDL to occupy or alter the bed of a navigable stream or river, including approval as joint review for projects not requiring IDL lease agreements or easements. Indicate whether or not permits from IDL are required, or whether IDL approvals are to be part of IDWR approval.

f. Furnish to IDWR and other interested parties where applicable copies of all applications for dredge and placer mining permits, surface mine reclamation plans, riverbed mineral leases, easements, logging operations or any proposal to alter or occupy the bed of any stream or river.

g. Prepare permits, lease easements as required by Land Board policy, include on each permit issued a statement indicating that a permit from IDWR may be required and provide copies to IDWR when stream channel alterations are proposed.

h. Deny permits, leases or easements upon request of IDWR if IDWR determines that the project would damage a stream channel.

V. OPERATIONS ON PRIVATE LANDS:

IDAHO DEPARTMENT OF WATER RESOURCES SHALL:

a. Consider a completed Notification of Forest Practices and completed Supplemental Notification Form for private timber harvest activities as a stream channel alteration permit, provided all activities meet the requirements of the Forest Practices Act and the Stream Channel Protection Act and IDAPA 37.03.07. Projects not installed or maintained to meet these criteria must be removed.

Projects qualifying for approval under the Notification of Forest Practices and completed Supplemental Notification Form are:

- Installation of round, squash culverts, open arch or open box culverts, forty (40) square feet open end area or less.
- Installation of culverts, less than sixty (60) feet in length, constructed in non-fish-bearing, perennial streams.

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- Construction of bridges on nonpublic roads, seventy-five (75) feet or less in length, that do not require placement of piers within the mean high water marks; cause an encroachment of the stream channel with fill material, or cause wetlands to be filled.
- Construction or reconstruction of fords less than seventy-five (75) feet in overall length and twenty-five (25) feet in width.
- Removal of perennial stream crossing culverts (40 square feet open ended area or less). Removal of culverts must be done during low flows and if practical, during dry stream conditions created by temporary diversion or dewatering. All fill over the culvert, perched material, and fill encroaching on the channel must be removed using machinery equipped with a bucket and placed in stable locations, above the high water mark, seeded and mulched. Once the culvert is removed, the banks need to be sloped back to a stable configuration, seeded and mulched.

Applicants must provide a description of the project, the location by stream name, quarter/quarter, section, township and range. Applicants must also verify that the project is exclusively for forest practices activities and will be installed and maintained in accordance with applicable regulations of the Stream Channel Protection Act and Forest Practices Act.

All new or reconstructed stream crossing structures in any stream supporting a fishery must provide for fish passage.

b. Process Stream Channel Alteration Permits for projects involving Forest Practices and other projects that do not meet the criteria under item V.a. above. When the banks must be armored, when in-channel structures are required to ensure stream stability in conjunction with installation or removal of stream crossings, when using machinery equipped with a blade or operating machinery within the stream channel for stabilization, improved fish passage or placement of woody debris for fish habitat and anytime state water quality standards cannot be met, a Stream Channel Alteration Permit and a Section 404 permit is required.

c. Investigate and enforce any violation of the Stream Channel Protection Act that cannot be resolved under the Forest Practices Act or as requested by IDL. IDWR reserves the right to undertake a separate enforcement action any time it is determined necessary for protection of fish and wildlife habitat and water quality as required by law.

d. Inform IDL of law, rule and policy changes relating to the Stream Channel Protection Act and provide training to IDL employees concerning Stream Channel Alteration requirements as necessary.

e. Include a statement on permits indicating whether the permit also constitutes approval from IDL, that an additional authorization is necessary from IDL, or that a permit is not required, as requested by IDL.

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THE IDAHO DEPARTMENT OF LANDS SHALL:

a. Meet or exceed the procedural requirement of IDWR Stream Channel Alteration Rules and Regulations and Minimum Standards (Rules), adopted by the Idaho Water Resource Board (IWRB), to protect stream channels on State of Idaho Lands and on other lands administered by IDL.

b. Review and comment on IDWR annual Recreational Suction Dredging Permit and Attachments and consider it as an activity jointly authorized, review and comment on other Joint Applications submitted and accept an application to IDWR to alter a stream channel as an application to IDL to occupy or alter the bed of a navigable stream or river, including approval as joint review for projects not requiring IDL lease agreements or easements. Indicate whether or not permits from IDL are required, or whether IDL approvals are to be part of IDWR approval.

c. Ensure that the completed Notification of Forest Practices and Supplemental Notification Form meet stream channel alteration permit criteria for forest practices and stream channel crossing projects. IDL will furnish IDWR's Stream Channel Specialist and other interested parties a copy of all completed Supplemental Notifications.

d. Consider failure to follow requirements of the Forest Practices Act a violation of permit conditions and report to IDWR related NOV's pertaining to stream crossings and stream channel alterations. Work not in compliance with the Notice of Forest Practices and Supplemental Notification Form will be considered a violation of the Stream Channel Protection Act.

e. Coordinate oversight and enforcement with IDWR when violations do not fall under the Forest Practices Act. Violations of the Forest Practices Rules require corrective action and potential mitigation. Normally accepted restoration and mitigation practices for violations of the Forest Practices Act pertaining to stream crossings and stream channel alterations are:

- The removal of materials placed within a stream channel as a result of a silviculture violation.
- Stabilization and re-vegetation of all areas disturbed as a result of a silviculture violation.
- IDL or Idaho Department of Fish and Game fishery enhancement projects permitted by IDWR for the installation or removal of large woody debris from impacted stream channels. Placement of material in a stream channel for activities other than culverts and bridges, and not directed under a Notice of Violation issued by IDWR or IDL, may require filing of an application under Section 42-3803, Idaho Code.

f. Refer applicants not covered by a Forest Practices Notification, and desiring to alter a stream channel to IDWR.

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g. Furnish to IDWR and other interested parties where applicable copies of all applications for dredge and placer mining permits, surface mine reclamation plans, riverbed mineral leases, easements, logging operations or any proposal to alter or occupy the bed of any stream or river.


h. Consider an approved Stream Channel Alteration Permit for the removal of gravel bar or bed material from non-navigable rivers by a flood control district for flood control purposes as final state approval for this activity. IDL has determined that the requirements of the Dredge and Placer Mining Act, Title 47, Chapter 13, or the Surface Mining Act, Title 47, Chapter 15, do not apply, regardless of the disposition or sale of the material removed for this purpose. The operator is not mining materials from a placer deposit and the activity is not a surface mining operation.

i. Inform IDWR of law, rule and policy changes established by the Board of Land Commissioners relating to navigable streams, to dredge and surface mining and the Forest Practices Act. IDL will provide training for IDWR staff as necessary.

j. Deny permits, leases or easements upon request of IDWR if IDWR determines that the project would damage a stream channel.

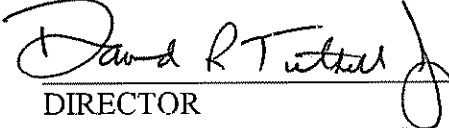
VI. MAINTENANCE AND REVISION PROCEDURES:

The Idaho Department of Lands and Idaho Department of Water Resources will hold a state level meeting in Boise, whenever mutually agreed to be necessary, to discuss a broad policy, standards and procedures of mutual interest and to consider the adequacy of the terms of this memorandum. This Memorandum of Understanding may be amended by mutual consent of the parties hereto as often as necessary to maintain the stated objectives and may be terminated by either party by providing written notice thirty (30) days prior to the termination date.



DIRECTOR
Idaho Department of Lands

11-7-07
Date



DIRECTOR
Idaho Department of Water Resources

Oct 25, 2007
Date

LAKES CONSIDERED NAVIGABLE FOR STATE TITLE PURPOSES

<u>NO.</u>	<u>NAME</u>	<u>COUNTY</u>	<u>AUTHORITY FOR DESIGNATION</u>
1.	Alturas Lake	Blaine	State
2.	Anderson Lake	Kootenai	State
3.	Bear Lake	Bear Lake	State, Coast Guard
4.	Beaver Lake	Bonner	State
5.	Bell's Lake	Benewah	State
6.	Benewah Lake	Benewah	State
7.	Black Lake	Kootenai	State
8.	Blue Lake	Bonner	State
9.	Blue Lake	Kootenai	State
10.	Bonner Lake	Boundary	State
11.	Boulder Lake	Valley	State
12.	Box Lake	Valley	State
13.	Brush Lake	Boundary	State
14.	Cave Lake	Kootenai	State
15.	Chase Lake	Bonner	State
16.	Chatcolet Lake	Benewah	State, Coast Guard
17.	Cocolalla Lake	Bonner	State
18.	Coeur d'Alene Lake	Kootenai	State, Coast Guard
19.	Fernan Lake	Kootenai	State, Coast Guard
20.	Fish Lake	Clearwater	State
21.	Glidden Lake	Shoshone	State
22.	Granite Lake	Bonner	State
23.	Granite Lake	Valley	State
24.	Hauser Lake	Kootenai	State
25.	Hayden Lake	Kootenai	State
26.	Henry's Lake	Fremont	State
27.	Herman Lake	Boundary	State
28.	Hidden Lake	Kootenai	State, Coast Guard
29.	Kelso Lake	Bonner	State
30.	Killarney Lake	Kootenai	State
31.	Louie Lake	Valley	State
32.	Medicine Lake	Kootenai	State
33.	Mirror Lake	Bonner	State
34.	Mud Lake	Jefferson	State
35.	Payette Lake	Valley	State
36.	Payette Lake, Little	Valley	State
37.	Payette Lake, Upper	Valley	State
38.	Pend Oreille Lake	Bonner	State, Coast Guard, Federal Court (194 Fed. Rep. 643, 600 F. Supp. 802), State Court (54 Idaho 700)

<u>NO.</u>	<u>NAME</u>	<u>COUNTY</u>	<u>AUTHORITY FOR DESIGNATION</u>
39.	Perkins Lake	Blaine	State
40.	Perkins Lake	Boundary	State
41.	Priest Lake	Bonner	State
42.	Priest Lake, Upper	Bonner	State
43.	Redfish Lake	Custer	State
44.	Redfish Lake, Little	Custer	State
45.	Riordan Lake	Valley	State
46.	Robinson Lake	Boundary	State
47.	Rose Lake	Kootenai	State
48.	Round Lake	Benewah	State
49.	Round Lake	Bonner	State
50.	Samuels Lake	Bonner	State
51.	Sheppard Lake	Bonner	State
52.	Spirit Lake	Kootenai	State
53.	Stanley Lake	Custer	State
54.	Stevens Lake, Upper	Shoshone	State
55.	Stevens Lake, Lower	Shoshone	State
56.	Swan Lake	Kootenai	State
57.	Thompson Lake	Kootenai	State
58.	Turtle Lake	Benewah	State
59.	Twin Lake, Lower	Kootenai	State
60.	Twin Lake, Upper	Kootenai	State
61.	Warm Lake	Valley	State
62.	Williams Lake	Lemhi	State

IDAHO DEPARTMENT OF LANDS

RIVERS CONSIDERED NAVIGABLE

<u>NO.</u>	<u>NAME</u>	<u>TYPE OF NAVIGABILITY</u>	<u>SECTION (B.M.)</u>	<u>AUTHORITY</u>
1.	Blackfoot	Title	E boundary T3S, R38E	State
2.	Boise	Title	All	State, State Court (94 Idaho 121)
3.	Boise, Middle Fork	Title	Through T5N, R8E	State
4.	Boise, North Fork	Title	Through T5N, R7E	State
5.	Boise, South Fork	Title	Through T3N, R11E	State
6.	Buffalo	Title	Through S21, T13N, R44E	State
7.	Clark Fork	Title	All	State, Coast Guard (to a entrance into point 4 miles above Pend Oreille Lake)
8.	Clearwater	Title	All	State, Coast Guard, State Court (29 Idaho 401, 438)
9.	Clearwater, Middle Fork	Title	All	State
10.	Clearwater, North Fork	Title	Through T40N, R7E	State, Coast Guard (upstream to Beaver Creek)
11.	Coeur d'Alene	Title, R/W	Through T51N, R3E	State, State Court (12 Idaho 723)
12.	Eagle Creek	Right-of-Way		State Court (20 Idaho 695)
13.	Kootenai	Title	All	State, Coast Guard (from Canadian border to Bonners Ferry)
14.	Lochsa	Title	Through T33N, R7E	State
15.	Moyie	Title	All	State, Federal Court (157 Supp. 931)
16.	Pack	Title	Downstream from NPRR bridge to its mouth	Coast Guard
17.	Payette	Title	All	State
18.	Payette, N Fork	Title	To Payette Lake	State
19.	Payette, S Fork	Title	Through T9N, R9E	State
20.	Pend Oreille	Title	All	State, Coast Guard
21.	Priest	Title	All	State
22.	Pritchard Creek	Right-of-Way		State Court (20 Idaho 695)
23.	St. Joe	Title	Through T45N, R7E (mouth to hwy. bridge 3/4 mile east of St. Joe City)	State, Coast Guard
24.	St. Maries	Title	Through S9, T45N, R2W	State
25.	Salmon	Title	Through T10N, R13E	State, State Court (26 Idaho 745, 99 Idaho 793)
26.	Salmon, Middle Fork	Title	Through S12, T14N, R9E	State
27.	Salmon, South Fork	Title	Through T20N, R6E	State
28.	Selway	Title	Through T32N, R7E	State
29.	Silver Creek	Right-of-Way		State Court (96 Idaho 360)
30.	Snake	Title, R/W	All	State, Coast Guard (Idaho-Washington border to Guffy Dam Site), Federal Court (227 US 229), State Court (29 Idaho 438)

<u>NO.</u>	<u>NAME</u>	<u>TYPE OF NAVIGABILITY</u>	<u>SECTION (B.M.)</u>	<u>AUTHORITY</u>
31.	Snake, Henry's Fork	Title	All	State
32.	Spokane	Title	Cd'A Lake to Post Falls Dam	State, Federal Court (775 F.2d 305)



DISCLAIMER PROCEDURE

The State of Idaho owns the beds and banks of all navigable waters below the ordinary high water mark, assuming the waterways were navigable at the time of statehood. These sovereign lands were acquired by virtue of the Equal Footing Doctrine and are administered by the Idaho Department of Lands (IDL) for the benefit of the public in accordance with the Public Trust Doctrine.

Two methods exist to clear title to property in areas where the navigable waterways have changed:

- 1) Quiet Title action through the courts
- 2) Disclaimer of Interest from the Department of Lands

The procedure for acquiring a disclaimer of interest is as follows:

1. Contact the appropriate IDL Supervisory Area Office to determine if the subject property qualifies for issuance of a disclaimer.
2. If the property qualifies, the subject property will require a legal survey. An IDL representative will visit the site with the surveyor to establish the Ordinary High Water Mark (OHWM). The applicant may also be present.
3. In cases where the present river has moved onto lands outside the GLO meander line survey, the IDL will require the requesting party to disclaim to the State, that portion of the present riverbed lying outside the GLO meander line survey. The plat and legal description must show the location and acres of the riverbed parcel to be disclaimed to the state.
4. Since statehood, accretions have resulted from artificial means such as diking, filling, irrigation diversions, dam construction, etc. Due to the uncertainties associated with identifying an OHWM and to avoid extensive research and potential litigation, the IDL will generally use the existing OHWM providing the requesting party will grant a 25-foot public use right of way along and adjacent to the existing ordinary high water line. This serves to protect the public trust values associated with rivers and the disclaimed lands by providing public access.
5. The surveyor will need to prepare a record of survey, and a metes and bounds description, which shows: 1) the areas to be disclaimed from the state to the property owner; 2) the areas to be disclaimed from the property owner to the state; and 3) the 25-foot public use right of way. These documents must show the present OHWM in relation to the original meander line as surveyed by the federal government land office (GLO) and be tied to the nearest section or quarter corner.
6. When the survey has been completed, submit the following documents to the Department of Lands office:
 - (a) A letter of request for the Disclaimer of Interest. Include the acreage of accretion land requested and the exact name and address you wish to appear on the disclaimer.

(b) A full size copy of the record of survey and a copy of the legal descriptions. A digital copy of the record of survey (PDF format) and legal descriptions (MS Word format) will also need to be provided for document preparation.

(c) Tax payment history.

(d) Proof of ownership of the upland property adjacent to the area to be disclaimed; a copy of the property deed is preferable. The applicant must be the legal owner.

(e) \$300 application fee, which is a portion of the minimum \$600 processing fee.

7. After approval by the State Board of Land Commissioners the applicant will be billed the remainder of the processing fee. This fee is the actual cost of the field inspection and preparation of the required documents, minus the application fee, but not less than \$300. The final documents for signature will also be sent to the applicant. After all signatures are obtained, IDL will record all the related instruments.



IDAHO DEPARTMENT OF LANDS

Idaho Department of Lands Management Areas

Priest Lake Supervisory Area
4053 Cavanaugh Bay Road
Coolin, ID 83821
(208) 443-2516

Mica Supervisory Area
3258 West Industrial Loop
Coeur d'Alene, ID 83815
(208) 769-1577

St. Joe Supervisory Area
1806 Main Avenue
St. Maries, ID 83861
(208) 245-4551

Ponderosa Supervisory Area
3130 Highway 3
Deary, ID 83823
(208) 877-1121

Craig Mountain Forest Protective District
P.O. Box 68,
014 East Lorahama
Craigmont, ID 83523
(208) 924-5571

Payette Lakes Supervisory Area
555 Deinhard Lane
McCall, ID 83638
(208) 634-7125

Southwest Supervisory Area
8355 West State Street
Boise, ID 83714
(208) 334-3488

Kootenai Valley Forest Protective District
6327 Main Street
Bonners Ferry, ID 83805
(208) 267-5577

Pend Oreille Supervisory Area
2550 Highway 2 West
Sandpoint, ID 83864-7305
(208) 263-5104

Cataldo Forest Protective District
80 Hilltop Overpass Road
Kingston, ID 83839
(208) 682-4611

**Idaho Department of Lands
Coeur d'Alene Staff Office**
3284 West Industrial Loop
Coeur d'Alene, ID 83815
(208) 769-1525

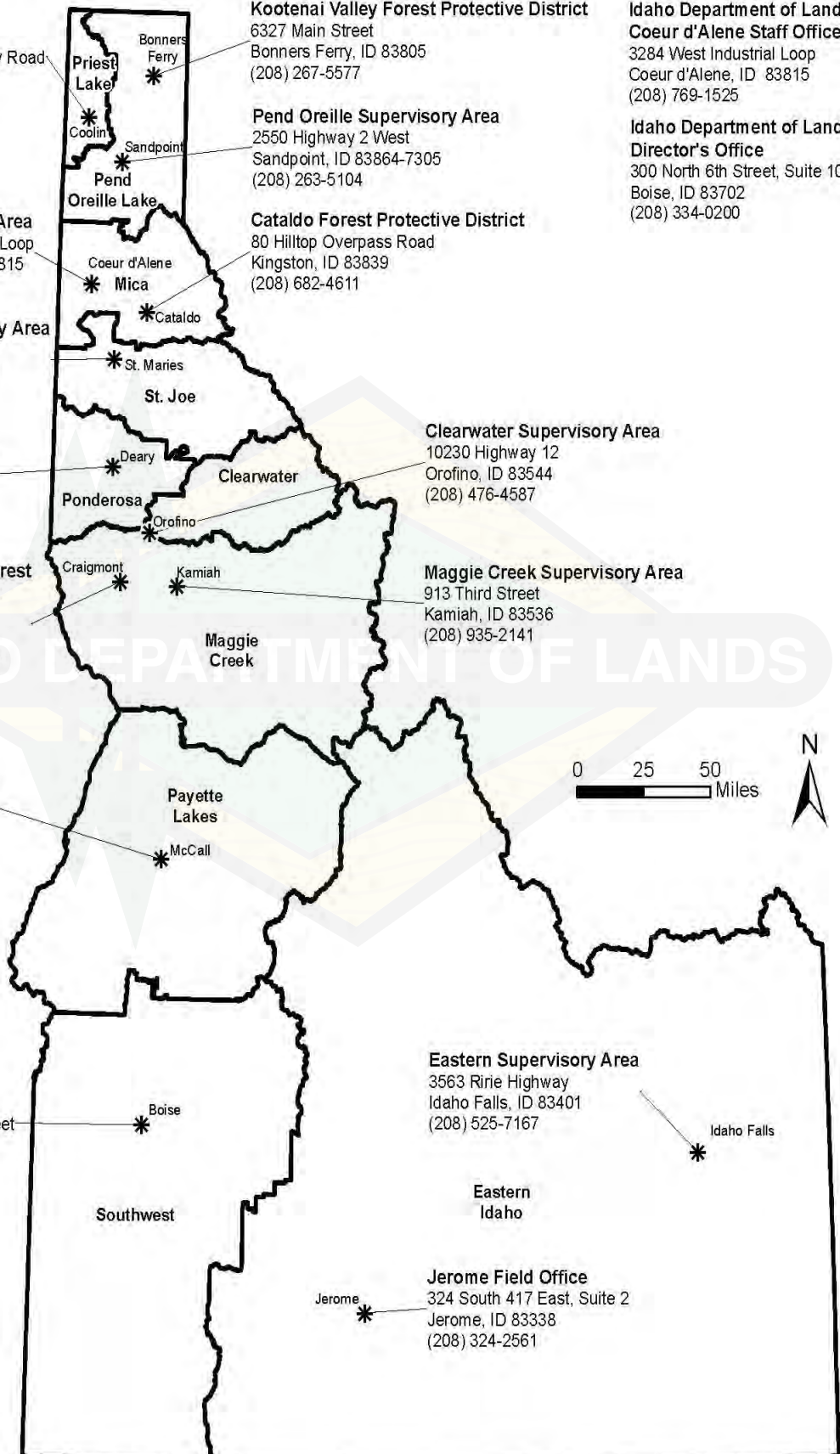
**Idaho Department of Lands
Director's Office**
300 North 6th Street, Suite 103
Boise, ID 83702
(208) 334-0200

Clearwater Supervisory Area
10230 Highway 12
Orofino, ID 83544
(208) 476-4587

Maggie Creek Supervisory Area
913 Third Street
Kamiah, ID 83536
(208) 935-2141

Eastern Supervisory Area
3563 Ririe Highway
Idaho Falls, ID 83401
(208) 525-7167

Jerome Field Office
324 South 417 East, Suite 2
Jerome, ID 83338
(208) 324-2561



STATE BOARD OF LAND COMMISSIONERS

March 21, 2023
Information Agenda

Subject

Idaho Master Fire Agreement between IDL and the Federal Agencies

Background

The Idaho Master Cooperative Wildland Fire Management and Stafford Act Response Agreement (Master Agreement) between Idaho Department of Lands (IDL) and the federal agencies – Forest Service (USFS), Bureau of Land Management (BLM), National Park Service, Fish & Wildlife Service, Bureau of Indian Affairs – is negotiated every five years. The agreement is the framework for defining how participating state and federal agencies cooperate for wildfire preparedness and suppression across Idaho. The proposed agreement allows for better mission alignment of interagency partners. The current agreement expired December 31, 2021; signatory agencies continued operating under a one-year extension that expired on December 31, 2022. The agreement was further extended through April 2023. The operating plan within the Master Agreement can be amended annually. As changes occur, the flexibility to amend the annual operating plan is critical to meet changing and diverse needs across the state.

Wildfire Response Methodologies

Offset Protection

Since the 1980s, offset has served as the primary wildfire response methodology used by the agencies to exchange protection of acres across the state. Under offset, since IDL's fire resources are primarily located north of the Salmon River, it protects a higher percentage of federal acres north of the Salmon River. The federal agencies have more fire resources south of the Salmon River, so they protect a higher percentage of state and private forest resources south of the Salmon River. Acres are exchanged on a straight acre for acre basis, with no weighting attached to different types of land (e.g., forested, wildland urban interface, rangeland, etc.).

When an agency agrees to provide protection of another agency's jurisdiction through offset, it means that agency assumes protection responsibility and all protection costs for the designated acres. For example, state or private acreage protected by the USFS under an offset agreement falls under protection responsibility of the USFS. In turn, for federal lands IDL protects under offset, IDL assumes the full responsibility of providing protection. Under offset there is no exchange of suppression costs when suppressing fires on lands covered by the agreement. All the protecting agencies agree to follow each other's suppression policy as it relates to fire response and suppression tactics.

Reimbursable Protection

Reimbursable protection relies on cost-share agreements to establish reimbursement for the partner agencies providing fire suppression services. For example, if the USFS protects IDL lands under reimbursable protection, the protection responsibility resides with IDL, not the USFS. To explain, if there is a fire on IDL land and the USFS receives a call from interagency dispatch to respond, the USFS will respond as a cooperating agency, but responsibility for protection still resides with the jurisdictional agency, in this case IDL. The State of Idaho would be responsible for reimbursing USFS costs through a cost-share agreement. Similar to offset protection, reimbursable protection requires the responding agency to adhere to the responsible agency's fire suppression policies.

Mutual Aid Protection

Mutual Aid relies on reciprocity between the agencies and closest available resources to respond when a call is received. Mutual aid under the new agreement is more formal and includes most of the State of Idaho where Offset Protection has not been designated, and where both State and Federal firefighting resources exist. Under the previous agreement mutual aid was limited to the first 24 hours or a \$5,000 minimal billable threshold. Except for aircraft, the new agreement states that agencies will not exchange funds unless the costs exceed \$15,000. A closest forces response is preplanned and based on a run card system that has been in place for several years. It is a quick and efficient way of responding quickly to any call regardless of jurisdiction or responsibility. Once the Mutual Aid threshold has been reached on an incident, responding agency costs are reimbursed through a cost-share agreement.

Discussion

IDL, USFS and BLM representatives have been meeting regularly for the past 24 months to negotiate a new Master Agreement. In September 2022 representatives from the agencies met for five days and came to agreement on proposed changes. While the proposed agreement will still include Offset Protection, it will also include an increase in both Reimbursable and Mutual Aid Protection.

The IDL wildfire program has been adding resources over the past few years that will enhance our capacity to meet the response expectations of the proposed agreement. Fiscal Year 2024 decision units requesting the necessary resources for standing up a fire protection district in Eastern Idaho and five strategic engines are important final additions to address changes in response areas, including balancing offset protection, in the proposed agreement.

These resources will assist IDL in the implementation of the new agreement over time. Key components of the proposed agreement include:

- This agreement provides a move to align areas protected with agency missions: USFS to take backcountry timber, BLM to take range, IDL/TPAs to take state, private forested lands and the wildland urban interface.
- Most large blocks of industrial timber ground are either under direct IDL protection or USFS offset protection.
- This agreement now includes a mutual aid component which has a billing threshold designed to maximize fire response and minimize billing impacts.
- There has always been a commitment to closest forces response, and this will continue. There is no expected reduction in resources responding to a fire. In certain areas, partners are anticipating an increase in responding resources.
- Run Cards (which determine how many and which type of resource responds to a given fire) are developed with interagency coordination. Current run cards will be adjusted to reflect changes in responsibility and maximize resource response.
- Dispatch centers are truly interagency, and all dispatchers work hard to ensure jurisdictional lines do not hamper fire response.
- This agreement will increase efficiency from a business perspective.
- Mutual aid comes with an expectation of response. Overall, there should be an increase in response resources whether it is federal or state. There are no proposed changes for the fire service organizations.

Leadership and staff from IDL, USFS and BLM continue to meet monthly to finalize language for the proposed agreement. IDL has been meeting with field staff and the dispatch centers to begin planning for necessary changes required to implement the new agreement. IDL also met with Forest Industry partners to discuss the proposed changes. The agencies have agreed to sign the new agreement by April 30, 2023 and begin implementing the new agreement this fire season.