

**IDAHO STATE BOARD OF EQUALIZATION  
OPEN MEETING  
MINUTES OF MEETING HELD AUGUST 14, 2023**

In attendance: Commissioners Tom Katsilometes, Jeff McCray, Jared Zwycart, and Janet Moyle; Maria Young, George Brown, Phil Skinner, Alan Dornfest, Tim Hurst, Jerott Rudd, Paul Woods, Brian Stender, Canyon County Assessor, Debbie Moxley-Potter, Washington County Assessor, Shyanne Massie, Rick Smith, Hawley Troxell Ennis & Hawley, Lisa Hardin, Idaho Power, Rod Brevig, Matt Virgil, and Brett Jarvis.

Commissioner Katsilometes, the Chairman for the State Board of Equalization, convened the State Board of Equalization for 2023 (Board). Commissioner Katsilometes noted the Idaho State Tax Commission is required by Idaho Code Section 63-108 and 63-405 to convene as the State Board of Equalization. The Board is now in session.

**Procedure for the 2023 Board of Equalization**

Commissioner Katsilometes recognized Phil Skinner, Lead Deputy Attorney General assigned to the Tax Commission and legal advisor to the Board for the duration of the 2023 Board of Equalization. Mr. Skinner reviewed the procedures for this year's Board to ensure the hearings flow smoothly and more effectively. There are 52 appeals this year. Property Tax Administrative Rule allows appealing properties to request a written decision in lieu of a hearing if they stipulate that they'd like the Board to only consider their written request. Many have submitted appeals to the Board of Equalization this year because of the Idaho Power v. Idaho State Tax Commission Supreme Court decision saying they want the same adjustment the railroads receive under the Railroad Revitalization and Regulatory Reform (4-R) Act of 1976. Several of the appealing operating properties have stated they don't want a formal hearing within their appeals, saying the Board may review their written materials and issue a decision. Some attended the prehearing conference and, after the conference, chose to forego the formal hearing and requested that the Board consider their written requests. There are six properties still scheduled for hearings. Five have said that if the Board opts to grant the 4-R Act reduction to operating properties in Idaho, they will withdraw their request for hearing. There will be only one formal hearing.

The Board is scheduled to convene every day for the full two weeks of the Board of Equalization. Hearings are scheduled for the second week; however, those properties are the ones just mentioned and may withdraw their requests for a formal hearing based on the Board's decision on the 4-R issue. If that's the case, the Board has the option to amend the agenda as they see fit.

**Status on Appeals**

Commissioner Katsilometes read the list of 36 hydro properties appealing this year. They are: AJMS, LLC; Barber Dam Hydro; BC Hydro LP; Bell Mountain Hydro; Birch Creek Hydro; Black Canyon Hydro; Briggs Creek Hydro; Bypass Limited; Dietrich Drop Hydro; Dry Creek LLC; Elk Creek; Hazelton A Hydroelectric; Hazelton B Hydroelectric Project; Jim Knight Hydro Plant; Lateral 10 Venture; Lemhi Hydropower Company; Little Wood River Ranch II; Littlewood Hydro Project; Lowline Rapids LLC; Magic Reservoir Hydro Inc; Marco Power Inc; Marsh Valley Development; MC6 Hydro; Midway Power LLC; Mile 28 Water Power Project LLC; Mink Creek Hydro LLC; North Gooding Main; North Side Canal Company; Pigeon Cove Power, LLC; Riverside Hydro LLC; Rock Creek II; Rock Creek Joint Venture; Sagebrush Hydro Plant; Saint Anthony Hydro LLC; Shoshone Hydro Project; Wilson Lake Hydro Project. Mr. Skinner reported that these are the non-utility

generators (NUGs) that have submitted appeals for the last several years. There is still a pending District Court case. Each of these properties have the same argument about values they've had for the last several years, and they're also asking for the 4-R adjustment. The signed stipulation is available to the Board members and includes an updated appraisal report. The District Court issued a decision that criticized some of the approaches to the values, but the decision was published after Property Tax staff completed the appraisal for this year, so an amended appraisal was completed for each property, to comply with the direction of the District Court. The stipulation indicates they do not need a hearing because the arguments have not changed. All of these properties have been scheduled on the agenda for the Board to discuss them all. Mr. Skinner encouraged the Board members to review them all, including the amended appraisals, and the additional information that was submitted last week. There was no further discussion on the NUGs at this time.

Commissioner Katsilometes recognized Brett Jarvis, Deputy Attorney General assigned to the Tax Commission, representing Operating Property Staff, to discuss the status of the appeal for Syringa Networks, LLC. Mr. Jarvis noted Syringa Networks, LLC (Syringa) is scheduled for a hearing on Thursday, August 17, 2023. The Board has the information for the hearing available to them, in accordance with Property Tax Rule 407. The sole issue in this appeal is whether the property owned by Syringa is eligible for the personal property exemption. The question on Thursday will be whether the property is considered personal property or real property. It is strictly a legal issue. There will be presentations from Syringa and from the state. Mr. Skinner noted they are also asking for the 4-R adjustment. Commissioner Katsilometes asked what the personal property entails. Mr. Jarvis said it is whether the fiberoptic wire Syringa owns is considered personal property or real property. If it constitutes personal property, they are entitled to the personal property exemption.

Commissioner Katsilometes read the list of properties that have asked for appeal based on the 4-R issue only. They are: Idaho Power; Avista Corporation; Lucky Peak Power Project; Arrowrock Power Project; PacifiCorp; Lumen Technologies, Inc; Rathdrum Power, LLC; Tesoro Logistics Northwest Pipeline, LLC; Northwest Pipeline, LLC; Gas Transmission Northwest; South Forks Joint Venture; Marysville Hydro Partners; Holly Energy Partners, LP; Telephone and Data Systems, Inc; Zayo Group, LLC. He noted that the Railroad Revitalization and Regulatory Reform Act was a law passed in 1976. Mr. Skinner said these are the remaining properties not already identified. All 52 operating properties are asking for the 4-R adjustment. These remaining 15 don't have a substantive issue and are only asking for the 4-R adjustment. The first five listed are all currently scheduled for a hearing; however, if the Board elects to grant the adjustment, they will withdraw their hearing request. The remaining 10 have indicated they will await the decision of the Board. Commissioner Zwygart clarified there is no issue with valuation, except for Syringa. Commissioner Katsilometes affirmed.

Commissioner Katsilometes recognized Mr. George Brown, Property Tax Division Administrator, and Alan Dornfest, Property Tax Policy Bureau Chief to discuss the Railroad Revitalization and Regulatory Reform Act (4-Rs) Report.

Mr. Brown asked Mr. Skinner to brief the Board on the Idaho Power v. Idaho State Tax Commission case. Mr. Skinner outlined the case that began with Idaho Power about two years ago when they came before the Board every year an adjustment is allowed for the railroads, in accordance with the 4-R Act. Mr. Skinner explained the purpose of the 4-R Act saying Congress was concerned that railroads were disadvantaged through property taxes, so they passed a law that says states can't discriminate unfavorably against the railroads in favor of commercial and industrial property in the property tax valuation. While different states have different approaches, Idaho reviews the railroad and the counties in which those railroads operate, looking at the commercial property values' ratio studies.

If the statistical studies indicate that the value of the commercial properties is below 95%, Property Tax staff has historically recommended a percentage adjustment to the railroads in those counties. Idaho Power argued that according to the Idaho Constitution, property taxes must be uniform among a class. They argued that due to the uniformity clause they didn't believe the Board couldn't also grant them the same adjustment. At the time, the Board of Equalization didn't believe that was how the law was intended to be read and that under the rules of federal preemption, the railroad was carved out from the equation and given separate consideration. That case went to the District Court who agreed that railroads receive special treatment, and that Idaho Power couldn't ask for the same exemption.

Idaho Power then appealed to the Idaho Supreme Court who agreed with Idaho Power saying that railroads should be given special consideration, but the Idaho constitution requires uniformity. The Supreme Court said it was inappropriate for the Idaho District Court to dismiss their request, that Idaho Power is entitled to ask for the same treatment. The Supreme Court decision was issued this spring wherein they remanded the case to the District Court. There could be more arguments for that year for Idaho Power, but the overarching suggestion is that Idaho Operating Properties are entitled to ask for the same adjustment railroads receive. The Court didn't see why uniformity couldn't be honored while also following the 4-R Act. The Idaho Supreme Court didn't address the proportionality requirement. The Idaho constitution requires uniformity in class, but Idaho Telephone Company v. Baird, 91 Idaho 425, says that in looking at property tax uniformity, don't just look at the uniformity clause alone. There's another clause that says taxes must be proportionate, called the "proportionality clause," meaning that all properties must be at the same proportion of fair market value. Idaho, by statute, has chosen to use 100%, saying that property tax assessments should be 100% of fair market value. The proportionality clause is still a question as the Idaho Power case continues. It seems that if the operating properties can ask for the same adjustments as the railroads, perhaps everyone else can too.

Mr. Brown thanked Mr. Skinner. Chairman McCray asked Mr. Skinner what issues the Supreme Court must still address. Mr. Skinner said one issue is that while these operating properties can ask for the same treatment the railroads have. since they aren't prohibited under the uniformity clause, they must show an intentional systematic discrimination or systematic discrimination; that one class of property is favored over another. It will need to be settled at the District Court level. Additionally, there could be factual issues about Idaho Power this year and whether their assessment was at 100% of fair market value. Proportionality may also be a part of this argument.

Commissioner Moyle asked if the statistical analysis uses all the counties? Mr. Dornfest was recognized to respond. Mr. Dornfest said they look at the counties in which the railroads operate. It could be one county or thirty counties. He doesn't do a statistical analysis of the railroads; it's not possible. They look at the commercial properties they have sales for in that group. They don't look at individual counties unless the railroad only operates in one county. They combine all that into a study and if the statistics show commercial properties are provably more than 5% low, they make recommendations to this Board. Commissioner Moyle asked that if they were to look at the commercial properties on a statewide basis, and at the railroads on a unitary basis, how much would he anticipate the adjustments would change? Mr. Dornfest said it depends. The larger companies like Union Pacific would not change much because they are in so many counties. It would only change a fraction of a percent. But the smaller companies would change substantially. They've looked at some that are only in one county: there could be no adjustment required or there could be a large adjustment. It varies dramatically. The larger companies, by rule of thumb, are roughly 15% this year. That won't change more than 1% whether it's looking statewide or one county.

Mr. Brown provided some background. Nationwide, many states make these types of adjustments. There are multiple ways it's accomplished. Some of that is based on case law and some is just that statistically, it's the best way to do something for them based on what they have. Mr. Brown recommends what he and staff believe is the best way to handle this, this year. He said the way they weighed different recommendations is a Venn diagram of legality, administrability, and consistency. The District Court case is still active, based on the Supreme Court decision. That issue isn't finished, but we must do something for this year. His recommendation is to grant all operating property companies the 4-R adjustment in the same manner it's granted for railroads. That would be based on the county, the ratio study on all the sales in those counties and go forward. That is essentially what the Idaho Power case asks and what they believe the Supreme Court has said. The Tax Commission doesn't believe the Supreme Court decision provides a solid answer, but it's easily administrable, it has fairly low damage to other properties because operating property is a small percentage of the state as far as both value and tax. It's not going to shift massive amounts. If there's a county that is heavily operating property, there could be a 4% - 5% shift at the most. Legality is completely arguable, but we can take the minimum that the Supreme Court said and apply it in this way. And it leaves us with a lawsuit that we're already in for this year. He believes going forward, as Mr. Skinner mentioned about proportionality, there are answers we'll need through the legal system. That is the recommendation of staff: give all the operating property companies the 4-Rs adjustment in the same manner it's given to the railroads.

The 4-Rs Act does not say the adjustment must happen in a specific manner. It just says railroads must be assessed at a level within 5% of commercial and industrial properties in the areas where they're located. The Board could order all counties up in their commercial and industrial properties. Or the Board could order all property up. That would be the most legal way: order all property to 100% if proportionality is a concern. Both of those options are administratively very difficult and results in worse uniformity because properties are moved up by class and by category that aren't necessarily not at 100%. A statistical analysis uses the median sales ratio in a county. Only a few properties are at the median; many are above, and many are below. When everything is moved up or down, people in the right spot are moving to a wrong spot and people in a wrong spot are moving to a more wrong spot. That doesn't bode well for uniformity. The second part of that is that many counties don't have enough information available to have a good indication of their values and couldn't move. There would be negativity and positivity, but definitely a uniformity issue.

Another issue, with any type of adjustment, is median versus weighted mean. Idaho uses a median. Mr. Brown detailed the differences between median and weighted mean. For 4-R purposes, federal law is explicit that weighted mean must be used. A weighted mean is used for the study for railroads or for operating property with very little damage. If a weighted mean is used for the whole system, it will completely eviscerate any uniformity at the parcel level. Right now, they try to have parcel-level uniformity as well inside the classes. Everything in the system is designed to ensure the counties are close to the actual value of those properties. Those are the problems with ordering counties up or ordering all property up: it's impossible for the Tax Commission to administer and likely ends in additional lawsuits.

The third way forward would be to only do the 4-R adjustment and ignore everything else. The District Court case remains to be argued, and the Supreme Court made a few general recommendations, then remanded the case to the District Court. There's no way of knowing whether they'll win in the District Court. Mr. Skinner alluded to it earlier that, with operating property, there is a presumption that the value is an accurate value, but that's a rebuttable presumption and we can rebut it ourselves, as can any other taxpayer. There is another step in the argument at the District Court: what if Idaho

Power and Avista are at 60% of value. Then they'd have to be raised to get them to the 4-R level. That question is still open before the District Court. It's a valid way to do this but the reason they're not recommending doing that is because it would mean "kicking the can down the road" and exposing all the counties and the taxpayers to a shift, or a refund. Should the companies be completely successful in everything they're arguing. Three to four years down the road, and it may take a couple of years for the District Court process, they've then just created the potential for some sort of refund which will require many counties to levy, and that's not great either. We can glean from the Supreme Court decision that they were expecting "something" to happen. Mr. Brown doesn't know if they knew what that something was, but they expected something. The Supreme Court decision affirms something is possible.

Another potential answer is to ensure counties are all over 95%. If all the counties are over 95% on the ratio study, then the 4-Rs Act isn't keyed. If the 4-Rs Act isn't keyed for the railroads, it isn't keyed for anyone else either. There's no uniformity issue. Unfortunately, 95% doesn't really fix the problem and much of that is because of the weighted mean versus median. Idaho's ratio studies use median because it's so important to uniformity on all properties. If they go to a weighted mean in a ratio study, they'd have to really think about not performing ratio studies in the same manner. The system would have to change. Mr. Dornfest will discuss some proposals, outside of this case, some general issues with ratio studies, and how it's possible to improve them either through Rule or Statute.

Staff's recommendation is to give all operating property the 4-R adjustment in the same manner granted to the railroads. Complete a study and create an adjustment for each operating property company that touches some place the railroads are geographically.

Commissioner Moyle said she believes this is administrable because the Tax Commission requires counties to adjust during equalization every year and this is the same concept. It can be done in the same way as when they're not in compliance with the ratio study. When Mr. Brown says the 95% option wouldn't work: how is that any different than asking them to comply with a 90% to 110%? She doesn't see the rationale behind it. Mr. Brown responded that moving the threshold to 95% doesn't fix the 4-Rs problem. It'll tighten the counties up, but they're still using a median and, if you run a weighted mean and do a study the way you would for railroads (and that is done only on railroads), the 95% really makes almost no change at all. The counties would move up a little bit and give the Tax Commission more exposure to a lawsuit from the railroads in the District Court, and they'd win. Mr. Dornfest will discuss moving up to 95% to try to promote better uniformity, in greater detail. It isn't going to fix uniformity problems. If there's a county with three sales, moving them up to 95% isn't going to be much more accurate than 90%. That's a move that, while they may eventually make it, isn't a decision that can be made without discussion with counties and other property tax experts. Mr. Dornfest will discuss a way to get better appraisals. Right now, there may be 100% on the ratio study and there may not be one property that's within 20% of that. If there were a way to promote, or bring the coefficient dispersal closer, to within 10%, there would be more efficacy in that for the whole system.

Commissioner Katsilometes asked Mr. Brown to address the administrability question. Mr. Brown said administrability is a couple of things: one he just discussed with ratio studies. The ratio study is an imperfect system, and in many counties, there isn't enough information, so counties with information move up, those without information don't move, creating disuniformity. That isn't very administrable. The other thing is the administrability on the Property Tax Division Staff who would need to go much more in depth with more education and meetings in the counties. This move to 95% will be discussed at the Assessor's conference this month, as well as other ways to tighten things up.

Property Tax wants to talk with the Assessor's get their input because there's a lot of expertise in that group. We want to team with the other tax experts in the state and come up with the best solution. Commissioner Katsilometes asked if Mr. Brown has the personnel to be able to do that. Mr. Brown said no. They've discussed, in places where there are no sales, sending appraisers and to value properties and use that as a proxy for a sale: using a proxy for a proxy. That's done in several other locations. They don't have staff to do that, and even if they did, it creates another set of administrability issues and a legality issue. Not that it isn't legal, but it would create conflict with the counties about whose number is correct.

Commissioner Moyle said legally, counties are supposed to be at market value, which is 100%. Rule allows the ratio study to be between 90% - 110%. Why do we not look at moving that ratio study to 95% - 105% so that these problems aren't in the court system anymore? Appraisals are subjective, and statistics can be altered. Mr. Brown said that is correct and is the reason it doesn't matter whether it's at 90% or 95%. The same issues with 90% are at 95%. It's a little tighter, but it's not going to fix 4-Rs at all because 4-R is calculated in a different manner than the ratio study program. If this Board wants to move everyone to 100%, staff will do the best statistical analysis they can, but it's going to be extremely flawed. It only creates a different set of winners and losers. Commissioner Moyle said it seems that Mr. Brown is arguing about how the system is now. Are we extremely flat now? Because it's no different now than what it would be, other than maybe using weighted mean instead of median. Mr. Brown said if a weighted mean is used, they might as well not do ratio studies because they're going to be way off at that point. Mr. Dornfest can explain it, but a weighted mean fantastically skews what they're trying to do with a ratio study. Mr. Brown said something to consider is that there are many states that don't have a market value requirement, they don't have a uniformity requirement, but decisions like this still come out of those courts. That's one of the reasons there isn't much litigation for railroads because it's of limited scope. Every state is in a different situation. Mark Twain talked about, "damned lies and statistics." He jokes but no business is going to have perfect statistical reliability because if they do, someone is lying, something is wrong, or you're putting yourself out of business testing each and every eventuality. Commissioner Zwygart asked what the counties are saying? Mr. Brown responded that they've been talking to the counties, and with their association, about the situation, and haven't received their opinions.

Mr. Skinner was recognized to clarify, first, whether the 4-R act says weighted mean must be used. There has been case law across the country where it seems the trend is toward using the weighted mean, but the law just talks about using a ratio study. The federal statute doesn't specifically say a weighted mean must be used. There is a reason the weighted mean makes more sense, specifically for the 4-R Act, but when doing the county-by-county ratio studies for general equalization, it makes more sense to use the median. Mr. Skinner said they spoke to the counties when the Supreme Court decision was rendered. A small number of counties were below 95%. The Consulting Appraisers conducted follow-up studies to determine if they'd self-corrected. Under the standard isolated county-by-county ratio studies (there were seven or eight), all but one had self-corrected. Statistically, their confidence interval overlapped 95%. The confidence interval says that statistically the Tax Commission can't prove they're below 95%, but when four or five counties are considered together, there are more samples and all of a sudden there's a better idea and the confidence interval shrinks. They originally thought that if the rule was tightened, and that one county came up, then everyone's between 95% - 105%, then there's no need for an adjustment. The railroads would then argue that the state has never done it county-by-county, for them. The state has always just lumped the counties together. Statistically, they would say, under the old system, they would still get an adjustment. Mr. Brown 's team talked to that one county that was at 90.11%, saying that if they were at 95%, they'd save the state a lot of problems. They declined and staff would have come to this Board and recommended

moving them up. The Board has the authority to do that, but there's no precedent and once again, it wouldn't fix the problem. The railroad study would still show that they were way out. Commissioner Moyle said statute says those counties must be at 100%. Mr. Brown said the Board can do whatever they want. If they want everybody at 100%, Property Tax will give them some numbers. They're not going to be accurate, but they'll provide numbers. Commissioner Moyle stresses to the assessors that statute is 100%. Tax Commission Rule allows 90% – 110% because of the subjectiveness of appraisals and because that's been the appraisal principle and it's been good appraisal principle. But per statute, she stresses it is to be market value and if she is doing her job and she is equalizing, then legally it's to be at 100%.

Mr. Dornfest was recognized and said the standard could be changed to say that if he can prove counties are not at 100%, they're failing and subject to some action. He could easily do that and write the statistics and information into the rule, and it would comply with the statutory requirement. It would not, however, fix the 4-R problem. If there are two counties that each have 10 sales, which isn't unusual in the commercial category, he can create a case where he can't prove that either one of them is out of compliance. While it sounds like he's playing games with the statistics, it's reality; they're not at 100%, with confidence rules overlapping 100%, not even 95%. When he combines them, he can prove that the combination of the two isn't even at 90%, or not even at 95%. Therefore, when railroads and other properties, whether it's just railroads, or it's all operating property, and there are anywhere from one to thirty counties, they'll get results all over the board, so there's no one adjustment that cures the problem. He will posit that it's impossible to cure the 4-R problem by adjusting counties, whether it's set to 100%, or to 95%, or to 90%. Statistically, it won't work because confidence is much higher once there are 700 sales after combining the counties together. It's clear in those cases. No one can know in a case where there are five or ten. He also mentioned that they must consider how much, if any, tolerance should be granted: 10% is allowable now. Should it be 1%? 2%? 5%? So, two comments on that. One: the 10% standard is based on national standards. Two: think about the opposite problem. In Canyon County, there are roughly 5,000 residential sales. In Ada County, it was probably 10,000. In that case, the equalization recommendation would come before this Board every year on counties like Ada and Canyon, even if they did a near-perfect job. Why? They could be at 99.8% on their median or weighted mean, either one, and he could prove it wasn't 100%. If the Board decides to grant no leeway at all, then that's the position in which they end. Again, national standards indicate that's not administratively proper or prudent.

The other issue discussed today is the weighted mean versus the median. He believes that the weighted mean was chosen for the 4-R Act, because while it's not specified in the law, it is the best choice, in most cases, because of the nature of commercial property. Commercial properties tend to be larger, in value, by and far, than residential properties. There's rarely a \$100,000,000 home, but there are \$100,000,000 commercial properties. The weighting of that is substantial. He believes that is the reason case law chose the weighted mean. In the case of uniformity, though, what do you really care about? If there are 10,000 residential parcels, do you care about the influence of the one house that's \$5 million, or \$10 million? Or do you care about the majority of the parcels? You can't choose both. You can only choose one or the other. National standards would suggest choosing the majority of the parcels, not the one house that's at \$10 million, with the proviso that the goal is to have them all at market value. There's only one statistic that measures that accurately and that's the median. So, we have this automatic conflict between the median, which doesn't care if it's a million-dollar house or a \$2,000 dollar house: it's a parcel; and the weighted mean, which cares only about the very high-end properties and not at all about the uniformity or results on the other properties. Having said that, he's not opposed to it, and he's planning to discuss this more with the assessors and talk about tightening things up. Nothing forbids going to a tighter standard. It's suggested that the one Idaho chose was the

most lenient; they could be more conservative. He would not propose to this group, in good conscience, that for the general uniformity roll, as opposed to the 4-R roll, they go away from the median. He can't argue that position.

Commissioner Moyle said Mr. Dornfest argues that the weighted mean would only take into account the high end, but she asked if it isn't true that it would take in the low end? The weighted mean will look at all of them. Mr. Dornfest said no. It simply doesn't. It's weighted by dollars and the ratio moves with whatever is done on the high end. A \$1.00 property hardly influences it at all. It is only statistically affected by the high-end properties. That's the only way it works. They try to work with the counties to get all the data that is proper, that isn't an improper sale. Commissioner Moyle said it appears that it doesn't matter what number, according to Mr. Dornfest, they choose to give them now, whether it's 90%, 100%, or 95%, they're all going to have the same problems. Mr. Brown was recognized to respond and said that's something he'd like to impress upon the Board: there are no good answers in light of this Supreme Court decision. It literally has the potential for corrupting, or even forcing, the elimination of the property tax system as Idaho's known it since the 1860's. He and his team are presenting their recommendations, which are merely, "what do we do this year." What must happen this year to get through this year to get tax bills out in the fairest, most legal, and most administrable way possible. Ongoing, something is going to have to change, either legislatively or in some other manner, or they're going to have to reinvent the wheel on a broad basis in order to have any sort of uniformity. Mr. Brown thinks that, realistically, more than likely it would be an argument that anybody can bring. He doesn't think it's exclusive to class with proportionality, it's everybody, and even if it is class, the law was changed. There are three classes: operating property, real property, and personal property. Fifteen or twenty years ago they changed the law to say operating property is just the combination of the real property and personal property owned by those companies, so there's a good argument that anybody that has real property or personal property can make a class argument. He could go to his county Board of Equalization and argue that Union Pacific got 15% off their property taxes this year, so he should receive 15% off because now he's not uniform. That whole landscape is real. Staff are just trying to get through this year. He emphasized that they're arguing about ongoing things, but staff are trying to get through "right now" because the ongoing things require input from every taxpayer and every government and every agency in the state.

Commissioner Katsilometes asked Mr. Brown if the first recommendation is the best of the worst scenarios? Mr. Brown said yes. Commissioner Moyle said she won't argue that proportionality could be stretched, but under the definitions that are in statute right now, it's very clear that for operating property and railroads, she thinks it would be a far stretch for other categories to come in and argue that. She believes the judge within this case said "within 'that' category." Mr. Brown said categories are not classifications. Classifications are the class of property. Categories are subsets of that in Rule. The three classes of property that require proportionality are real property, operating property, and personal property. Operating property, by statute, is the real and personal property of operating systems. Mr. Brown said he's trying to impress upon the Board that this is about this year. How does staff administer property taxes in Idaho this year so they can get to those other questions. He's hoping to get this issue out there and then discuss how, long-term, the state can deal with it. The Board has the ultimate authority in this state to set values. Staff is just trying to give the Board as much information as possible to make the right decision.

Commissioner McCray asked Mr. Dornfest to walk through the mechanics of weighted mean. Mr. Dornfest did and noted that the weighted mean weights by value, measured by sale price. It doesn't care about low-price properties.

Commissioner McCray asked Mr. Dornfest to elaborate on an earlier comment about considering a statewide assessment for the 4-R adjustment. Mr. Dornfest responded that they tried to follow the methodology in their initial analysis that they've used in previous years for the railroads, and that was to look at areas, whether in one county or 30 counties where the railroads were located. But there's an argument to be made that these are state-assessed properties, and they can look statewide. If they look statewide, we end up, because of the sample size and everything else, with a weighted mean around 85%. So, he would recommend an adjustment downward of 15%. Many of the adjustments in the report he provided the Board are close to that for the larger companies because they're in so many counties. A couple of things to point out about that are that some don't need any adjustment because there were no sales in the counties where they're located. Secondly, they were in counties where the results couldn't be proven. Those would be some of the downsides of doing assessments on a statewide basis. The study they did considers those vagaries, those differences between different areas and different mixes. There were over 50 mixtures in the actual study of different sets of counties that were reflected by the property to which a particular company, or set of companies, was apportioned. The statewide, if all the sales are lumped together, that would include making adjustments, presumably, to companies that were in counties with no data whatsoever. Statistically, he believes that's improper because it concludes that something is wrong and there is no data to prove that it's wrong.

Commissioner McCray asked what percentage of Idaho property is operating property? Mr. Brown responded that by tax, about 2.5% of the total property in Idaho is operating property statewide. Commissioner McCray asked if we know the value of that. Mr. Dornfest said the value is \$330 billion. Commissioner McCray asked that if there was \$2.1 billion in taxes, is the operating property 2.4% of that \$2.1 billion? Mr. Dornfest said yes. The value of operating property was roughly \$8 billion last year. He doesn't know the corresponding number this year out of about \$330 billion in taxable value across the state of all classes.

Commissioner Katsilometes asked the Washington County Assessor to explain how the values compare. Debbie Moxley-Potter, Washington County Assessor, was recognized and said she wants to protect the people of Washington County the best she can. In the last two years, operating property in Washington County has been 30% of their total value and 27% of the total value. This year, before the 15% reduction, operating property will be 25% of their total value. That will significantly affect Washington County. Commissioner Katsilometes said that's more than 2 – 3% statewide. Ms. Moxley-Potter said that is correct and they have no commercial sales in their county.

Mr. Dornfest commented about the report that was distributed to the Board last week, dated August 10, 2023, which contains the analysis his staff completed on each of the companies that were in areas where there were sufficient sales to do a study and shows the number of sales, the weighted mean, the confidence interval (because if it overlapped 95%, they would say no adjustment was necessary because it's not in violation of the 4-R Act), and then the recommended adjustment. With that, he will stand for any questions or clarification on the report.

Commissioner Zwygart asked if the Board makes this adjustment for everybody with operating property, is the dollar amount significant to some of the counties? Mr. Dornfest said on the statewide basis, it would be roughly 15%. It was \$8.5 billion last year; he doesn't know what it will be this year. It's undoubtedly going to be higher than that, just because of the amount, the proportional share represented by operating property on a county like Washington County. There are three or four counties, maybe a few more than that tend to have fairly high percentages. Again, there's always a

predominance of other property that isn't operating. Even though Washington has 30% operating property, there's 70% in other properties. There is a real effect in those cases, he can't deny that.

Commissioner Moyle thanked Mr. Brown and Mr. Dornfest for the conversation and the presentation.

The Board recessed for approximately 25 minutes to re-establish video contact.

The Board reconvened, having re-established video contact.

Commissioner Katsilometes said the Board will discuss what they've heard. Commissioner Zwygart said that looking at all the facts, he feels they need to decide now and not put the decision off to wait for the courts. Commissioner Moyle said we have appeals and the case hasn't run all the way through the legal system, which is something to consider too. She goes back and forth; does she try to second-guess what the court is going to say? And then again, just because she has an appeal on something, does she make a rash decision just because she has appeals?

Rick Smith, Hawley Troxell, asked to be recognized for comments. Commissioner Katsilometes recognized Mr. Smith and allowed comments. Mr. Smith said he'd like to reinforce a couple of points and answer any questions the Board may have. To him, there's only one option and that's to follow the staff's recommendation. He understands they are in the middle of litigation and it's going to go back to District Court, but the Supreme Court sent a clear signal to this Commission and to the entire state, that centrally assessed taxpayers are to be treated the same as railroads. There's only two ways to get there: One is to make the adjustment that staff is recommending, and the other – which is not a viable option – is to try to increase everybody else. He understands Commissioner Moyle, that everyone wants everyone at 100%, but you can't do that in one year. For one thing, there's case law that says, and it's cited in his brief, raising everyone else isn't a valid remedy to correct an equalization issue like this. The only valid remedy is to reduce the party that is appealing, that is contesting the higher value that is higher than everybody else. He thinks the only reasonable choice is to accept staff's recommendation to reduce the valuation. He would say that it isn't a radical remedy. It's not that big of a tax impact – 2.5% over the entire property tax collections – and it's not unusual. Washington has this same process, by statute, that they reduce all centrally assessed taxpayers to the assessed level of other assessed taxpayers. They do it by statute, here you must do it because our constitution requires it.

Commissioner Moyle was recognized for a motion: **grant the adjustments for this year with a caveat that the Commissioners will send a letter that the assessors will increase their commercial values for the following year and that we will make sure that they are at about the 95%, for next year.** That provides a solution for this year, but it also gives the counties a year to reevaluate where their commercial properties are, it gives the counties two opportunities of notice of a mistake. That would be the first letter, and in April, when the ratio studies are reviewed, an opportunity to send out adjustments if needed. That would be her motion.

Commissioner Katsilometes clarified the motion: He understands that Commissioner Moyle's motion, without the caveat, is to follow staff's first recommendation. Commissioner Moyle said the caveat is part of her motion. Commissioner Katsilometes understands the caveat is part of the motion. Commissioner McCray seconded the motion.

Commissioner McCray asked Commissioner Moyle to explain the caveat asking why would they not just make the change for this year as part of the Board of Equalization? Commissioner Moyle said the reason she made that motion is because they have typically given those counties in April the opportunity to make adjustments and this year that was not a viable option. This way, they give the counties a year to reevaluate, get the appraisers out there, making sure that those commercial properties are up to the 95%. It also gives the Commission a year to see where the court's going to take us.

Commissioner Zwycart said the caveat gives him pause. Are we asking them to give between 95% and 100% of the state evaluation, or is it between 95% and 100% of their county valuation? Commissioner Moyle said it will be 95% of their commercial property valuation in their counties. Commissioner Zwycart said he thought they were already doing that. Commissioner Moyle said the compliance levels at this time are 90% - 110%; 4-R only kicks in when it's 95% or above. The caveat would be that they look at those commercial properties and make sure those values are up.

Mr. Skinner clarified the motion. When the Board makes a motion, he must figure out how to implement it. He recapped what he heard: **The Board is choosing to go with Option 1 – to give reductions as suggested in the memo from Mr. Dornfest. The caveat is, then, that the Board will send a letter to the counties that says the Board had to address this issue, and even though Rule 131 says they must only be in the 90% realm with their statistics, we have the 4-R Act problem. To satisfy that, the counties need to be at 95%.** Notwithstanding the Rule, Federal law has more stringent requirements. The Board is giving them warning they must bring the values to at least 95%. Next year, if there's still no legislative fix or anything to change what is happening now, and this is still an issue, the Board wants counties tighter.

Statute says counties must be warned by April if they're going to be adjusted based on the standard Idaho uniformity equalization Rule 131. This is something different. This is federal law being imposed upon us. Commissioner Moyle's suggestion helps to diplomatically deal with that. We have a solution for this year, but next year, because of the 4-R Act, notwithstanding the 90% threshold in Rule, we need commercial properties to be at 95%. He asked Commissioner Moyle if that was correctly stated. She said yes.

Commissioner Katsilometes asked about the authority they have in making that caveat recommendation and whether we have the authority to enforce that in the counties. Mr. Skinner said he believes so. Before the Board is option 1: do the adjustment; or Option 2: order the counties up. This is giving the counties a head's up. The Board will deal with it using Option 1 this year, but next year this could be back on the table, depending on the court case, or if something happens with legislation; but if we're back here next year, the signal is that they need to tighten up those commercial properties.

Commissioner Katsilometes said there are several things that could happen between now and next April. Commissioner Moyle said it's difficult to do, but it's no different than trending. In April, the Commission would have counties trend up, and this would be that same type of thing. She feels this is a better path forward, for now, and we then see what the court decides, and this satisfies the appeals this year.

Commissioner McCray addressed Commissioner Moyle, saying tactically, the expectation will be for those counties that are not at 95% to be that and that the Board of Equalization would require that next year. Commissioner Moyle said yes, at that time, and there may be some discussion about changing our rule. Commissioner McCray asked why 95% and not 100% to be aligned with statute?

Commissioner Moyle said the Board could be at 100%. Legally, that is where we are supposed to be, but it depends on how heavy-handed you want to be. This gives us the opportunity to do the best we can with the information we have. Commissioner Zwygart asked where the 90% and 110% came from. If statute says 100%, why did the Board decide on 90% – 110%? Mr. Skinner said legally, the statute is talking about individual properties being at 100%, when appraising individual properties, you should shoot for 100%. The ratio study is talking about 90% – 110% and is looking at a whole class for that county and, as a group, how close is the assessor to hitting the right number. That's the distinction. Nothing in statute says that under the ratio studies, the confidence interval needs to overlap 100%. The 100% statute is marching orders to the assessors on an individual property basis to try to get to 100% of fair market value. That's a little different than what we now test. How much being unequalized do we tolerate before ordering an equalization?

Commissioner Zwygart asked why was it 90% – 110% and now trying to make it tighter and isn't feasible? Commissioner Katsilometes recognized Mr. Dornfest to respond. Mr. Dornfest said whenever possible they try to make decisions based on law, but in terms of implementing that law based on something, a textbook, a standard, or something and in this case, there is a standard. The International Association of Assessing Officers (IAAO) has used this standard since 1980. Although it was different at that time, it's been consistent since about 1990, so that's 30 years of a particular standard. Is it used in every state? Do we have to use it? No. But is it used in many places? Yes, and it gives us something to fall back upon instead of "we just invented it." The second part of that is the Ada County problem. The Canyon County problem. You can be at 99% in those counties, and he can prove you're not at 100%. Mr. Dornfest said these standards are developed by a consensus of professionals. Commissioner Moyle said the Tax Commission wrote the 90% – 110% into Rule based on National Standards. We can change that rule. She also pointed out that the ratio study is a part of the statute.

Commissioner McCray noted both Commissioner Moyle and Commissioner Zwygart have made comments about not wanting to wait until the court case is finished and he asked if they will elaborate on why we wouldn't wait on the court to provide guidance since this is before them on their calendar and they're going to tell us what to do anyway. Commissioner Moyle said her thought process is that the Supreme Court did make a ruling and that is something we have to take into consideration. The motion she made was because she was trying to see if there was a fair balance between everything they're trying to weigh. She felt she tried to cover the needs of the counties, and the administrative needs of staff. She feels there is no perfect solution, but she feels this covers work for everybody.

Commissioner Zwygart said the reason he's saying to decide now is that it takes the court so long to decide. It seems that the Supreme Court has said they want the Board to equalize, i.e., the 4-R is for everybody. He understands that if the District Court doesn't change and go along with the Supreme Court and this issue is again before them, it seems the Supreme Court will stay with that equalization. So, we'll have a good case to show that it's equal, that the railroads are an exemption, all by themselves and it's not a blanket exemption. He doesn't think we have good legislation yet to make it a blanket exemption. Commissioner Moyle said she also thought of was what can we control internally, because legislation is not a guarantee. She thinks the legislators – having been there – covered this because the Tax Commission is allowed to promulgate those rules. And it's a very simple solution in their minds, and that is that we change to 95% – 105%; that is what she, in this position, can control. It would be the best solution to have legislation, absolutely, but it's not guaranteed, so she must look at what we control.

Commissioner Zwygart said he likes the motion that's on the table. He feels the Board should follow the 4-R Act, but he has a hard time going against standards. The standard is 90% – 110%, and

he would like to stay with that standard. It seems the caveat is changing a standard for no reason other than following this rule of 100%, which is what statute says, which is impossible to follow. Commissioner Moyle said we're here because the courts have said that is the standard. They are telling us that is the standard we are to use. That is why she says that is our standard. The 95%.

Mr. Skinner clarified that the court doesn't get specific to the 95%. The 4-R Act says you can't, as a state, do your ratio study and then find that commercial property is more than 5% lower. In other words, they're at 95% of what the fair market value ratio is that the railroads are in, although the court never discussed 95%, that is the underlying standard in the 4-R Act. If commercial property is below 95%, states must do something about it. Commissioner Moyle said it isn't us changing the standard, it's what the court is saying our standard will be. Commissioner Zwygart asked if that is enforceable? To raise it from 90% – 110% up to 95%? Can you back that up with statistics? Mr. Dornfest was recognized to respond. Mr. Dornfest said the IAAO Standard doesn't insist on the 90% – 110%. In fact, it says don't go wider than that. Some states have 95% – 105%, so he isn't saying it's a direct violation of that however, in terms of equalization responsibilities, the IAAO standard is adamant about not using the weighted mean to do an adjustment for the very reasons indicated. He believes there are two issues: Can the target be moved to 95%? That's an assessor's question. He doesn't have any problem doing the analysis and moving it to 95% as a test. He does have a problem arguing for it if we move away from the median and into the weighted mean. Rule covers both issues.

Commissioner Moyle said this isn't changing the rule. This isn't telling the counties they can't be between the 90% and 110%. What it is saying is that we believe the commercial properties need to be brought up. If county assessors want to be below that 95%, then they just need to understand that next year, they'll get that 4-R adjustment again. But we are going to try to look at those and do what the court said and be more within that 95% range. And then, barring whatever we hear from the court system, we can look at if we need to change the rule. That's not on the table right now. All we're saying is that for this year, make those adjustments, and next year, we're going to encourage you to be more toward the 95%.

Commissioner Zwygart asked Commissioner McCray why he wants to wait. Commissioner McCray said he never said he wanted to wait. He only wanted to hear why Commissioner Zwygart and Commissioner Moyle didn't. Commissioner McCray said he's just trying to weigh all the options. The argument for him in waiting is that this hasn't been resolved by the court completely. We have some guidance, but there are still issues to be resolved. Until that's done, he doesn't know that we have enough information to make a recommendation. Regarding the 95%: He's also uncomfortable with the caveat. Partially, property tax is a local issue, and this is a significant decision to be undertaken because all we're going to be doing is shifting the tax burden to those other properties. He doesn't take that decision lightly and he is also sensitive to the fact that, as the State Board of Equalization, we will be imposing our idea on where commercial property should be in future years. So, he struggles with all that. He would like a little bit of time to consider the options before a vote is called.

Commissioner Zwygart asked if they can split the motion? Commissioner Katsilometes said Commissioner Zwygart can make a substitute motion at any time. Commissioner Zwygart said he'd wait. Commissioner Moyle said there are a couple of things going on. Property tax is a heated issue. By making these adjustments, we are shifting from commercial to residential, which is already a heated topic. That's why she added the caveat of getting the margins tighter. It is not easy, but if you're going to shift, let's make sure we know what the 4-Rs Act does; if you shift operating property down, it shifts it back up to the other properties. This is residential. This is not the year to have that discussion. No matter what we do here as a Board, we're going to take a hit. You're either going to have residential

people mad at you, or you're going to have commercial property people mad at you. That's why she felt like this motion covered most bases. It isn't something she took lightly when she made her motion. That is not a discussion she wants to have with residential taxpayers. Especially this year.

Commissioner Katsilometes called for other comments or questions, saying it sounds like Commissioner Moyle is trying to give guidance to the assessors on where the Board will possibly be next year. Commissioner Moyle said to remember that as much as we'd like to say that we don't want to change the standards, when it comes to the 4-R Act, those standards are set. If the judge tells us that is what we are to follow, then it seems to her that we are having our hands forced on that. It's not really her making that decision, it's the courts. The decision made was through rule and set at 90% – 110%. Commissioner Zwygart said that if we are then following the 4-R rule, then why do we need to put something in, since it's already there. Commissioner Moyle said it's just giving notice to the counties that we're looking at this lawsuit and this is what it's going to say, and giving them the opportunity to get their appraisers, and to make internal policy decisions. It would be her strong advice to seriously look at this court decision. They can make those adjustments or have those discussions with the residential and commercial taxpayers. It gives them a year instead of making them have those discussions now.

Commissioner Katsilometes asked for any further discussion. There was none and **Commissioner Katsilometes called a roll call vote.** There is a motion in place: **Commissioner Moyle – aye; Commissioner Zwygart – aye; Commissioner McCray – nay. Commissioner Katsilometes noted the motion has passed** and asked if there are further discussions today.

Commissioner Katsilometes recognized Mr. Skinner. Mr. Skinner said anytime there is a motion, he clarifies how to help the Board carry it out. He envisions that staff will prepare the final operating properties the Board will approve at the end of the Board of Equalization season; they'll work on the adjustments presented in Mr. Dornfest's report. He'll start drafting the letter for the Board to review stating the issues before the Board this year and that one of the options was to raise commercial properties. The Board did not do that, but the counties are advised that if this is before the Board next year, depending on what happens with the court case, depending on what happens with the legislature, that could be an option on the table again. The Board urges counties to try to bring those numbers up to minimize the impact.

Commissioner Katsilometes asked if there is any other business today. Hearing none Commissioner Katsilometes noted the Board will reconvene tomorrow at 9:00 a.m. and may want to consider amending the agenda, because the Board will not be hearing those cases with only a 4-R adjustment request.

There being no further business, Commissioner Katsilometes recessed the Board until 9:00 a.m. on Tuesday, August 15, 2023.

Maria Young  
Secretary

Tom Katsilometes  
Chairman of the Idaho State Board of Equalization