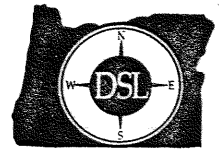


# Oregon



The Oregon State Land Board met in regular session on February 14, 1995 in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon 97310.

Present were:

John Kitzhaber	Governor
Phil Keisling	Secretary of State
Jim Hill	State Treasurer

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DIVISION OF  
STATE LANDS

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STATE LAND BOARD

JOHN A. KITZHABER  
Governor

PHIL KEISLING  
Secretary of State

JIM HILL  
State Treasurer

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The meeting was called to order at 9:10 am by Governor Kitzhaber. The topics discussed and the results of those discussions are listed as follows. Further details of the discussions may be obtained in the written transcript of the meeting available at the Division of State Lands, 775 Summer Street N.E., Salem, Oregon 97310 (phone: 378-3805).

**Administrative  
Rules**

Request for authority to initiate an amendment to Chapter 141, Oregon Administrative Rules for Management of Rangeland, to repeal competitive bidding in favor of an alternate lease award process.

State Treasurer Hill began the discussion by saying the competitive bidding process in the previously adopted rules does not guarantee the Board will meet its fiduciary responsibilities.

Director Gustafson said the rules adopted in July 1994 were the result of an intensive effort that took 2 1/2 - 3 years to complete, including public hearings. He said three alternatives were presented to the Land Board for their consideration, with differences primarily dealing with the subject of competitive bidding. The Board adopted the alternative that required competitive bidding for all new or expired leaseholds on trust lands (except where there were specific exemptions). A provision was also made for non-trust land parcels to be competitively bid, if the Division chose to do so.

Since the adoption of the rules, Gustafson said there have been many concerns expressed over the competitive bidding portion of the rules and the possibility that the stability of the area might be threatened if the ranchers were outbid. He said this was a concern, especially by ranchers who felt they may be outbid on a one-time basis and that the entity that outbid them might not remain around as long as the ranchers had to ensure long-term care of the land.

Gustafson said the request was made by State Treasurer Hill to place a possible repeal of this portion of the rules on the agenda. Gustafson stressed that there would be no final action on the rules today. If approved, this request would initiate the rulemaking process for a possible repeal of that portion of the rules. He said public hearings would be held and comments received and analyzed. He said final action could be taken on the rules no earlier than 90 days--possibly returning to the Board in May for a final decision.

Gustafson then reviewed the recommended options presented to the Board by Division staff.

Option A would propose no amendment to the rules. Gustafson said this option has been determined by the Attorney General to meet the Land Board's fiduciary obligation.

Option B1 would provide that a prior lessee has a right of renewal, if full compliance has been demonstrated with all the terms of the existing lease, including responsible land stewardship in accord with the leasehold's adopted range management plan. Under this option, if there is no qualified prior lessee, the Division would award the new lease based on two criteria. The first would be the ability to fully utilize the lease due to the proximity to the base property of the prospective lessee. The second would be the greatest overall benefit to the Common School Fund and the constitutional requirement to secure the greatest value to the people of the State of Oregon. Gustafson said this option provides an incentive for good stewardship, as well as stabilizing land uses and activities on the leasehold over the long term, and encouraging private investment on the leasehold. He said that, assuming the base rental amount charged under the rules reflects at least a fair-market value, this option may satisfy the Board's long-term fiduciary obligation.

Gustafson said another provision of the existing rules increased the base rental amount the Division charges, independent of competitive bidding. A cropshare method is used which is based upon a number of factors, one of which is the price of beef. When prices go up, the amount per AUM goes up, and when prices decline, so does the price per AUM. This formula equates to \$3.33 per AUM in 1995 (whereas the prior base fee was \$2.50 per AUM for most tracts and \$3.50 for wetlands). Gustafson compared that with BLM/federal rangeland rates of \$1.92 per AUM last year (dropping this year to about \$1.61 per AUM).

Option B2 provides that new leases would be awarded based not on an immediate renewal right, but on a preference to renewal for someone who owns base property in the proximity of the leasehold. The two criteria applicable to Option B1 would also then apply. Gustafson said this is similar to what the BLM uses in federal grazing leases--requiring that an applicant must be engaged in the livestock business and own the land or water base property near the state property.

He said the Board should choose one of these options as a replacement mechanism which would be presented to the public for their input. He said if the Board directs the Division to begin rulemaking to consider repeal of the competitive bidding portion of the rules, staff recommends that Option B1 be advanced as a replacement.

Chris Orsinger commented that he had heard rumors that the Legislature is threatening to slash funding for the Division if the competitive bidding rule isn't repealed. He said he trusts the Land Board will have the integrity to reject such attempts as this. He stated that the Board should retain the competitive bidding portions of the rules adopted in 1994. He said the Harney County court injunction now blocks the implementation of competitive bidding and a Marion County Court suit challenges the existing rules. From 12-24 months after the courts adjudicate the matter, the Land Board will have the guidance and will probably need to revive the rules again at that time. He said to go through the hearing process now and then to have to do it again in a year or two is a waste of Common School Fund monies. He said the asset management plan that is being developed should also be considered before taking any action.

Orsinger said competitive bidding is a good way for the Board to help meet its fiduciary obligation, since Oregon's grazing leases are currently below market rates compared with Washington.

He also referred to the March 25, 1994 Attorney General opinion and said that eliminating competitive bidding and excluding a lawful use, such as a non-grazing use that would provide more net revenue, is clearly a violation of the Admissions Act trust.

Orsinger then discussed the concerns expressed regarding a non-rancher jeopardizing the long-term potential for these lands to create income, by outbidding the rancher (who may go out of business and later be financially unable to renew the lease). He said many conservation uses will establish endowments to enable them to continue to pay for lease costs. He stated he believes competitive bidding will have a fairly minimal impact on the livestock industry and that leases to conservation groups for these lands will generate more income for the Common School Fund.

He concluded by saying the below-market lease rates, combined with taxpayer-funded improvements which benefit ranchers is a clear and significant subsidy to the livestock industry, which should be ended, so the lands can produce income as they were intended to for the Common School Fund.

Jim Myron, Oregon Trout, said they supported the competitive bidding portion of the rules with the understanding that the Attorney General's opinion portrayed it as the best, if not the only way, to satisfy the fiduciary responsibility to the Common School Fund. He said an argument could be made that the school children are subsidizing the livestock industry through this program, and that it may be in the best interest of the Common School Fund to simply get the state out of the livestock business. He said Oregon Trout recommends the Division go through the asset management plan, carefully considering exchanges (especially of the arid desert lands) to the BLM for other lands that would be more beneficial to the Common School Fund than the high desert lands.

Jill Workman, Sierra Club, said their members have been involved since the inception of the rules by attending hearings, making comments and writing letters on the issue of competitive bidding. They believe the Land Board made the correct decision previously and requested the prior decision in favor of competitive bidding be upheld. Workman said she agrees with the Attorney General's opinion that the Land Board's trust obligation is best met through competitive bidding. She said she also believes the trust obligation could be met by the Board charging a high enough grazing fee to return a reasonable profit to the Common School Fund, but stated that barely meeting one's fiduciary obligation is not what a good fiduciary does. She said that the interests of affected counties and individuals and the environment should only be considered as they fit within the framework of doing, not just meeting your fiduciary obligations.

Judge Dale White, Harney County, said the grazing fee advisory committee, to which Gustafson appointed him, spent considerable time discussing the issue of competitive bidding. The minutes of the June 30, 1993 meeting stated, "The committee did not believe that competitive bidding should be used as the primary approach to establish a fee." White said prior policies adopted by the Board affirm that they felt competitive bidding would not contribute to good land management. He stated he personally does not believe that competitive bidding is consistent with Article 8, Section 5(2) of the Constitution. He said that good management, good stewardship and improved rangeland conditions cannot be achieved through the use of competitive bidding. He gave several reasons why the Board should repeal the competitive bidding portion of the rules.

Secretary of State Keisling asked Judge White what he thought about the Board selling some of the lands, since records showed a net revenue outflow on the lands. White said this could apply to the isolated parcels of land, but said it would be physically impossible or financially impossible for most ranchers to afford the capital required to purchase lands they are leasing. White reminded the Board of assurances that were made to the ranchers when the state took over the class one BLM rights.

Dan O'Leary spoke next, saying he represents the Common School Grazing Land Association that is made up of the majority of the Division of State Land grazing lessees. He shared their support of the proposal to amend the rules to delete the provision relative to competitive bidding. O'Leary said that before the rules were adopted, he objected to the imposition of substantial policy changes on these lands without reference to the history of what has taken place over the course of the previous 15-20 years. He said that suggestions had been repeatedly made that these lands were being damaged by grazing, though information had been provided to the Board indicating that is not an accurate assessment.

He said that many representations had been made to induce cooperation from the lessees by Division of State Lands' staff. He said Judge Yraguen identified the staff's conduct as being inequitable in bringing about the cooperative assistance of the lessee's. He said there are more reasons now not to accept competitive bidding than there were when the rules were accepted.

O'Leary said they are also in support of the proposed substitute amendment to the rules that would provide for a grazing preference to the current lessee and the incorporation of a base property requirement.

O'Leary distributed a legislative concept which would amend ORS 273.815, to provide for a preference in favor of the current lessee and in favor of landowners engaged in livestock grazing business. He said much of the language of the proposed bill was taken from the Department of the Interior's Taylor Grazing Act.

O'Leary said the level of cooperation and trust that was part of the program for years has been severely degraded by the debate over competitive bidding and other aspects of the rule changes. He said that many things were not adequately addressed or accounted for when initially creating the rules. Tenure of lessees, he said, is a critical to the management of these lands.

He also stated that the valuation clauses were deleted in a number of the leases. Judge Yraguen in the Harney County trial, he said, called this an inequitable conduct on the part of state land managers. The Judge ruled against the appeals made, since they had not met the 60-day statute of limitation, but said if it were not for the 60-day limitation, those people would have been entitled to have their leases reformed and the valuation clause reintroduced.

O'Leary reconfirmed his support for the elimination of the competitive bidding portion of the rules.

Secretary of State Keisling asked O'Leary what he thought about the current termination clause, which provides for terminating leases with 60 days notice, if the state determines it is in the best interest to use the land in a different way, such as for sale of the land.

O'Leary said it is highly unusual for a commercial lease to have that kind of provision in it. He said another problem identified by Judge Yraguen is that these leases are imposed, rather than negotiated. He said it may not be interpreted quite the way that they were suggested. He said he thinks there are limits to the application of that language, since it appears to be a very broad lease termination clause.

Governor Kitzhaber said it's clear that the state has to make a finding that it's in the best interest of the state to use the property for other uses, so it isn't that broad.

O'Leary added, if the Board is addressing the rules again, some action should be taken to bring the rules back from the Court of Appeals. He said he is willing to assist in that process.

Bob Phillips, group coordinator for Rest the West, spoke next. He said Rest the West opposes reconsideration of competitive bidding at this time for several reasons. He said competitive bidding for all uses that are compatible at protecting the resource is the best means at maximizing revenue to the Common School Fund, as he felt the Attorney General opinion of July 24, 1992 also stated.

He further stated that the legality of the current rules is now in the hands of the courts. With lawsuits now pending, he said for the Land Board to consider the rules at this time would be a needless expenditure of Common School Fund monies. He said that the asset management plan should also determine the long-term direction for management of the lands. To consider changes at this time, he said, would be premature and a waste of Common School Funds. He asked the Board to defer reconsideration until there is a clear course to follow.

Bill Marlett, Director of the Oregon Natural Desert Association (ONDA), said he agreed with the prior comments made. He said there is a larger public interest at stake here than just making money. He said their interest in the state land issue is tied to the Owyhee Canyon lands, blocked lands that the BLM traded to the state. He said the Owyhee is a state scenic waterway and a federal wild and scenic river. ONDA is interested primarily in two leases, bordering 26 miles of the river, where he said the watershed is extremely degraded. They would like to lease the land to restore the ecological integrity of the watershed. He sees this as being mutually beneficial, since in doing so, they will provide stable revenue to the Common School Fund.

He said taking away the opportunity for them to participate in a competitive forum is a real disfavor to the public at large. He said the ranchers have been subsidized for the past 100 years.

Marlett questioned the level of involvement by Representative Denny Jones, as a legislator and also as a state permittee. He said if it would be best if something can be done to keep that interest away from the public interest.

Terry Drever-Gee, Baker County Planning Commissioner, Vice-Chair of Regional Strategies, and also a miner, said she is testifying on behalf of the ranchers. She stated that the state has a responsibility not only to the Common School Fund, but also to the communities affected by the rulemaking.

She stated that many of these families have had grazing leases for a long period of time and many are operating on shoestring budgets. They are contributing to the community, though. She said if you take the cattle away, and take them off the land when the stewardship of the land is good, it is wrong.

She referred to a partnership of ranchers in Malheur County, teamed up with state, federal and county agencies and with miners to enhance the Bolie Creek watershed. She said many positive things such as this can occur, increasing the productivity of the land, the revenue from the cattle, and also improve economic conditions in the communities.

She stated that there must be provisions in the leases requiring good stewardship and said if this provision is not being kept, then a competitive bidding process on that lease might be in order. She said while people are doing a good job, competitive bidding is a real detriment to the community and to the state.

Senator Eugene Timms discussed the Class A permits that were traded from BLM to the state. He said in 1983, he assured several lessees involved in trading their permits, that the state would treat them fairly. He said the competitive rulemaking process has created a mistrust between the state and

the landowners of his district, which in many cases have lived in these communities all their lives and for some, such as the Tracy's have invested large sums into the leases and their improvements.

Timms said there needs to be an analysis done of how the process can work. He said it will not work by going back on agreements or contracts that were made in 1983, and since verified by Governor Clay Myers and Governor Atiyeh. He said it is a sad thing, to refute and disclaim agreements that were made with citizens. He stated that it needs to be made right with these people.

Representative Denny Jones began by registering a possible conflict of interest. He commented that he would like to discuss with Secretary of State Keisling his comments regarding the rangelands losing money. He stated his opinion that the Board should rescind the competitive bidding portion of the grazing rules and have a lease agreement that would satisfy everyone. He said once this is done, there won't be anything to do for 20 years except for someone to oversee that the land isn't being abused, and someone else to bill once per year. After this, he said, all the money could go into the Common School Fund.

State Treasurer Hill moved the Board direct the Division to begin rulemaking to consider the repeal of the competitive bidding portion of OAR 141-110, and accept the Division's recommendation that Option B1 in the written agenda materials be advanced as a replacement in the proposed rule amendments to be circulated to the public. Governor Kitzhaber seconded the motion, commenting that his doing so is not a vote to repeal the competitive bidding process, but to initiate a process to reopen the debate.

State Treasurer Hill said the issue is really one of fiduciary responsibility for these lands over the long term, rather than environmental (since no one had proven to him before that degradation of the lands was occurring). His objections to competitive bidding was that there was no proof that over the long term, that this would bring in more money for the Common School Fund. He said the asset management plan that is being developed should determine whether or not we get the most income from the land to meet the fiduciary responsibilities. He said that the plan should be used before a decision is made.

He stated that under the current rules, there is an assumption made that the highest bidder will always be an environmentalist. He said this may not be the case--since another use could win the bid, a use that could be very detrimental to the environment.

He said if environmental degradation is occurring on the lands, this issue should be addressed directly, but it shouldn't be mixed up with fiduciary responsibility.

State Treasurer Hill stated that undue influence of the legislators to the Board has not been a factor on how prior decisions have been made.

Hill said that in reopening the issue, hopefully a genuine effort will be made to accommodate the various uses on the land (those that are most helpful to the community and the environment), to protect the environment, and at the same time to ensure that the proper revenue is received for the land.

Secretary of State Keisling said he believes that competitive bidding is not the only way to go, but said he believes it to be the best way to protect ourselves and the best way to proceed. He said Oregon is one of few western states that currently does not have competitive bidding for rangeland leases. He said the lack of competitive bidding makes the Board quite vulnerable.

He stressed that the Board's fiduciary obligations make it paramount that these lands be used in accord with the activity which will provide the greatest return to the Common School Fund over the long term. He further emphasized that the Board should not create any artificial barriers to maximizing revenue from these lands. Secretary of State Keisling also stated his preference to sell the rangelands if they cannot be managed for revenue production.

Currently when the costs are compared to the actual revenue on these lands, Secretary of State Keisling said, the program is actually losing money.

Governor Kitzhaber said he believed the real issue here is not competitive bidding or funding of our educational system (since the small amount received from these lands doesn't make much difference in funding education). He said management of these lands is the real issue, and whether or not livestock should be grazing on these lands. He said his motivation for wanting the process opened is to have a good dialogue over the next few regarding these issues.

Governor Kitzhaber and State Treasurer Hill voted for the previous motion to initiate the rulemaking process. Secretary of State Keisling voted against. The motion was approved.

**Administrative  
Rules**

Request for approval of administrative rules to allow Division staff to represent the agency at certain contested case proceedings upon a case-by-case authorization of the Attorney General.

Director Gustafson said this rulemaking would allow the Division to represent itself in certain contested case proceedings, in cases where there are not substantive legal issues. This will result in cost savings to the agency and will provide for efficiency. One comment was received against the proposed rulemaking, which was copied to the Board. A public hearing was held in which no one attended.

Secretary of State Keisling moved adoption of the item. State Treasurer Hill seconded the motion and the approval was unanimous.

**Land Exchange** Request for approval of the proposed exchange of the mineral estate under land owned by the Board of Forestry for the mineral estate under land owned by J-Spear Ranch Company in Klamath County.

Director Gustafson introduced this item by saying that all transactions involving state mineral and geothermal rights must be approved based on a finding by the Land Board that the sale or exchange is for the purpose of obtaining the greatest benefits for the people of the state, consistent with conservation of state lands under sound techniques of land management.

This exchange is for 160 acres of mineral rights owned by the Board of Forestry for 210 acres of mineral rights owned by J. Spear Ranch, both parcels in Klamath County. The purpose of the exchange is for consolidation of timber holdings for purposes of ease in management. The Department of Geology and Mineral Industries has reviewed the exchange of mineral rights and has determined that the state may actually gain value as a result of the exchange.

State Treasurer Hill moved the Board approve the mineral exchange consistent with the staff's findings. Secretary of State Keisling seconded the motion and the approval was unanimous.

**Minutes** Request for approval of minutes of the December 13, 1994 State Land Board meeting.

Secretary of State Keisling moved the Board approve the minutes. State Treasurer Hill seconded the motion and the approval was unanimous.

**In-Lieu Land** Update on in-lieu land selection process.

Director Gustafson stated that upon statehood, Sections 16 and 36 of all surveyed townships throughout the state were given to the state as common school trust lands. Certain of those lands were not available at statehood for the state to receive. As a result, an in-lieu entitlement was granted. Those lands that Oregon couldn't get were challenged in a court case, which was just recently decided and ruled in our favor. The state is entitled to over 4,000 acres to be selected from the federal government. Gustafson said meetings are being held with the BLM in this process, to select candidate lands, and to determine values for the lands the state did not receive. He said this should be done by July 1995.

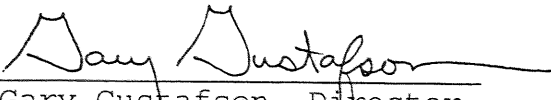
**Asset Management** Update on the Asset Management Plan.

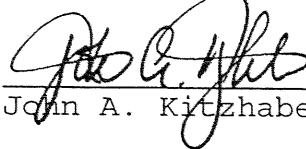
John Lilly, Assistant Director for Policy and Planning, said he is being assisted by David Blum and Jeff Kroft of the Division in heading up the Asset Management Plan project, dealing with consultant Arnold Cogan, of Cogan Owens Cogan, and several other subcontractors. Lilly said he believes this project is probably one of the most important projects the agency is involved with this biennium, laying the groundwork for future work that will go ahead. He reviewed what has occurred to date on the project. He stated that a draft plan should be out by the end of next month, and hopeful the plan will be brought to the Board by the middle of the summer for adoption. Prior to that, public involvement will take place. The major objective of the plan is to provide the agency with a proactive way of being managers for the assets it owns.

**Unclaimed Property Settlement**

Director Gustafson told the Board that the State of Oregon will receive about \$1.75 million over the next ten years as a result of a recent unclaimed property court settlement. He thanked the Treasurer's Office for their assistance in this effort. He said this will go directly into the Common School Fund.

Governor Kitzhaber adjourned the Board meeting at 10:55 am.

  
Gary Gustafson, Director

  
John A. Kitzhaber, Governor