

The State Land Board met in regular session on December 19, 1997 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97310.

Present were:

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

Assistants

Paula Burgess
Rick Hanson
Rollie Wisbrock

Staff

Paul Cleary
John Lilly
Steve Purchase
Jenifer Robison
Gail Lowry

Dept. of Justice

Bill Cook

Governor Kitzhaber called the meeting to order at 10:48 am. 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 NE, Salem, Oregon 97310 (phone: (503) 378-3805).

Director Paul Cleary said the Board would be taking final action on five items—two of them being Emergency Board requests. In addition, three requests to initiate rulemaking or administrative rule hearings will be reviewed as well as some informational items. Cleary asked that public testimony at the Board meeting be reserved for those items that are being reviewed for final action, as the other items would have separate public review and comment opportunities. He said he and senior staff would be available after the meeting to discuss the items not slated for final action today. Cleary said in the future the agenda will designate which items are final action items and open for testimony by the public, so people can tell at a glance when final action is being proposed and determine whether or not there is any need to comment on that action during the Board meeting.

Rulemaking

Request for final approval of amendments to the Division's rules governing the management and leasing of state-owned submerged/submersible land to: (a) implement a \$250 lease application fee; and (b) freeze lease rental rates at their December 31, 1996 levels through December 31, 1998.

Director Cleary told the Board the first item is a request for approval of amendments to the waterway leasing rules to implement the \$250 lease application fee, and to freeze lease/rental rates at the 1996 levels through December 31, 1998. Cleary said the proposals went through six different public hearings and received very few adverse comments.

Cleary explained that the application fee is needed to recover lease processing costs. He said the proposed rate freeze will keep current inequities from growing, reduce confusion during the upcoming review of other lease proposals and maintain the pressure on the Division to complete a comprehensive rule review process by 1999. There will be no inflation adjustments for 1997 or 1998 and no redeterminations based on changes in upland values.

Cleary said a proposal for registering, rather than leasing various noncommercial, private use structures such as private docks and floats will be open for public comment during January and final action may be taken on the proposal at the February Land Board meeting.

John Davis shared his concern that with the rental rate freeze proposal, those private residential dock owners that are paying a lease of \$588 per year will be locked into a "rather large lease rate through the end of 1998." He said he discussed this concern with Division staff prior to the meeting and they assured him that they would address the issue in the private dock registration proposal. He provided a written statement to the Board members and asked that they read it.

Director Cleary said a credit and refund approach has been proposed for the private dock rules to deal with this issue. If someone paid their dock rental for 1998 and registration system is adopted in February or April, the rental amount that was paid will be prorated and a credit or refund of the remaining difference will be issued.

Richard Olson declined to speak, saying that he also shared the same concern as John Davis, but felt Mr. Davis had adequately expressed it.

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

Rulemaking Request for approval to initiate rulemaking to review and revise the Division's rangeland management rules and the related lease form to consider implementing a lease renewal preference/assured lease system pursuant to Senate Bill 5523 (1997).

Director Cleary explained that this item is a request to initiate the public review process to solicit input on the grazing rule and lease form revisions to assist the Board in evaluating potential implementation of 1997 legislation (SB 5523) that authorized transfer of \$3.5 million of the Common School Fund as compensation for granting lease preferences to current lessees. Cleary said this is an opportunity to resolve some of the outstanding litigation in a manner consistent with the trust and land stewardship obligations, but said the challenge is to do it in a sound public policy manner and to ensure that all interests benefit under the revised system.

Cleary said the \$50 per AUM trust compensation represents an average lease assignment value from western ranch real estate transactions. Under this approach, there would be a preference to lease and renew as long as lands remain suitable for grazing and the lessee is in good standing. Land suitability would be reviewed at the end of every ten-year lease term. Review criteria will be developed, working with lessees and conservation interests.

Cleary explained that the Board will reserve the right to lease for multiple uses, sell or exchange the land, and allow public access and recreational uses. He said strengthening stewardship provisions, using rangeland management plans and rangeland improvement funding, and providing increased lessee tenure should help address rangeland health issues in a positive, cooperative manner.

He said the agency will continue meeting with lessees and conservation interests, draft rule changes, open the public comment period in February and then return to the Board in April for a decision on the Emergency Board request.

Cleary expressed his appreciation to Dan O'Leary and those he's been working with on the lessee side, as well as Bob Philips with the conservation groups, who have all been working hard on this issue.

Secretary of State Keisling moved the item be approved.

Dan O'Leary expressed his concerns and those of the lessees he represents with Section 1.2(a) of the proposed lease, saying this language doesn't seem to agree with what was presented to the Legislature for an assured grazing lease program and questioned whether there really is a lease preference. He said the state's interests could probably be handled with Section 6.2 which allows the state to terminate all or part of the lease and pay liquidated damages at the rate of \$50 an AUM, if they determine a higher or better use for the lands.

Ray Simms said he and other lessees would like to know that grazing is still supported by the Land Board for the use of a lot of the land and that there will be an assured lease created that will give lessees some security that their livelihoods will remain intact. He said as long as progress can be made toward resolving this issue, the lessees and Lake County are prepared to work with the Land Board and Division of State Lands to develop an assured lease program.

Governor Kitzhaber reminded the Board that a motion had been made to approve the item. State Treasurer Hill seconded the motion and the approval was unanimous.

Emergency Board Request for approval to appear before the Legislative Emergency Board to request a Wetland Mitigation Bank Revolving Fund Account expenditure limitation of \$300,000 for the FY 1997-99 biennium.

Director Cleary said this is a request for authority to appear before the Emergency Board to request a \$300,000 expenditure limitation for the Wetland Mitigation Bank Revolving Fund Account. He said the moneys accumulate in the account from removal-fill permit applicants who can't mitigate on or off site. Cleary said six candidate projects are in line for a total of \$111,000. In addition, some new projects are being proposed for restoring estuary salt marshes to enhance salmonid rearing habitat in Clatsop County, as well as wetland restoration in Portland/Metro area.

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

Emergency Board Request for approval to appear before the Legislative Emergency Board to request an expenditure limitation of \$98,580 in Other Funds (Common School Fund) and 0.63 FTE to support implementation of the Division's Steelhead Supplement measures during the remainder of the 1997-99 biennium.

Director Cleary explained this is a request to appear before the Emergency Board to request an expenditure limitation of \$98,580 in Other Funds statutory

revenues, and position authority for the remainder of the biennium (15 months of a 24-month FTE). This is to implement a monitoring program as part of the Steelhead Supplement proposal. This request will be part of a larger package with other natural resource agencies, and was recommended for approval by the Salmon Oversight Legislative Committee. Cleary explained that the funds would come out of the statutory revenues of the Common School Fund.

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

Consent Agenda

- Land Sale** Request for approval of the sale of 40 acres of state trust land (zoned Exclusive Farm Use) in Wheeler County to the National Park Trust.
- Land Sale** Request for approval of the sale of two parcels of state land (non-trust "swampland") totaling 788.91 acres located at "The Narrows" in Harney County to the Oregon Parks and Recreation Department.
- Rulemaking** Request for approval to initiate rulemaking to review and amend removal-fill permit rules to: (a) implement 1997 legislation regarding emergency letters of authorization; (b) make minor changes to multi-year permit provisions; and (c) repeal or review the waiver of permit for commercial shellfish harvest activities.
- Rulemaking** Request for approval to initiate rulemaking to review and amend Oregon's scenic waterway removal-fill permit rules to conform with the following 1997 statutory changes: (a) deleting the requirement for Land Board approval of permits; (b) allowing limited scale, non-motorized recreational prospecting without a permit; and (c) establishing conditions for the approval of small scale recreational placer mining.
- Hearing** Request for authorization to proceed to public comment and hearings on the proposed revisions to the Oregon Natural Heritage Plan.
- Minutes** Request for approval of State Land Board minutes for October 6, 1997.

Director Cleary gave a brief overview of the items on the Consent Agenda. Secretary of State Keisling moved the Consent Agenda be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

Informational Agenda

Navigability Status of navigability study requests.

Director Cleary said the Joint Legislative Interim Committee on Navigability (JLICN) has been appointed and is scheduled to meet six times beginning January 12. Cleary said the agency will be advocating a balanced resolution to the problem that will accommodate responsible public use, protect adjacent private and public lands, and preserve Oregon's waterway legacy for future generations.

Removal-Fill Update on removal-fill program regulatory streamlining project.

Director Cleary said the agency will be initiating a public review on a draft state programmatic permit to allow the Division to handle small, routine projects (Corps permitting) to eliminate the need for the public to get a separate 404 permit and allowing the agency's focus to be shifted from paperwork to field work. The permit would cover two counties (Douglas and Linn) and be effective for one year to test the process on a pilot basis.

Cleary said the issue would come before the Board again in February with a detailed analysis and a summary of public comments. The issue will be brought back to the April meeting for a decision on whether to implement the programmatic permit on a pilot basis.

Forests Informational presentation on Sustainable Forestry Partnership.

Director Cleary introduced Steve Lawton from the Oregon State College of Business, Catherine Mater from Mater Engineering, and Mike Bordelon and Dave Steer from the Department of Forestry for their presentation of a certification concept for encouraging sustainable forest management.

Steve Lawton shared that he was invited by the MacArthur Foundation as a part of a 30-member team to research market incentives and financial opportunities (rather than governmental intervention) to help move the industry forward in implementing sustainable forestry. The team included researchers representing industry, environmental non-governmental organizations and universities who evaluated the entire value added chain from the forest to the retailer of forest products, for both nonindustrial private forest landowners and large industrial producers.

Lawton provided a one-page handout to the Board with project findings. He said that forest certification is gaining momentum with the market forces at play, with

large buyers exerting purchasing power demanding their suppliers provide wood products coming from sustainable forests.

He said Europe is the lead market, with Sweden being the lead producing country to have embraced certification. The UK and Germany, he noted, are probably the lead consumer markets in regards to certification, with the UK buyers group (75 retailers representing 30 percent of the retail market) having reached an agreement that they will be purchasing 100 percent certified forest products by the year 1999. Lawton added that the German publishing industry is making commitments in purchasing only certified pulp and paper.

Lawton described third-party certification as being a lot like a CPA – an independent, certified assessor of forestry practices, the forest land management and its plan. It reviews the chain of custody to ensure that the flow and segregation of the raw material, the log and finished product are coming from sustainable harvest, right through to the retail chain.

Lawton discussed concerns such as evolving regional standards; whether those regional standards will be compatible; whether they will provide a competitive or non-competitive advantage to one region of the world; who will bear the cost of certification; and how will materials that actually come from sustainable forest management be segregated and tracked.

He relayed some of the benefits of certification as being a commitment to social responsibility; avoiding negative public relations; allowing companies and the producers to differentiate their product in the market; allowing access to international markets, building credibility with the general public, and etc.

Catherine Mater, with Mater Engineering and executive partner of the Sustainable Forestry Partnership Program at OSU, said she was asked by four major, non-profit institutions to contact all 50 state foresters across the US and ask them what level of inquiry they had encountered from private, non-industrial landowners surrounding the issue of independent third-party certification. If the level of inquiry was strong enough, she asked if they were considering possible application on state lands. If interested, they were asked if they would consider a pilot project in their state on whatever amount of acreage they chose to see if their current forest management practices could meet the independent, third-party certification standards.

Of the 50 states contacted, she said 22 were interested. The funders chose to concentrate on the Great Lakes region (Minnesota and Pennsylvania). Mater said after the full assessment process took place over the course of the year, final recommendations came out indicating that the management of both states' lands exceeded certification standards. She discussed other states that have since begun pilot project assessments.

She said industry both large and small are looking carefully at the issue of independent, third-party certification. She said she would like the west to be the focal point for the next round of assessments.

Governor Kitzhaber said a high level of debate is currently taking place on the purpose of state forest land rules on the Tillamook State Forest. He said that adding some kind of market incentive for certain types of management practices could help move the debate into a different arena.

Steve Lawton quoted executives in the forest products industry in Sweden saying, "In the 60s we thought the critics of forestry were whackos. In the 70s we said we knew better. In the 80s we started to listen. And in the 90s we've collaborated and found a solution." He said that is what we need to do in the west.

Catherine Mater commented that Jim Brown, Oregon State Forester, and his staff have been great to work with and have been completely open to dialogue and discussion on the issue. The Board thanked Catherine Mater and Steve Lawton for their informative presentation.

Director Cleary extended best wishes for the holidays on behalf of the Division of State Lands' family.

The meeting was adjourned at 11:40 am.

Phil Keisling, Secretary of State

Paul R. Cleary, Director