

The State Land Board met in regular session on December 15, 1998 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97310.

Present were:

John A. Kitzhaber Governor

Phil Keisling Secretary of State

Jim Hill State Treasurer

Assistants

Paula Burgess
Rollie Wisbrock
Kari Chisolm

Staff

Paul Cleary
John Lilly
Steve Purchase
Gary Van Horn
Jenifer Robison
Gail Lowry

Dept. of Justice

Bill Cook

Governor Kitzhaber called the meeting to order at 9:05 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).

Presentation on the Willamette Restoration Initiative

Director Cleary introduced Dr. Paul Risser, President of the University of Oregon and chair of the Board for the Willamette Restoration Initiative (WRI), and Rick Bastasch, Executive Director for WRI. Dr. Risser explained that the WRI began with an executive order from Governor Kitzhaber in October to examine how we use and conserve our natural resources in the Willamette Basin and to take a collective view of competing demands. Risser described the WRI Board's three specific focuses: ensuring the protection of fish and wildlife populations and restoring those that are declining; appropriately managing floodplain and riparian areas; and assuring the valley remains economically strong, so the resources can be protected. He said the WRI Board is comprised of 26 individuals, with wide ranging interests in the valley. He discussed their intent to review The Oregon Plan and write a chapter on the Willamette Basin for the Plan.

Rick Bastasch presented a slide show about the WRI showing what is being done to preserve and protect the watershed health of the Willamette Basin.

Governor Kitzhaber asked about timelines that may come from the WRI Board for recommendations for action. Dr. Risser said they hope to have the chapter on the Willamette finished by March 1999. He said this will serve as a framework for the broader recommendations.

Administrative Rules Request for final adoption of amendments to administrative rules for management and leasing of rangeland forage, and revisions to the forage lease form.

Director Cleary said this action proposed today would bring to an end a 5-year effort and the litigation regarding the grazing program. He said the November Emergency Board approved the \$3.5 million transfer to the Common School Fund to enter into a lease renewal preference system. A hearing was held by Judge Yraguen on December 11 to approve the class action settlement of the Mendieta lawsuit dismissal. The Judge gave oral approval of the settlement and a draft order was developed. Cleary said the rules and lease form presented today were extensively revised based on public review and Department of Justice review. He provided an overview of the proposed changes to the rules and the lease form.

Cleary said the key to and the measure of the success to the rangeland program will be whether people are working together for the good of the land. He expressed appreciation to Bob Phillips and Ray Simms; Bill Cook, Eric Iverson, and Rives Kistler from the Department of Justice; and everyone else involved with this long process.

The recommendation is to support the revised administrative rules and lease form with two minor revisions (as described in the December 12 handout - deleting 141-110-0150(3) from the proposed rules and adding the following to the lease form under Section 1.2(c), "The provisions of Subsection 1.2 only apply to renewal of this LEASE. They do not affect any right or obligation that either the STATE or LESSEE has under any other section of this Lease").

Bob Phillips, Oregon Natural Desert Association and Oregon Natural Resources Council, said the new administrative rules and lease form constitute a "sweetheart deal" for the lessees of state rangelands. He believes the proposed changes benefit lessees at the expense of Oregon's K-12 school children, the rightful beneficiaries of the trust lands. He cautioned that the requirements of the Admissions Act are being ignored. He reviewed other concerns regarding the proposed rules and lease form. He said the two organizations he represents oppose adoption of these administrative rules and lease form as currently proposed.

Secretary of State Keisling asked Cleary to respond to some of Phillips' concerns. In relation to his concern over possible lack of notification to

conservationists for rangeland available to lease, Cleary said the rules require the agency provide notice to any interested parties, as well as to local newspapers (anyone can be on the mailing list for notification). Cleary commented that most of Phillips' questions and concerns were for clarification. He said because of the delay of the lessees to withdraw the lawsuit, only two weeks remained to finish preparation after the Emergency Board in November. If the issue had gone before the June Emergency Board, as originally planned, he said more time would have been available to address questions and provide clarity.

Cleary said the \$50 liquidated damage payment provision, contained in Section 4(2)(d) of the lease form (page 4), provides that after payment is made, the leasehold description will be modified and the average forage production adjusted to delete the substantively impaired portion of the lease. He explained that this is a one-time payment to terminate the leasing privilege and is based on the same dollar value that the trust is being compensated for extending that leasing privilege. Cleary said it isn't referenced currently in the rules, since it is a liquidated damage provision within the contract itself, as opposed to an administrative process, but he added that it could be referenced, if the Board chooses.

He said with most subleases there is a combination of subleasing on both state land, as well as private land associated with those leases. Often, there are lessee improvements being utilized by the sublessee, so some contributions are made by the lessee that are not associated with the state's interest. He said splitting any excess rentals associated with the sublease is a standard practice throughout the western states.

Cleary said there are provisions to entertain bonus payments on vacant lands because there is no lease preference right extended on those lands. He cited one incident where a lessee defaulted on a lease. Seven different agriculture operators applied for the lease and it became a challenge to decide which to select.

Regarding Phillips' concerns over ESA compliance, Cleary stressed the importance of realizing that the lease authorizes only activities that aren't otherwise prohibited by law and requires lessees to comply with all local, state and federal laws. He clarified that the liquidated damage provision only applies where the land will be used for a purpose other than forage that impairs the forage rights during the term of the lease, and when that purpose or use hasn't otherwise been reserved by the Board in the lease.

Cleary said the process has been a difficult one – with neither the lessees nor the conservationists getting everything they wanted, but with enough common ground that the two sides can work together and with the agency.

Governor Kitzhaber asked whether it is implied in the lease form under Section 1.3 "Reclassification" that the state could evaluate reclassification if one of the considerations was critical habitat for threatened and endangered species. Cleary said this issue would be covered in the lease under Section 1.2 "Renewal," but added that a critical habitat for endangered species clause could also be inserted in Section 1.3(a)(iv) to add clarity.

State Treasurer Hill moved approval of the amendments to the administrative rules for management and leasing of rangeland forage and the proposed forage lease form to implement the new forage leasing system, to complete the Senate Bill 5523 fund transfer and end the Mendieta litigation. Secretary of State Keisling seconded the motion, asking that the clause regarding endangered species be included, as well as the two housekeeping changes specified in the handout dated December 12.

Secretary of State Keisling applauded the work that went into the new leasing system. He said he doesn't believe a liquidated damages provision has ever been used here and commented that it's a good way to deal with a very thorny issue. He asked that this provision be written in the rules, as well as being in the lease form, saying it is a clear statement of policy as to how we want to deal with these situations as they come up. Cleary confirmed that this could be included in the rules. This was added as a third amendment to the motion. The motion was approved unanimously.

Administrative Request for approval to continue the freeze on the rental rates for
Rules leasing state-owned submerged and submersible land for one more year.

Director Cleary said the waterway leasing rates have been frozen since 1996. Continuation of this rate freeze would give additional notice and opportunities for lessees and tenants to make adjustments to future lease rates. Cleary said the agency currently plans to present the new rules for adoption in February to be effective on January 1, 2000. He said the agency believes this is a clear and effective approach and recommended the Board approve the rate freeze extension through December 1, 1999. Secretary of State Keisling moved the item be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

Land Request for approval of the exchange of 8,705.75 acres of state
Exchange land in Crook and Wheeler Counties for 7,789.42 acres of private land in Crook, Deschutes, and Harney Counties.

Director Cleary said this is an equal value exchange with Bill Smith of GI Ranch. He added that it will help block state and private land into more manageable units. This will help the state eliminate some isolated parcels and acquire some sensitive riparian areas. Cleary said the proposal had been revised significantly to reflect public input and to enhance public access and recreational use opportunities. He said the proposal is now supported by conservationists, hunting groups and local governments. Cleary reviewed the boundaries of the proposed exchange on a map provided in the written materials.

Cleary said the exchange was developed on an appraised value basis, with some extensive negotiations with Mr. Smith. Cleary characterized this as a good exchange for both the state and Mr. Smith, as well. The agency recommended the Board approve the exchange. Cleary said the Division is required to notify local governments and request their approval for disposition of any state owned land. He said this has been done. He said Harney County is requesting the state continue to evaluate the opportunity to sell some of the isolated state land parcels in their county, to help them maintain their private land base.

State Treasurer Hill moved the Board approve the exchange. Secretary of State Keisling seconded the motion. Secretary of State Keisling said this is a historic event—the largest exchange so far involving private land and the state. He said blocking up makes sense for both parties. He thanked everyone involved for the hard work that went into the proposal.

Cleary credited Burt Lewis and AK Majors, Division of State Lands' staff at the Bend office, who spent the time negotiating with Mr. Smith.

The motion was approved unanimously.

Consent Agenda

Legislation Request for authorization to pre-session file 1999 legislative concepts.

Director Cleary reviewed the agency's five legislative concepts: (1) to reduce the unclaimed property dormancy period for securities from five to two years; (2) to add the state geologist to the Natural Heritage Advisory Council membership; (3) to repeal the treasure trove law to eliminate conflicts with state archaeological and historic preservation statutes; (4) to allow state agencies to charge for

easements and rights-of-way on state-owned land (including marine fiber optic cables crossing territorial sea and beaches); and (5) to increase removal-fill permit application fees by 30 percent to adjust for inflation since the last fee increase in 1989, and to exempt habitat restoration projects from fees.

Cleary said the last two concepts will probably attract the most attention, but added that allowing the state to charge for easements is a good business practice, and increasing the removal-fill permit application fees is necessary. In the past, 20-25 percent of the costs of the program were covered by fees. Because of the effects of inflation and the growth in the program, currently only about 15 percent of the costs are covered by application fees. With the proposed increase, fees would cover around 20 percent of the operating costs of the program. Current application fees range from \$50 to \$600 (the larger being that of the Hyundai permit). This 30 percent adjustment would change the above fees from \$65 to \$785. Cleary outlined the activities that would continue to be exempt from fees, including erosion control, emergency authorizations and General Authorizations.

Minutes Request for approval of minutes of October 13, 1998 State Land Board meeting.

Cleary said the second item on the Consent Agenda is the request for approval of the minutes from the previous Land Board meeting.

Secretary of State Keisling moved the items on the Consent Agenda be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

Informational Agenda

Land sales and exchanges status report

Director Cleary said the agency has focused on 66 isolated rangeland tracts totaling about 16,300 acres in eastern Oregon, which are being grouped geographically for appraisal purposes. He said there are three categories of lands: vacant, unleased parcels; single-ownership inholdings (land surrounded totally by one owner); and legally accessible tracts surrounded by multiple ownerships. Appraisals will first be obtained for each parcel, then a determination will be made as to whether to proceed to sale on them. The vacant unleased parcels would be put on the market first in an open public auction. Based on the results of these auctions, the agency would come before the Board and determine whether adjustments need to be made

before proceeding with sale of the single-ownership inholdings as well as the legally accessible tracts surrounded by multiple ownerships. Cleary said the courts take a very limited view of permanent disposition of trust assets, since you have one opportunity to benefit the trust and, therefore, must do everything possible to maximize the sale proceeds.

Cleary said the Wilsonville School District wants to buy 20 acres of the Wilsonville Tract adjacent to the existing middle school. He said a map is provided in the written materials showing the location of the parcel. He added that the sale at Dibblee Point is proceeding, as well as work on a forest land exchange.

Cleary noted this is a status report for the Board, with no action requested at this time.

Update on Division of State Lands' short-term agenda

Cleary said this is an update on the short-term agenda that was reported on last August. After a review of this, Cleary said he was again impressed with the breadth and the depth of the activity of the staff in the numerous programs administered and the accomplishments they have made over the last eighteen months. He said the agency has a lot of good people working for it, as evidenced by the progress being made on the short-term agenda.

Director Cleary extended best holiday wishes from the agency to the Board and their families. The meeting was adjourned.

John A. Kitzhaber, Governor

Paul R. Cleary, Director