



Oregon

Kate Brown, Governor

Department of State Lands

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June 14, 2022

State Land Board

To: Vicki Walker, Director of Department of State Lands

Kate Brown
Governor

From: State Land Board

Shemia Fagan
Secretary of State

Subject: Delegation of Authority Related to Use of State Lands for
Portland Harbor Superfund Remediation and Restoration Activities

Tobias Read
State Treasurer

Background for Delegation:

The State of Oregon owns submerged and submersible lands of the Willamette River through the Oregon Admission Act and the Equal Footing Doctrine. 11 Stat. 383 (1859); *Pollard v. Hagan*, 44 U.S. 212 (1845); *Oregon v. Corvallis Sand & Gravel, Co.*, 429 U.S. 363 (1977). The State Land Board has authority to manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management. Oregon Constitution, Article VIII, Section 5. The Department of State Lands acts as the administrative arm of the State Land Board and has specific statutory authority to authorize the use of state-owned uplands, submerged lands, and submersible lands. ORS 273.171 and 274.040.

In 2011, pursuant to its authority under the Comprehensive Environmental Responsibility, Compensation and Liability Act of 1980 (CERCLA or the "Superfund" law), the Environmental Protection Agency issued a General Notice Letter to the State of Oregon, by and through the State Land Board and the Department of State Lands, alleging that hazardous substances have been or are being released from submerged and submersible lands of the Willamette River in the Portland Harbor and that the State, by and through the State Land Board and the Department of State Lands, is one of the parties potentially responsible for the costs cleaning up that contamination. In 2010, a group of Potentially Responsible Parties entered into a Participation and Common Interest Agreement to undertake a confidential allocation and mediation process to allocate costs associated with remedial activities in the Portland Harbor.

In 2014, the State Land Board passed rules in OAR Chapter 141, Division 145 to establish guidelines for the Department to determine the terms and conditions (including compensation) required when remediation and restoration activities occur on state-owned submerged and

submersible lands conducted pursuant to any such Superfund order issued by the Environmental Protection Agency or the Oregon Department of Environmental Quality pursuant to state laws. Those rules set the guidelines that the Department of State Lands must follow in negotiating the terms of the use of state lands in a potential settlement in mediation.

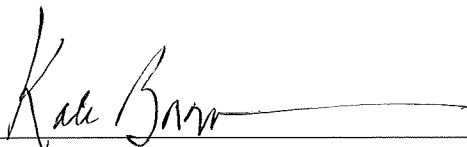
To afford the State Land Board and the Department of State Lands with flexibility to reach an agreement in mediation, the State Land Board desires to provide the Director with authority to facilitate EPA- or DEQ-approved remediation and restoration activities on lands under the State Land Board jurisdiction to the fullest extent possible, within the Land Board's constitutional and statutory authorities. The Land Board desires that the Director use the Division 145 rules as a guideline, but also have the discretion and flexibility to agree to terms that deviate from the limits of OAR Chapter 141, Division 145 if the Director believes that such different terms would be in the State's best interests.

Scope of Delegation:

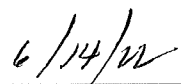
The State Land Board, under its constitutional and statutory authority to manage state-owned lands (including but not limited to uplands, submerged lands, and submersible lands) hereby delegates to the Director of the Department of State Lands the authority described below.

The State Land Board delegates to the Director of the Department of State Lands the authority to negotiate and reach agreements with Potentially Responsible Parties, federal, state and local government entities, or any other interested party regarding the compensation due to the State, and any other applicable requirements, for the use of state lands, in order to facilitate remediation and restoration activities on lands under the State Land Board jurisdiction within the Portland Harbor Superfund Site. The State Land Board intends for this delegation to apply to all of the State Land Board's constitutional and statutory authorities related to lands under its jurisdiction in this matter. The State Land Board intends for the Director to use the OAR Chapter 141, Division 145 rules as a guideline for making decisions but grants the Director discretion and flexibility to agree to terms that deviate from the limits of OAR Chapter 141, Division 145 if the Director believes that such different terms would be in the State's best interests. The Director shall update Land Board members at important decision points and as requested by Land Board Members.

This delegation does not include the authority to sell state-owned lands, except in situations where other authority already allows the Director or the Department to take such action. This delegation may be withdrawn by the State Land Board at any time.



Kate Brown,
Governor and Chairperson of the State Land Board



Date