
STATE LAND BOARD MEETING

Tuesday, February 14, 1995

State Lands Building

775 Summer Street NE, Salem, Oregon

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GOVERNOR JOHN KITZHABER: The Land Board will come to order. I'm John Kitzhaber, I'm the new kid on the block.

We have six Agenda Items, then, as I understand, an opportunity for anything else that might come up or occur to anyone while we're talking up here.

I believe that the first Agenda Item will probably be the main focus of our meeting today, and that deals with the request for authority to initiate an amendment to Chapter 141 of the Oregon Administrative Rules for management of range land, to repeal the competitive bidding in favor of an alternative lease award process. This is an issue that is brought to the Land Board by Treasurer Jim Hill, and I will have him speak briefly to his concerns and then we'll turn it over to Mr. Gustafson to give us some background on the issue.

STATE TREASURER JIM HILL: Yes, thank you very much, Governor.

Governor, the issue of competitive bidding really is -- has to do with fiduciary responsibility. In my opinion, the issue of fiduciary responsibility was in fact mixed up with environmental issues. Although those issues are related, they really are separate. It is my belief that the way that we proceeded with the rule concerning competitive bidding really does not guarantee that we will meet our fiduciary responsibility, and I have some other

remarks that I will make at the time when there is a motion, Governor.

GOVERNOR JOHN KITZHABER: Thank you.

Mr. Gustafson?

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AGENDA ITEM NO. 1

DIRECTOR GARY GUSTAFSON: Governor, members of the Board, good morning. Well, it seems only about six months ago that we were here on the same issue. I'd like to set the stage for today's discussion--

SECRETARY OF STATE PHIL KEISLING: The weather was nicer though.

DIRECTOR GARY GUSTAFSON: By taking you back, of course this Board adopted new Administrative Rule for range land management the end of July of 1994. This was the first time that we had ever had Administrative Rules for our range land program.

During the process that led up to the adoption of those rules, of course, we had approximately two and a half to three years of very intensive effort went into it, involving numerous public meetings, hearings, comments, and so on. Eventually the Division of State Lands presented three different alternatives to the Land Board for your consideration. Those three alternatives dealt primarily -- the differences had to do with the subject of competitive bidding, which by and large was the most controversial of all of the aspects that the public commented on during the rulemaking.

Finally, the Board adopted the option that required competitive bidding for all new or expired leaseholds, and those rules provided that on all lease

holds on trust land, unless there was a specific exemption, that each lease hold would be subject to competitive bidding at public auction. The rules also had a provision that on non-trust land, if the Division chose, we could also do competitive bidding on non-trust land parcels. As a reminder, out of our 650,000 or some odd acres in eastern Oregon that would be subject to these rules, the vast majority are Common School Trust lands.

I think everyone knows at this point since the adoption of those rules, we've had three different lawsuits filed against the Land Board and the Division related to the range land program. I'm not going to get into those, and of course, Bill Cook is here today should there be any questions related to any of those lawsuits.

The important thing though is that since the adoption of those rules, as Treasurer Hill pointed out, the concern about the application of the competitive bidding portion of the rules has still been very paramount for a number of the lessees and ranchers and many others throughout particularly the rural areas of this state.

Their concern is centered primarily on a possibility, of course, that the stability that they have engendered by their use and occupancy of these areas could be threatened and lost if they were outbid. Particularly if they were outbid on a one-time basis and the entity that outbid them was not going to remain around as they

have to insure that the land is taken care of over the long term.

In early January Treasurer Hill submitted a request that we place this Item on the agenda, that of course, is the reason we're here. I wanted to outline for you and clarify something, and that is that before you today is a request to initiate amendments to existing rules. Now, that means should there be any question that no final action is taken today on those rules. What we would do, if you choose to do it, is to initiate a process. The process that would be initiated would be like any other administrative rulemaking. We would give notice in the Secretary of State's bulletin; we would give an opportunity for public comment; we would hold public hearings; certainly we would have one in Burns and Salem, and perhaps additional hearings. And then we would digest all of the comments and come back to this Board at a later date, no sooner than 90 days, probably sometime in early May, with a recommendation for final action by the State Land Board. That's the process that would be begun today should you choose to initiate this rulemaking amendment process.

Now, if competitive bidding should be removed through an amendment process, obviously we have to have something to replace it. The Division has taken a look at this, we've come up internally with a number of

suggested replacements. I would like to run through those very briefly with you.

First of all, Option A, as you go through options you always have to have an option that basically suggests that you keep what you got. Option A is the retain the status quo option and do not amend the rules. Now, obviously this would not change the rules, and therefore, require all terminating, expiring, or new leases to be competitively bid. This option has already been determined by the Attorney General to meet the Land Board's fiduciary obligation. That obligation, as we all know, is to maximize revenue for the use of State Land and resources over the long term.

There is also an existing provision in the rules to exempt certain lease holds through a competitive bidding. If the terms of the existing lease provide for a right of renewal, or if there is only one qualified applicant, or the Division determines that its fiduciary responsibility to the Common School Fund would not be served by offering a lease hold through competitive bidding.

The second option before you, a replacement option, is Option B1. This option would provide that a prior lessee has a right of renewal if he or she has demonstrated full compliance with all terms of their existing lease. This specifically, of course, includes responsible land stewardship in accord with the lease holds

adopted and range management plan,

As you know, the rules do require that each block lease hold have a range management plan. That plan is developed in conjunction with the lessee, and agencies receives public review and is basically the prescription by which the lessee manages that particular lease hold. It includes a number of provisions to insure that we are establishing and maintaining range land health.

Now, if there is no qualified prior lessee under this option, the Division would award a new lease based upon two criteria. The first one is the ability to fully utilize the lease due to the proximity to base property of the perspective lessee. Then second is the greatest overall benefit to the Common School Fund, and consistency with the constitutional requirement to secure the greatest value to the people of the state of Oregon.

This option provides an incentive, if you will, for good stewardship. It also has the advantage of stabilizing land uses and activities on the lease hold over the long term, and encouraging private investment on the lease hold, and that's been important in the past.

Now, assuming that the base rental amount charged the lessee under the rules reflects at least fair-market value, this option may satisfy the Board's long-term fiduciary obligation. And it provides long-term stability to the ranching community, and it encourages the promotion

and maintenance of range land health.

I'm going to pause for just a minute and speak to the issue of base rental. I think that everyone knows that another provision of the existing rules increased the base rental amount that we charge. Now, that's independent of competitive bidding. It used to be that our base fee amount was \$2.50 per AUM for most of our tracts, and \$3.50 for our wetland tracts. Now, the rules have changed that, they've employed what we call a cropshare method. It's a formula, and it's based upon a number of factors, one of which is the price of beef. It envisions that we share in the benefit, and if prices go down, then obviously, then we also would reduce our income from that. It's similar to an approach used in a couple of other states.

In 1995, for instance, this formula equates to \$3.33 an AUM. Now, I want to compare that to federal land, most of which in Southeast Oregon at least, is the Bureau of Land Management land. Last year federal lessees paid about \$1.92 per AUM. This year's fee has actually dropped because the price of beef has dropped, and they are about federal AUM rate for this year is about \$1.61. So in effect, we would be almost double what the BLM charges on adjacent range land.

Now, the third option, Option B2, provides that new leases would be awarded by the Division based upon the following, and it's the two criteria I mentioned earlier.

In other words, you would not have no immediate renewal right, but you would have a preference to renewal if you had a base property in the proximity of the lease hold. And then secondly, of course, we would do the same thing as I mentioned previously, and that's factor in the greatest overall benefit to the Common School Fund in consistency with the constitutional requirements.

This criteria helps insure that the lease hold will be fully utilized, and it is also similar, this proximity question, is similar to what the BLM uses in federal grazing fees. Federal regulations require that in order to qualify for a grazing permit on public land, an applicant must be engaged in the livestock business, in which owner controlled land or water base property.

Obviously when you list alternatives, there's always an opportunity to make apparitions to tweak them, to move things around, and to come up with additional alternatives, and that always exists. At this point, if the Board decides to move forward, there's a need to lead with what we think is our best replacement mechanism. And that should be what goes to the public, and then, as always, we'll see what the public has to say about it.

I've given you the options that we have developed. With that, it is the recommendation of the Division of State Lands that should the Land Board direct the Division to begin rulemaking consider repealing the competitive bid

portion of these rules, we recommend that Option B1 be advanced as a replacement in the proposed rule, which would be circulated to the public.

GOVERNOR JOHN KITZHABER: Thank you, Gus. Before we go to public comment on this, are there any comments that the members of the Land Board wish to make?

SECRETARY OF STATE PHIL KEISLING: I'll wait.

GOVERNOR JOHN KITZHABER: Okay. Then at this time we have a sign-up sheet here, and I believe everyone who signed up is interested in speaking on this issue. So I'm just going to take people in the order that they signed up. We'll start with Chris Orsinger.

CHRIS ORSINGER: Is there a time limit?

GOVERNOR JOHN KITZHABER: Well, we'll see, I'll let you know.

CHRIS ORSINGER: Give me a warning when I'm down to my last minute.

GOVERNOR JOHN KITZHABER: All right. If you'd just identify yourself for the record. Thank you.

CHRIS ORSINGER: My name is Chris Orsinger, I'm representing myself, and before I deal with the question at hand, I just feel compelled as a citizen, and someone who tries to remain involved in -- commenting on public issues that I think are returned to civil discourse, an irrational (phonetic) discourse in Oregon is extremely important. We need citizens to be encouraged to

participate, not discouraged by the rancor that is common in the 1990's.

I also feel compelled to mention that I hear persistent rumors that the Legislature is threatening to slash funding for Division of State Lands if this competitive bidding rule is not repealed. I think policy decisions such as this should be based on its merits, and on the judgment of what should be done for the land, and in accord with the constitutional requirements. And such heavy-handed forms of political blackmail should be -- not be tolerated. And I trust the Land Board has the integrity to reject such attempts.

I do believe the State Land Board should keep the competitive bidding portions of the new range land rules adopted in 1994. Here is three reasons: The Harney County Court injunction now blocks the implementation of competitive bidding, and a separate Marion County Court suit challenges the existing rules. In 12 to 24 months after the courts adjudicate the matter, the Land Board will have the guidance, and it will probably need to revive the rules again at that time. But to go through this hearing process to -- in this six-month period, and again in a year or two is a waste of Common School Funds, which have to pay for those hearing processes that would go on. In the meantime, the injunction gives the grantors (phonetic) the relief they desire. While repealing it offers no

tangible benefit.

A third reason, the Division of State Lands, as you know, are preparing an asset management plan that may recommend other ways to increase income from State lands, and these -- this document's suggestions should be considered before taking action.

Other reasons, financial and legal, to keep the competitive bidding are these: competitive bidding is a good way to meet the fiduciary obligation; Oregon state lands are now leased below market rates, compared to Washington state lands, which earn about \$7 per AUM, and Idaho state lands, which earn \$5.15 per AUM in 1994. I believe it was \$3.34 just mentioned that Oregon is receiving. Leases for non-grazing uses are likely to be in small percentages to State range land and -- and with little impact to livestock industry.

And I refer as a fifth point, the Attorney General's comment in the March 25, 1994 opinion: to arbitrarily exclude a lawful use, such as a non-grazing use would provide -- provide more net revenue than the designated use clearly violates the admission act trust. Yet this appears to be exactly what you would do by -- by preventing -- by eliminating competitive bidding. And particularly by the -- given the preference to existing lessees.

There have been arguments made that the

competitive bidding would jeopardize the long-term potential of these lands to generate income for the State, and this argument runs that after a ten-year term. A conservation or a non-rancher bidder may be financially unable to renew his or lease, and then it's argued that the former rancher if -- may have gone out of business and the State may not be able to get a tenant for the land. But this argument ignores the likelihood that for conservation uses -- conservation bid will establish an endowment to pay lease and management costs.

I'm familiar with one conservation group that intends to raise \$2 million for an endowment, and the interest on that endowment will pay the lease cost, and those lease costs that they're prepared to pay are two to three times the current lease amounts. So my basic question is why would the State turn down a stable funding source that triples -- that could triple the economic benefit from a particular land holding or lease. Triple that benefit to our state court -- schools while also improving the productivity and condition of the range.

And in fact, under the current rules removing cattle will actually increase the forage that such a the lease gener -- would such land generate. In other words, that's the costs upon which a pra -- a lease price is calculated, how many AUM's. So by improving the productivity of the land, and increasing the AUM's available on over a ten-

year period, a conservation group or another user would have to pay even more, generating more income for the Common School Fund. With these lands only earning one-half of one percent, I think this is something you have to do given the fiduciary responsibility. And I also think this is going to be a fairly minimal impact on the livestock industry.

And I would -- there at least has been one study done on that by a Mr. Tanaka, an economist for the Oregon State University, and it indicates five ranching operations could be significantly impacted, and not that that -- not to minimize those impacts on a personal level, but that seems relatively minor in the big picture.

In short, I believe the current market -- below market lease rates are -- combined with the taxpayer funded improvements which benefit ranchers amount to a clear and significant subsidy to the livestock -- livestock industry. And I think it's time that these subsidies be ended so that these lands produce the income they were intended to for the Common School Fund.

And during this time when the courts are adjudicating matters, I believe that you should retain the current rules and revisit this matter in one to two years, and -- and in any case, I do believe competitive bidding should be retained in order to benefit state schools and improve the health of the range.

Now, I thank you for taking the time to consider my points and deliberations.

GOVERNOR JOHN KITZHABER: Thank you very much, Mr. Orsinger. Are there questions? I particularly support your comments about trying to develop a more rational and respectful public dialogue on this and other issues. Thank you.

CHRIS ORSINGER: And I think it's critical.

GOVERNOR JOHN KITZHABER: Jim Myron.

JIM MYRON: Good morning, Governor, members of the staff, my name is Jim Myron, and I'm here representing Oregon Trout.

Let me just briefly summarize my written comments. Oregon Trout did support the competitive bidding process in the current rules, and our view of the -- or our understanding of the Attorney General's opinion is that competitive bidding is the best, if not the -- the only way to satisfy the Division's fiduciary responsibility to the Common School Fund.

When -- when you look at the income generated by -- by the grazing program, it's easy to conclude that the program is probably losing money for the Common School Fund, and -- and that good argument could be made that the state's schoolchildren are subsidizing the livestock industry through this program. And it -- it might be in the best interest of the Common School Fund and the children of the

state to just simply get the state out of the livestock business.

So what would -- we would recommend is that as the Division goes through its asset -- asset management plan, that you give careful consideration to disposing through similar exchange of some of these existing lands, especially the arid desert lands, they could be exchanged to the BLM, as an example. BLM is probably in a better position to manage those lands for grazing than the Division is. And as an example, they could -- there may be exchange possibilities with some of the lands in Central Oregon, around Redmond and -- and Bend that the BLM owns. And in the long term those lands would certainly be more beneficial for the Common School Fund than -- than the high-desert lands.

So let me just close by saying that we support the continuation of competitive bidding, and be happy to answer any questions.

GOVERNOR JOHN KITZHABER: Thank you, Jim.
Questions?

JIM MYRON: Thank you.

GOVERNOR JOHN KITZHABER: Thank you. Jill Workman. Welcome.

JILL WORKMAN: My name is Jill Workman, on behalf of the Sierra Club's 11,000 Oregon members, and half-million national members. I thank the members of the Land

Board for this opportunity to comment upon DSL's request made at Treasurer Hill's direction to initiate rulemaking to consider an amendment to Oregon Administrative Rules 141.110 in order to repeal competitive bid -- bidding.

The Sierra Club, as a member of the Grazing Fee Advisory Committee, has been involved in this issue almost since inception. Our members have attended hearings, made public comment, and written letters on the issue of competitive bidding. We, like many here today, had hopes that this matter was finally settled, so that we can move on to other issues.

We believe that the correct decision was made by the previous Land Board, and therefore, ask that you uphold the decision made last July 29. The easy out for the Sierra Club would have been to avoid comment on the issue of competitive bidding and to focus on asking the Land Board to hold firm on the other more important reforms that were approved last summer. After all, the on-the-ground issues are the issues that most concern the Sierra Club.

I, as a member most involved with this issue, recommended the Sierra Club uphold the July 29 decision. The job I go to this afternoon is that as a trust administrator. Fiduciary responsibility is interwoven into my daily work. I agree with the Attorney General's opinion that the Land Board's trust obligation is best

satisfied through competitive bidding; however, I also believe the Land Board's trust obligation can be met through charging a grazing fee high enough to support the State's grazing program, and return a reasonable profit to the Common School Fund. But barely meeting one's fiduciary obligations is not what a good fiduciary does.

As fiduciaries, the Land Board's sole responsibility is to the bene -- beneficiaries of the Common School Fund. Because of that, the interests of affected counties and individuals and the environmental community as well should only be -- be considered as they fit within the framework of doing, not just meeting your fiduciary obligations. Thank you.

GOVERNOR JOHN KITZHABER: Thank you. Are there questions? Thank you, Jill. Mr. O'Leary.

DAN O'LEARY: Your Honor, Judge White is here from Harney County--

GOVERNOR JOHN KITZHABER: Very good. You're a team, huh?

DAN O'LEARY: In perspective.

GOVERNOR JOHN KITZHABER: Very good. Please join us. Welcome.

JUDGE WHITE: Thank you. Good morning, Governor, members of the Land Board. My name is Dale White, I'm a county judge from Harney County. I appreciate the opportunity to appear before you today to present testimony

on the repeal of competitive bidding.

I was appointed in May 1993 to a grazing fee advisory committee by Gus. The committee was charged to study the issue of grazing fees on State lands. While grazing fees was the primary charge of the committee, considerable time was spent on the subject of competitive bidding. The minutes of the June 4, 1993, may indicate competitive bidding was a major discussion item. The minutes of the meeting of June 30, 1993, state, and I quote, "The committee did not believe that competitive bidding should be used as the primary approach to establish a fee," end of quote.

Competitive bidding was not discussed at the August 5 and 25th meetings because all the guidelines and policy considerations had been developed in the June meetings. However, the former only makes sense if you do not use competitive bidding. If you're going to have competitive bidding, then there is no need for a grazing fee formula, such as recommended by the committee.

The decision of the committee to not consider competitive bidding is based on long-term history of (unintelligible) by the State Land Board over the years not to use competitive bidding. The policies adopted by the Board on June 4, 1969, June 4, 1979, and December 16, 1983, all affirm that competitive bidding was not through the policy of the State Land Board as to the lease of

State lands.

In addition, there are many additional statements from the minutes of the Board that indicate that sound management of the land has always been a priority for the Board, and that competitive bidding does not contribute to good land stewardship.

Additionally, the people of the state of Oregon amended the Oregon Constitution in 1968, to state in Article 8, Section 5,(2), to require that more of the managed lands for this jurisdiction, and I quote again, "With the option to obtain the greatest benefit to the people of this state consistent with the conservation of this resource under sound techniques of land management." I do not believe that competitive bidding is consistent with this amendment.

As important as all of the above is, and the good arguments that they make for repeal of competitive bidding, they pale in comparison the need for good management, good stewardship, and improved range land conditions for our State lands. Governor Kitzhaber, Treasurer Hill, and Secretary of State Keisling, I submit to you that you cannot achieve these desired goals for our State lands by the use of competitive bidding.

The State Land Board should repeal the competitive bidding rules adopted on June 29, 194 -- 94, and replace it with non-bid, non-competitive process for the following

reasons. The non-competitive leasing process will encourage responsible land stewardship, and the application of good land management techniques to State lands if a lessee has some insurance that he will be able to maintain his lease.

Two, non-competitive leasing encourages lessor/lessee cooperation that will result in long-term range improvements on the land.

Three, that positive and prudent management encouraged by non-competitive leasing will result in higher long-term economic benefits to the state; therefore, meeting the Board's trust responsibility of obtaining the greatest benefit for the State, as well as improving the land.

Four, that non-competitive leasing encourages the accomplishment -- accomplishments of the strong land ethics that generations of our family-owned ranches.

Five, much of the State land can only be effectively managed in cooperation with adjacent ranchers because they own the water, the fencing, and the livestock-handling equipment that make these lands useable.

Six, if the Oregon Legislature and previous Attorney Generals' opinions have all stated that competitive bidding is not required, and that the good management policies that the State Land Board has implemented by the Division in cooperation with lessees in a non-competitive leasing system resulted in an increase of 19,207 AUM's on State lands from 1969 to 1992.

Those kinds of increases that come from good stewardship and improved range conditions can be expected to continue in the future if you repeal the competitive bidding rule.

Finally, by rewarding the lessees with some insurance of tenure, we will see improved range land conditions, which increase productivity, productive lands means added revenues for our public schools. Hunters, hikers, fishermen, and campers will enjoy the enhancement of plant riparian and water-life habitat, which will result from encouraging good stewardship of the land.

I urge you to repeal the competitive bidding rules adopted on July 29, and begin the process of adopting new rules and implementing non-competitive process for the leasing of State lands. Thank you again for the opportunity to present this testimony to you today. I'd be happy to answer any questions you might have. Thank you.

GOVERNOR JOHN KITZHABER: Thank you, Judge White. Are there questions?

SECRETARY OF STATE PHIL KEISLING: Just -- I just have one. Dale, figures from the land from the Division suggest that in '93 and '94, while the old rules were still in effect, that we probably actually lost money, had a net revenue outflow on these lands. Talk to me a little bit about what your position is on selling these

lands. And just basically through some mechanism, competitive bidding, others. Basically move forward and -- and of course, we'll have the Asset Management Plan later. on, but just in effect saying, let's put that money in a place where we might not lose money, but maybe make eight or ten percent.

JUDGE WHITE: Well, I think your argument certainly has some merit, Secretary. I think it certainly applies to the isolated parcels of land. I think the argument doesn't necessarily follow for the blocked lands that were achieved by trade from the BLM because those were adjudicated rights that were necessary for those ranches, and the acreage are so large that I think it would be physically impossible, or maybe financially impossible, for most ranchers to afford the capital of commitments that would be required to -- to do that. And I think under the terms of the trade between the State and the BLM, there was some assurances given that those would have the same kind of tenure that they enjoyed under their class one BLM rights.

GOVERNOR JOHN KITZHABER: Questions? Mr. O'Leary?

DAN O'LEARY: Thank you, Governor Kitzhaber, Treasurer Hill, Secretary Keisling. I represent the common school grazing land association that is made up of the majority of the State land lessees who currently hold leases with the Division of State Lands.

We are here in support of the proposal to amend the rules to delete the provision relative to competitive bidding. I do not intend to reiterate what Dale has already told you. I have supplied to the members of the Board written testimony that sets forth some aspects of our support for the proposed action. There are a couple of things, however, that I would like to address that Dale did not touch on, some that he did. And another point that I think needs to be made.

The only thing (phonetic) that I would observe about this process since I've been involved in it is that the only constant and it has been change, and we have had change since we last got together and talked about these rules on July 29, 1994. The playing field is somewhat different, even though the issues look the same.

I was interested in the first speaker here today, who was saying that we shouldn't do anything until we've done the asset management plan, and we -- and until we've got a study and know what's going on out on the land. That was what I was saying when we were here on January -- July 29, 1994. And I also said at that time that I objected particularly to the imposition of substantial policy changes on these lands without reference to the history of what had taken place with these lands over the course of the previous 15 or 20 years.

The representations that had been made to induce

assistance and cooperation from the involved land owners, and also, the repeated suggestion that these lands were being damaged by grazing that was being practiced on them. We supplied information to the Land Board in the course of the hearings to date that would indicate that that probably is not a true assessment of what's going on on these lands.

We have learned more since we met on July 29 about the nature and the multitude of representations that have been made to induce cooperation from the State land lessees by members of -- of the State -- Division of State Lands. It is instructive, I think, and I'm not here to talk about the litigation per se, but it is instructive to read Judge Yraguen's comments with reference to the nature and the -- and the number of representations that were made, and his comments about the cooperation that -- that was induced by those representations. And in fact, the judge identified conduct of State land agents as being inequitable conduct in bringing about the cooperative assistance of the State land lessees.

So there have been -- things have changed, and we know more now than we did six months ago, but they have not changed in favor of the idea that competitive bidding is the way to meet the fiduciary responsibilities on these lands. They have changed in the opposite direction. There are more reasons now not to adopt

competitive bidding than there were on July 29, 1994.

The other thing that I would like to tell the Board this morning is that we also are in support of the proposed substitute amendment by the Division of State Lands for the amendment of the rules to provide for a grazing preference in the current lessees, and the incorporation in any amended rules of a base property requirement.

In the materials which I have supplied to the members of the Board, and I think that you have, is something called a "Bill for an Act," which proposes to amend ORS 273.815, which is the description of the Division's powers to provide for what we think would be an appropriate language to install a preference in favor of the current lessees, and also in favor of landowners who are engaged in the livestock grazing business.

So that you'll understand that this is not necessarily just the product of my thinking, the language that is there is pretty much -- it -- it has been refined somewhat to address the peculiarities of the State land leasing program. It is pretty much the language of the Taylor Grazing Act and the regulations that have been adopted in support or in definition of the Taylor Grazing Act by the Department of Interior. So that's -- that's where most of that language has come from. I think that that is an appropriate thing.

The other thing that's changed, members of the

Board, is that -- is that the level of cooperation and trust that was part of this program for so many years in Oregon has been severely degraded as a result of the debate over competitive bidding and other aspects of the rules changed. And Judge Yraguen also addressed that issue in his -- in his opinion, and I think that if nothing else, that opinion is helpful to us because it gives us the views of an impartial arb -- judicial officer on the evidence, the facts that both sides were able to adduce and present to him.

The final thing, and it's kind of an indication I think, of why there has been a degradation of the level of trust and confidence between the parties to this process, has -- and I too call for the imposition of civil discourse, but the thing that has troubled me as I've looked at this from the outset of my representation of these people has been the -- the move to impose a new program without any reference to what had been going on for the prior ten or 15 years, or 20 years. The letters that had been written, the promises that had been made, the -- the investment of money based upon those promises, the changing of position, the giving up of valuable rights. Those things I do not think were adequately addressed or accounted for in the first cut at making rules in this area. And I think that those things speak very loudly against the imposition of competitive bidding rules.

The idea of tenure, that seems to me a central to what we're talking about in management of these lands. Without regard to who has the right to -- to establish tenure, it seems to me that you cannot logically think about a -- a good program of land management, or as the Constitution of Oregon commands you to do to apply sound techniques of land management if you don't have some concept of tenure involved in that management program. And the question is: How are you going to obtain tenure? How are you going to deal with the same people or people of similar capabilities or outlook if you -- if you have a series of one-year leases that are up for grabs every -- at the end of every year? I think the answer is that under the state constitutional language, you probably cannot. And so I think tenure is something that is important.

That brings me to the last issue that I just want to touch on, and it's not actually in the agenda for today as in a proposal to amend the rules. But there was an issue in the trial in Harney County about the question of valuation clauses. And that's why I've handed to you as part of my presentation two State land grazing leases, both of which have a valuation clause. And you'll find that in Section 9 and 10 of those two leases.

One of those leases no longer has a valuation clause, and Judge Yraguen addressed how that -- that

valuation clause was eliminated in his decision. That was one of the things that occurred that he denominated as inequitable conduct on the part of the State land managers. There were five -- four or five other leases that were in a little different category in that what was presented initially to the lessees, was a lease that contained Section 9 and 10. This is where the negotiations were going on in 1983 through 1985, and in those leases that were presented as part of the negotiations was a valuation clause. In the event when leases were finally signed two years later, the Section 9 and 10 had been unilaterally deleted from the leases by the Land Board agents. Again, Judge Yraguen denominated that as inequitable conduct on the part of the Land Board agent.

He, I think, rightly makes a plea to this Land Board or whoever is going to be managing these lands to review that situation. He -- he ruled against those people on the grounds that they had not met the 60-day statute of limitations for filing the appeals under the Administrative Procedure Act, but he made findings in his decision that specifically found that were it not for that 60-day limitation, the people would have been entitled to have the leases reformed and that valuation clause reintroduced or introduced, as the case may be.

So I wanted to call that to the -- to this Board's attention simply because I thought that the language

of Judge Yraguen, who -- who looked at a lot of information about this, and there is a lot of information in the record of this body about what's happened with this program over the last 20 or 30 years. And most of it shows a very positive sort of working relationship where people are trying to accommodate the interests of the State and -- and also accommodate the economic realities of what they're trying to perform out on the land. So there is a lot of information.

And I guess where we got off the track, in my opinion, is that we tried to impose a new system of management on that without regard to what had taken place over a long, long period of time, and over the investment of very, very substantial sums of money by the parties to these leases.

So I -- we fully support the -- the elimination of competitive bidding. It is not -- it seems to me an issue of federal constitutional law as has been represented. So much as it is a state of tension between that provision and the State constitutional duty, which this Board has, to operate these lands under sound techniques of land management. I don't think that competitive bidding is a sound technique of land management, given the circumstances that are present in this case. Thank you very much, members of the Board.

GOVERNOR JOHN KITZHABER: Thank you, Mr. O'Leary.

Are there questions?

SECRETARY OF STATE PHIL KEISLING: Just one. Dan, the current lease language in provision 610 talks about lease bidding being terminated in order to sell land, and as you know, it's a question I've continually raised, 'cause in many respects I see that competitive bid issue is a bit of a transition. I think they're more serious, more far-reaching questions that have to do with the land is not, I know -- in fact, the whole sage brush rebellion, so-called, a decade ago. It was about ways in which to return public land in a way.

I just wanted to get your take on that termination clause. Current language provides for terminating leases with 60 days notice, good faith determination, the best interests of the State to use it for a different use, with refunding portions of things in the like. Is that something you think is pretty -- pretty straightforward and clear that the State has the right to do that if they dec -- how would we go about, you know, offering that for sale if we could -- if we could all sit around and agree that that made some sense from a larger public policy issue.

DAN O'LEARY: Well, it's not my -- the lease that I happen to have with me in Section 6 says miscellaneous.

SECRETARY OF STATE PHIL KEISLING: 610.

DAN O'LEARY: Oh, 610.

SECRETARY OF STATE PHIL KEISLING: I think 610, yeah.

DAN O'LEARY: I have read that provision before, and I guess that your -- your question is: Is it pretty straightforward?

SECRETARY OF STATE PHIL KEISLING: Yeah.

DAN O'LEARY: I would say, and I'm doing some research on this now as a matter of fact. I would say that it's a highly unusual thing for a commercial lease to have that kind of a provision in it.

The other thing that came up, and has been identified as a problem in Judge Yraguen's decision, is that these leases are imposed, they're not negotiated. There is no negotiation for these leases, and when you have that kind of a situation, courts traditionally will look differently at the -- how the language is to be interpreted, then if it's a negotiated lease where parties agree to certain things. But it was very clear that these are not negotiated leases. These are offered on a take-it-or-leave-it basis, and if you don't take it, you leave it, and you don't get a--

SECRETARY OF STATE PHIL KEISLING: Okay. Sir -- sir, you're saying--

DAN O'LEARY: It may not be interpreted quite the way that they were suggested.

SECRETARY OF STATE PHIL KEISLING: You were saying that it might not be allowable. You would sense that a court might not allow us to terminate a lease to sell it under that line of reasoning, and that this clause too would be really void.

DAN O'LEARY: Let me just -- if I could move it just a little bit from that point of view, because I'm not sure. I -- you know, and we don't--

SECRETARY OF STATE PHIL KEISLING: Yeah, and I'm not asking to, you know, lock yourself in to that. I just -- I'm just trying to think this through, because -- and I think the -- this issue is not over. I mean--

DAN O'LEARY: I don't think so.

SECRETARY OF STATE PHIL KEISLING: And the courts are going to have a chance to look at a whole range of things, would be my guess. And you might get in a position that you have to start thinking outside the box.

DAN O'LEARY: What I -- what I was going to say is this: that I am doubtful that this lease would ever be interpreted as an unfettered, untrammled right on the State to terminate this lease for any reason that struck its fancy at a given point in history. Now, that isn't quite the question you asked me, but I'm doubtful -- I think there are limits to the application of that language that you might not suspect looking at it the first time. It appears to be a very broad lease termination clause.

GOVERNOR JOHN KITZHABER: Just to follow up. I don't think that section says the State can terminate it for any reason whatsoever, it's very clear that the State has to make -- I read it as have to make a finding that it's in the best interest of the State to--

DAN O'LEARY: Yes.

GOVERNOR JOHN KITZHABER: Use the property for different uses. It seems to be a bit tighter than that.

DAN O'LEARY: Yeah, no, I wasn't saying that's what is in the lease now, but if you're looking for a legal interpretation of that, that there are no limitations on the State's right to terminate.

GOVERNOR JOHN KITZHABER: Right.

DAN O'LEARY: I -- I suspect you're not going to get it given the way the lease is arrived at.

GOVERNOR JOHN KITZHABER: Questions?

DAN O'LEARY: The other -- there was one thing that I mentioned that in my written testimony, I won't dwell on it. It does seem like to me that if you are going to approach addressing the rules again, that we should take some action to bring those rules back from the Court of Appeals, which is where they are currently residing. And I'm willing to participate in that.

GOVERNOR JOHN KITZHABER: Thank you.

SECRETARY OF STATE PHIL KEISLING: Thank you very much, Dan.

DAN O'LEARY: Thank you.

GOVERNOR JOHN KITZHABER: Bob Phillips. Welcome.

BOB PHILLIPS: Governor Kitzhaber, Secretary Keisling, Treasurer Hill, and members of the staff, and ladies and gentlemen, I'm Bob Phillips, I'm Oregon coordinator for Rest the West, an environmental group.

Rest the West opposes reconsideration of competitive bidding at this time for several reasons. First, we believe the principle of competitive bidding for leases is sound although we have reservations about specific provisions that tilt the process, the current process in favor of current lessees. Competitive bidding for all uses that are compatible at protecting the resource is the best means at maximizing revenue to the Common School Fund. The Attorney General's July 24, 1992 opinion says as much.

Second, the legality of the current rules is now in the hands of the courts. The recent Harney County Circuit Court decision validated 20-year leases with 20-year right of renewal, but let stand other provisions. This decision would effectively block competitive bidding for leases until the year 2023 or later. However, there is a likelihood that the decision would be appealed, leaving the decision up in the air.

A separate lawsuit was filed in Marion County Circuit Court January 30 of this year by Rest the West,

Oregon Natural Resources Council, and the Oregon Natural Desert Association challenging the legality of the current rules. We contend that competitive bidding -- the competitive bidding rules do not offer equal opportunity for all competitive for potential -- or rather for all potential bidders. We anticipate that these two court case will not be decided for another one or two years.

For the Land Board to consider the rules at this time, consider changing them, it would be a needless expenditure of Common School Fund monies. Whatever changes are made now through the administrative process will likely have to be reconsidered again when the court -- when the court rulings are known.

We understand that the Division of State Lands has begun an assessment management plan to determine the long-term direction for managing the range lands. The plan will recommend, among other things perhaps, but which lands should be retained and which lands disposed of by sale or exchange. The results of this process and the court decisions should form the foundation for any changes to the current rules. To consider changes at this time is premature and a waste of Common School Fund revenue.

We direct -- recommend (phonetic) to the Board to defer reconsideration till there is a clear course to follow. I'd be happy to respond to questions.

GOVERNOR JOHN KITZHABER: Thank you, sir. Are

there questions? Thank you very much.

BOB PHILLIPS: Thank you.

GOVERNOR JOHN KITZHABER: Bill Marlett. Welcome.

BILL MARLETT: Welcome, Governor Kitzhaber, and the rest of the Board. Again, my name is Bill Marlett, I'm executive director of the Oregon Natural Desert Association.

Our interest in the State grazing rule is, I think, well established. Rather than repeat any of the comments that have been made before, that I generally agree with from the environmental camp. I want to just, for what it's worth, let you know where we're coming from and why in the interest of, perhaps not persuading you to change your mind, I think the decision's been made, unfortunately, but to suggest that there is a larger public interest at stake here than just making money.

Our interest's specifically in the State land issue is tied to the Owahee Canyon lands. These are blocked lands that the BLM traded to State lands. I think in retrospect that was a bad decision, but that's history.

Specifically, the -- the Owahee itself, as you know in particular, Governor, that -- that's a state scenic waterway, a federal wild and scenic river, and the particular lease that we are interested in that -- there are actually two leases, borders 26 miles of that river. The Owahee River and watershed is extremely degraded. The

water quality conditions exceed State water quality standards virtually every month of the year. It's, in short, pathetic. And in spite of state rules that suggest otherwise, very little is being done to maintain, but more importantly, restore the ecological integrity of that watershed. Our interest is in doing that. That is why we wanted to lease this land. That's our primary motivation. It is not to enhance the Common School Fund, but as we see it, there's a mutual benefit that in doing so we feel that we can provide stable revenue to the Common School Fund.

And taking away the opportunity for us to participate in a competitive forum, I think is a real disfavor to the public at large. I don't have to tell any of you that the environmental community has had a tough time trying to make some advance on range land reform issues on public lands. Essentially we've been defeated at every turn. And so it's unfortunate that we're here today because as I see it, this is a step backwards from where we were last year, where I felt the State Land Board made a tough decision. There are some questions left unanswered that hopefully the courts will resolve, but here we are taking a step backwards.

And I just want you to know that as far as the environmental position, I think, in general is that we feel pretty boxed in. Every time we turn around and want to

do something for the land, that in this particular case we'll do something good for the Common School Fund, you know, we hit a brick wall. So I just want you to know how frustrating this experience has been. And I know the ranchers feel likewise, that they feel that the system has not done them a great favor either. How -- however, they have been -- whether they liked it or not subsidized for the past 100 years, and if they continue to dum -- deny that that's their -- that's their problem, I can't do anything about that.

So that's all I wanted to share with you. And one last point that I feel compelled to share with you also, is that -- is the issue of Denny Jones. And I don't know what level of participation he has had in proceedings or discussions with the State Land Board or the Division, but as a state permittee, I do question the level of his involvement in whether there is a potential conflict of interest there. And I just think -- I just want that on the record that you are aware of that, if you aren't already. And that if -- if something can be done to keep that interest away from the public interest, I think we're all better off for it.

So that's all that I have to say. If there's any questions?

GOVERNOR JOHN KITZHABER: Questions? Thank you. Terry Drever-Gee. Did I get that right? Correct me if

I butchered your last name. It happens to me all the time.

SECRETARY OF STATE PHIL KEISLING: Jim is the only one up here that doesn't have that problem.

GOVERNOR JOHN KITZHABER: Welcome.

TERRY DREVER-GEE: Good morning, Governor, Treasurer, Secretary. Well, I'm here wearing many hats. I had another meeting to go to today, but people over here on the west side aren't used to this snow. I'm from Baker County, and I just wanted to come and -- I'm a Baker County Planning commissioner, vice chair of regional strategies, and also a miner. And I'm here testifying on behalf of the grazers, the ranchers, because this is a -- this is near and dear my -- to my heart. Okay.

Responsibility; the State has responsibility to the communities. And there's one thing that I would like to say is that I would like to thank State Treasurer Hill and Governor Kitzhaber for coming out to our part of the country. And Secretary Keisling, we've invited you.

SECRETARY OF STATE PHIL KEISLING: Oh, I'd -- I'd come, I've just taken a different position on -- on the issue, but I -- I was there--

TERRY DREVER-GEE: That's okay. That's okay if you--

SECRETARY OF STATE PHIL KEISLING: A year ago.

TERRY DREVER-GEE: If you have a different

position, but we'd like to have you out in Baker County. We showed Treasurer Hill a great time, and we'd like you to get to know us a little better.

But anyway, the responsibilities that I feel the State has, not only to the Common School Fund, but to the communities that are affected. And kind of -- I'm not -- I'm not going to get into it real long, but kind of bottom line of it is financial and environmental.

A financial basis, there needs to be a fair process with consideration of labor and stewardship of the land. And I feel that competitive bidding -- you've -- you've got leases that have been in families for generations, and you take that away from them and put it up to competitive bidding, a lot of the people out there are operating on shoestring budgets. But they're contributing to the community, and they're contributing to the state. And you take the cattle away, you take them off of the land if they're doing a good -- if they're doing a good job and the stewardship is good, I feel that that -- I feel that's wrong. And that's my own personal opinion.

Because we're looking at an environmental and -- I'm real excited about what the ranchers are doing out in that area. In Malheur County there is a group of ranchers that have come together at the Bolie Creek watershed coalition, they have initiated it to come together with

state agencies and with federal agencies and with county agencies, ranchers, miners, everybody to come together to see what they can do to enhance their watershed, and enhance their production. That's what I feel is really a neat partnership.

There are so many positive things that can happen here. You increase the productivity of the land, you increase the -- the amount of money that's coming off of the cattle, you increase what is going on in the community by buying vehicles, buying hay, all of that is something that really needs to be taken into consideration. Plus, it's a win-win situation, because the environment's taken care of. And it's taken care of in a long-term manner.

And there needs to be provisions in the leases that if there's somebody that's not being good stewardship, a good process, that they're out of there. And possibly if they're out of there, that could be put up for competitive bid. But for the people that are doing a good job, I feel that competitive bidding is real -- is a real detriment not only to the community but to the state. Thank you.

GOVERNOR JOHN KITZHABER: Thank you. Questions? Thank you very much. Is there anyone else? Senator Timms, please. We'll conclude the testimony with Senator Timms here. We all have a lot of questions for you though, sir.

SENATOR TIMMS: Probably about your budget. Governor, it's nice to be here on your first day of the Land Board. Secretary of State Keisling and State Treasurer Hill. I'm just going to take a few seconds, in fact, I wasn't planning on -- on talking, I guess, but when you sit through these meetings and you get tied up in them, you -- you feel as a State Senator representing an area that -- that has 650,000 acres of state land, it's important that you say something.

I started ⁱⁿ this the process in 1983, and I flew with a rancher, Dick Jenkins, and we were with Ed Zajonc, and he had traded these -- his Class A permit, BLM permit for the state lands, and he was very nervous about it, because he just didn't think the state would treat him right. And -- and I assured him that they would. I thought we had one of the best programs in -- in the United States, and that's what my -- my rancher friends told me and -- and I believe it, that we did.

Now we've gone through this process, and we've created a mistrust that I don't know how we'll overcome it, of landowners with state lands in my district. It's been a issue that has hurt a lot of key people in communities, as Terry mentioned. The Jenkins have lived there all their lives, as I have, many others. The Tracys that have put \$80,000 into a lease and improvements, and so forth.

And I think that we need to really sit back and analyze as an environmentalist as landowners of how we work this process and how we make it work. And we do not make it work by not agreeing to contracts that were made in '83, which were verified -- they were verified by Clay Myers, and the -- Governor Atiyeh in the court case. There was no alternative. I mean, this was so poorly done in the process to -- to refute and disclaim agreements that were made with people and citizens. And I think it's a sad day that when we do these kind of things. I think we need to reassess and try and make it right with these people.

And I appreciate the fact that you're bringing up, I appreciate Senator Hill -- or Senator -- you were a Senator. That's how I got to know you anyway. That came out in the district and -- and the Governor, and Secretary Keisling has been out in our district, we appreciate that. But let -- we need a better understanding of our people. And I think we're getting that, and I think this is a -- a valid process that we're going through. It's a shame that it had to go to the courts. I don't think that was anyway that it should have happened, but it did, and this proved that, I believe, the landowners are right. Thank you. Any questions?

GOVERNOR JOHN KITZHABER: Thank you, Senator. Okay. That -- yes, Senator Jones. Excuse me,

Representative Jones. Let me ask, is there anyone else besides Representative Jones? Okay. Going once, going twice, this will be the last witness. Representative Jones.

REPRESENTATIVE DENNY JONES: Thank you very much, Governor, and Treasurer Hill, and Secretary Keisling. Probably I should start out by, after listening to Mr. Marlett, registering a possible conflict of interest. Except that when you're in the Legislature and vote on issues, I think maybe we all have a conflict of interest regardless of what we do. So I don't see this as a problem.

However, I'm pleased to be here, and I'm also pleased that we've taken another look at this issue, and -- because I think we need to solidify this particular part of the economy so that we know what was on down the road, where we're going. And we know that Secretary Keisling, I will -- and I was interested in your comment a while ago that you're losing money on these lands, and I -- I guess I'm -- maybe I'll visit with you later to see where you're coming from, because in order to earn money you've got to have a place to start from as to what the value is. And, you know, I would kind of like to know that because if one group of people took, say, 25,000 acres and left 625 laying there, without anyone on it, then I think that your statement of the rules and money

might -- might need a little exploring as to exactly where you're coming from. And I totally agree with you on some of these isolated tracts, they should be disposed of, and, you know -- I think for whatever you can get for them actually, because they're -- although most of them have been leased now, but they're -- they're not in -- you're not in a position to do much with them, actually, because they are isolated and -- and don't have access.

But anyway, I don't have a lot to say, and -- and -- and Governor Kitzhaber, I'm sure that we will be discussing issues at length that don't involve grazing lands before this session is over.

GOVERNOR JOHN KITZHABER: I expect that's right.

REPRESENTATIVE DENNY JONES: And I will, you know -- I'd appreciate doing that anytime that we get the opportunity to do that. I hope that you will not be as busy as you have in the past, because, you know, I noted that -- you early -- early on, and I said that I had had a problem of getting an audience with the two previous governors, and you assured me that that wouldn't happen, but up to now it's been -- it's been a little tough.

GOVERNOR JOHN KITZHABER: You bet.

REPRESENTATIVE DENNY JONES: You know, I haven't--

GOVERNOR JOHN KITZHABER: Could the office then -- have you?

REPRESENTATIVE DENNY JONES: Oh, yeah.

GOVERNOR JOHN KITZHABER: Yeah.

REPRESENTATIVE DENNY JONES: Yeah, I've been aware. That's kind of an indirect way that I wanted to get the message through. I just wanted to remind you.

GOVERNOR JOHN KITZHABER: The reason I'm busy is I'm travelling a lot. Next week I'm going to your district, so -- thank you.

REPRESENTATIVE DENNY JONES: We got to have a little fun as we go along anyway. But I'm pleased that -- and I -- I could get real serious now. I certainly hope that you do rescind the competitive bidding part of this, and that we can enter into a lease agreement that will suit all of us. And that it will last a while. And Secretary Keisling, this may enhance your -- the fund that you talk of, because you won't have -- you'll have to spend very little money on this grazing issue once we get this nailed down, you know, long-term lease. The fact of the matter, you know, there won't be anything to do for 20 years, so you -- you can put all that 379,000 acres -- dollars right into the Common School Fund. You won't have to siphon any of it. So that will kind of -- sort help when (unintelligible) comes from.

SECRETARY OF STATE PHIL KEISLING: Well, this is -- Representative Jones, I think most of that money goes for the -- for the staff just to oversee the program. I think you're saying you don't want anyone to keep on eye

on it.

REPRESENTATIVE DENNY JONES: No. No. I'm not saying that at all. I said once we get this nailed down in a long-term lease--

SECRETARY OF STATE PHIL KEISLING: Right.

REPRESENTATIVE DENNY JONES: And get the issues all settled, then all you need to do is have somebody see whether we're abusing the land or not, and have a nice lookin lady to bill it once a year, and that's all you need.

GOVERNOR JOHN KITZHABER: Thank you.

REPRESENTATIVE DENNY JONES: Thank you, members.

GOVERNOR JOHN KITZHABER: Mr. Hill?

STATE TREASURER JIM HILL: Yes, thank you, Governor. Governor, I move that the Land Board to direct the Division of State Lands to begin rulemaking to consider repealing the competitive bid portion of OAR 141-110, and further, that we accept the Division's recommendation that Option B1 be advanced as a replacement in the proposed rule amendments, which will be circulated to the public.

GOVERNOR JOHN KITZHABER: Senator Hill -- Senator Hill, I got used to that too. Treasurer Hill has moved that the Land Board initiate an amendment process to Chapter 141 of OAR for management of range lands, repeal competitive bidding in favor of Option B1 as put forth by

our staff.

I will second the motion. But in so doing I want to make it clear here that what we have -- what we will be doing today is not voting to repeal the competitive bidding process, but to initiate a process to reopen this debate.

Are there discussions to your motions?

STATE TREASURER JIM HILL: Yes, thank you.

GOVERNOR JOHN KITZHABER: You used to be Senator Hill, is that right?

STATE TREASURER JIM HILL: The issue really here is fiduciary responsibility. When this issue came up in the hearing that dealt with it, interestingly enough, there was not one word mentioned of the issue of the environment.

Now, I specifically asked representatives from the environmental community what were there or was there degradation of these lands. I received no reply to that whatever to that. I do respect Mr. Marlett who at least came up and he spoke about the environment.

Fiduciary responsibility is what we live and die by in the Treasury in most of our operations. And I won't get into the discussions of the history of how we got to this point, the history of the cases, but fiduciary responsibility, especially with respect to these lands, is very, very long term. My objection was that there was no

showing that long term, that this would bring in more money for the Common School Fund.

At least three witnesses on opposite sides of the issue have mentioned the asset allocation plan as being important. In the Treasury we have an asset allocation plan for how we invest our pension fund of \$17 billion. I believe that the Asset Management Plan that is about to come into effect, is analogous to that to some extent.

It is the most important decision that you'll make in terms of how you decide how you are going to carry out your fiduciary responsibilities. We went ahead and made a very, very important decision, supposedly under the guise of fiduciary responsibility, and we made that decision before we even looked at our asset management plan. They were expending a great deal of money for, and that plan more than anything will determine whether or not we get the most income from this land to meet our fiduciary responsibilities. We should proceed with that plan before we make any decision.

I guess there's one other thing that I would like to throw out, because of my vote, I guess many people in the environmental community considered me to not be concerned about the environment. I guess what I'd like to say is under the current rules, I want to point out that there's an assumption here that the environmentalists will always be the top bidder when we are in competitive

bidding, and I just want to point out that that may not be the case. Under competitive bidding as it is now, you could end up with something that could be detrimental, certainly more detrimental to the environment than ranching.

If there is an environmental degradation on these lands, let's address that directly, and let's deal with that, but let's not mix up fiduciary responsibility with environmental issues.

I guess I have to also address some of the things that have been said about the influence of the Legislature. This process was started, I think, before I was elected, looking at this issue, the decision was actually made in July, and I can say that there was no input at all from legislators to me about this issue. The idea that the Legislature is somehow blackmailing this Board, I have two Republican -- both of them former colleagues here, and we can look both of them in the eye, and we have disagreed, and we'll disagree about this, and we can disagree about this issue. But undue influence here is -- I don't believe has been a factor with anyone on how this decision was made.

Governor, I appreciate the opportunity to have Governor and Secretary Keisling, the idea to bring this back up. But hopefully in this process as we go back into the community to discuss this issue, that a genuine effort will be made to accommodate the various uses that

we have for the land, and I believe that we can protect the environment, and at the same time make sure that we get the response from this land that we should. And at the same time, have the uses that continue on the land that will be most beneficial to the community and to the environment that composes it. Thank you very much, Governor.

GOVERNOR JOHN KITZHABER: Secretary Keisling?

SECRETARY OF STATE PHIL KEISLING: Yeah, I just thought I'd make a few comments. I'll not support the motion, but I think that as in the Legislature -- to coin a phrase, "I see a potential constitutional problem with the competitive bidding rules." Potential constitutional problem being not having two votes on the Land Board.

STATE TREASURER JIM HILL: I'm familiar with that process.

SECRETARY OF STATE PHIL KEISLING: And I think we've had -- and this is an issue that was underscored, and I think is a real important one to address. I think we've had a good faith disagreement about just exactly what role competitive bidding has, vis-a-vis, the fiduciary trust. And you know, those who spoke to the issue of the mistrust in certain parts of the state around this issue, that's something that we really have to pay attention to and pay heed to, and it distresses me.

I happen to come to the conclusion that

competitive bidding was not the only way to go. I think it's important to distinguish between that. I don't think we ever made the argument that you had to do it. I think that the argument that was made was that it was the best way to protect ourselves on this issue, and the best way to proceed. We do it for practically everything else. The Elliott State Forest is our other major land asset. And of course, the notion that you would not competitively bid timber sales are -- really isn't one that is seriously looked at.

But we have a good-faith disagreement about that. But I do think it's important to talk about as these rules go forward and no decision has been made, but on the assumption that they will be repealed. I think it's important to know what the old rules, the existing rules did and what they actually didn't do. First of all, did they impose a -- something unusual upon range land? Oregon's actually right now an exception. We're one of the few western states that does not have a competitive bidding mechanism for range land leases. Idaho, Montana, Utah, all of those states have competitive bidding.

Did it say competitive bidding, and then that's it, absolutely not, in fact, I want to point out for the record that Mr. Marlett and some others are parties to a lawsuit against the existing rules, saying that the existing rules are insufficient. That they do not go far enough.

We let ranchers -- an existing lessee match any high bid. We also required fair, some might even argue, generous compensation for improvements that were made.

We also require that existing contracts be honored, to the extent that there was a judicial (phonetic) issue about valuation clauses. I think we made it pretty clear in July that if something like that were indeed part of this arrangement, that that would be honored. I think we've spelled that out in the rule. There is some doubt it, but we said that it would.

We required any non-grazing lessee to meet open range law and put up fencing, and those who know this business recognize that you might be able to lease a 640 acre piece of land for maybe \$600 a year. The only problem with -- is under these rules, the way I read it, you probably would have been required to put up \$12,000, \$15,000 worth of fencing in addition to whatever you might -- you might pay.

I'm very concerned that we have a situation where no one up here will end up controlling this. And that was one of the reasons that I felt pretty strongly about this.

We see over and over again environmental issues really ending up in court, having people end up -- who are not part of an elected accountable (phonetic) system. In the traditional way, end up making these kinds of

decisions. I truly believe that the lack of any kind of competitive bidding, okay, makes us quite vulnerable. We may still be able to win, I may be wrong. I'm not an attorney. I think that generally serves me better than not.

But I am truly concerned that we go forward without competitive bidding and we, in fact, will dramatically increase the chance that we will lose control of this issue and put it in the courts requiring. We've seen that in other states. But again, I might be wrong. And in any respect, I hope I am, because if -- I don't want to see that happen regardless of what we decide is a -- is the best policy for the state.

This is an issue that is one that -- it's ironic the amount of time we have spent on it relative to, you know, what it does for us in terms of income and the like. Recently the staff looked at the calculations of just what our actual costs are versus actual revenues. We're not making one-half of one percent, at least in recent years. We are actually losing money from the best I can tell on this.

And I have from the beginning thought that if you believe the fiduciary trust, if you believe the fiduciary trust leads you to competitive bidding when you lease, I think we also have to seriously look at how that same notion leads you to seriously look at the long-term

question of these lands, who ought to own them, how they ought to be -- how they ought to be managed. Not to say that you should simply put them out there, but I'll be looking at part of the Asset Management Plan to at least seriously consider that issue. That will cause, I think, a lot of people pause, whether you're rancher, whether environmentalist, or the like. But in the end, that's to me the most important issue. Is how in the long term we do this.

This was going to end up in court anyway. 1994 came and this issue had got to the point that without any rules at all, with only contracts, however we decided this, that there was going to be lawsuits around this. And by the way, I think those net benefit costs are -- I don't know if they include all the legal fees or not, but they probably include some of it. And maybe Representative Jones is right that at some point the legal fees won't be part of that mix, much less the competitive bidding.

But I think we've made, you know -- I respect my colleagues on the Land Board come at me -- come to a different conclusion based around the same issue. We're all struggling to, I think, both honor the law. We may not like the law. The law may seem to lead us to some conclusions that at times are not preferable ones, but we're trying our best to follow the law. And I think as this proceeds, let's do what -- what is going to happen.

Let's try to do it quickly. Let's move on to what will be, I think, the real key questions in the long run, and about how we really forge a relationship between the public with the assets that we do manage on their behalf, that it is going to be a more productive one significantly than it is -- than it has been particularly in the recent past.

So I appreciate a chance to just put that perspective on it, and -- and also I want thank everybody who traveled long distance today. They're the worst possible circumstances to come to a meeting. Particularly if you had to cross the Cascades, even come from Portland today was tough. I appreciate the people who came here today to weigh in on this.

GOVERNOR JOHN KITZHABER: Thank you, Phil. Well, I obviously am going to support the motion. But I think it's important to understand what my motivation is. I want to reiterate that supporting a process to initiate rule changes, not the same as voting to repeal this. And we will have an opportunity to make an affirmative step on this once we've gone through this process.

My interest is to try to get what the real issue is. I don't think, quite frankly, the issue here is about competitive bidding. I think that is -- that's the premise. It's certainly not about funding our educational system. In 1993, we got \$215,000 off of these lands. The State appropriation for K through 12 was \$2.56 billion

in 1993. In 1994, we got \$209,000, a little bit less, and the appropriation was \$3.45 billion. This year, in the coming biennium, we're going to be spending around \$4 billion on K through 12 education, and a couple hundred thousand dollars, quite frankly, doesn't make much difference in funding education. So I think there's an issue of perspective here.

All the Common School Fund lands contribute less than one percent of the cost of public education in Oregon, so at some point I think we have to come to terms with the constitutional language or its interpretation and recognize that the real issue here is management of these lands. It has very, very little to do with educating kids. Personal opinion.

The real issue here, I think, is about whether or not we want livestock grazing on state lands. I mean, that's really the issue. If the answer is that we're going to do it, if the concern -- if the concern is that the livestock grazing is having an adverse effect on public lands, that we're not philosophically opposed to this use of public lands, but we're concerned about the impact. Then where we ought to be focusing is on the range land management plan to make sure that we have rules in place, and the ability to enforce them and monitor them to make sure that we are having good stewardship.

If in fact the agenda of some parties is not to

have any livestock grazing on public land, then that issue ought to be advanced as a policy debate, and we ought to debate that.

I know it's argued that this is -- and I've heard several times, that we are -- the public is subsidizing the cattle industry, that's true. But I think we have to put that into context. My medical education was subsidized by the public, and one could argue that that was a waste because I'm not using it right now. I think that clearly anytime you buy a gallon of gas, no matter which side of the environmental industry side, you are buying a subsidized gallon of gas. If you go anywhere outside of Canada or the U.S., you are paying about, you know, \$3 a gallon. You're paying the replacement cost. We don't do that in this country. Every person who has health insurance is subsidizing all those people in this country who don't have health insurance.

So I think the issue isn't as much one of subsidies, it's not one of education, it's not one of the Common School Fund, it's not even one of competitive bidding, the issue is do we want to allow livestock grazing on state land. Is the debate about good range land stewardship, or is that we just don't want that to happen. I guess my motivation for opening this is to try to take that issue head on, and really get to the heart of this and have a good dialogue about those issues over the

next couple of months. I'm not saying that that won't necessarily be contentious, but at least we'll be arguing about what we're arguing about instead of trying to talk about fiduciary responsibility of an amount of money that really doesn't have a whole lot of impact on long-term funding of education.

So with that clarification for the record, and if there is no further comment. Mr. Keisling?

SECRETARY OF STATE PHIL KEISLING: Well, I guess that's one point I didn't make. I don't think, in my mind, this isn't about stewardship, environmental degradation at all. This, you know, you've gotta -- we've got to be good stewards on this land, period. That's an assumption no matter how we decide, what we decide to do when a lease comes up for a renewal. Any successful bidder, even under our existing rules, would have to prepare a plan for stewardship and have that plan enforced, and could lose the bid if it wasn't enforced. And so I want to underscore the agreement that I think should not be about that, that if we have problems with the condition of the land, then I think we ought to look at that directly, because that's a concern regardless of the mechanism that you happen to use. But -- I just want to underscore that.

GOVERNOR JOHN KITZHABER: Thank you. Go for the vote. Those in favor of the motion placed by Treasurer

Hill will signify by saying -- when the names are called.
I guess I get to call the names. Push the green button.
Treasurer Hill?

STATE TREASURER JIM HILL: Aye.

GOVERNOR JOHN KITZHABER: Secretary of State
Keisling?

SECRETARY OF STATE PHIL KEISLING: No.

GOVERNOR JOHN KITZHABER: And Governor votes Aye.
The motion is carried.

With that, we will move to the second agenda
item. I'd like to thank all of you that came and
testified today. I look forward to seeing you over the
next few months at other public forums of this nature.

Gus, Item 2.

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AGENDA ITEM NO. 2

DIRECTOR GARY GUSTAFSON: The second item is the completion of another rule-making effort that was begun a couple months ago.

This one would allow the Division to represent itself in certain contested case proceedings. The reason for that is the stated law does allow an agency to do that, if you've gone through a rulemaking process, and if you differentiate legal items from the non-legal items that may be subject to an appeal.

Now, we have worked out this process with the Attorney General. We will involve our contested case process, an advisory with them, and if both of us are comfortable, that the Division may represent the agency on a case that is not involved in substantive legal issues. This rule would allow us to do just that.

This will result in some cost savings to the Agency. Also, I think it will result in certain efficiencies. We'll move the process forward much better than perhaps has been the case in the past.

Now, I want to alert you to the fact that we do have a new public comment that was just received, I believe, yesterday. It's distributed today. It's from the same individual who commented earlier to us, and he has expressed just a concern that this is not a proper differentiation between the powers of the Attorney General

and those of the other executive function of government, the Division.

I've looked at that. I don't think it raises anything new to us. As Bill Cook can clarify, if there's a need to today, we have worked a process out so that we will not be representing legal issues, and our advance of this on behalf of the Agency. So I think that issue has been addressed.

Again, we've gone out to the public. We've received public comment. We've held a hearing, which no one attended by the way. Now we're back today to ask you for final authority to adopt these -- to approve the adoption of these rules.

GOVERNOR JOHN KITZHABER: Since I'm the new kid on the block, who raised the question?

DIRECTOR GARY GUSTAFSON: A gentleman by the name of Don Leach. You may know him. Canyonville.

GOVERNOR JOHN KITZHABER: Yes. A fellow constituent. Still a constituent, I guess.

Is there discussion or questions by members of the Land Board?

SECRETARY OF STATE PHIL KEISLING: Mr. Chair, I'll move adoption of Item No. 2.

STATE TREASURER JIM HILL: Second.

GOVERNOR JOHN KITZHABER: It has been moved and seconded that the Land Board approve the Administrative Rule

to allow the Division staff to represent the Agency at certain contested case proceedings, on a case-by-case basis, authorization by the Attorney General.

Is there objection? Hearing none, the request is approved. Three?

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AGENDA ITEM NO. 3

DIRECTOR GARY GUSTAFSON: The third item, Mr. Chairman, is the request for approval of an exchange of mineral rights. And for members of the audience, as well as perhaps yourself, because this is your first meeting, the State Land Board must approve transactions involving all State mineral and geothermal resource rights. The approval, when you approve is based upon -- must be based upon 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 taken from the Constitution.

This particular application before us is for a land exchange between the Board of Forestry, who owns the mineral estate under certain timber holdings in Klamath County. The exchange would be with a private land company, J. Spear Ranch, also in Klamath County.

There is a map that is attached as an exhibit here that shows you the land holdings that would be exchanged. The overall purpose of this is to consolidate timber holdings for purposes of ease in management, efficiency, and so on.

The fact that there are mineral rights here is incidental to the purpose of this exchange, but just to be sure, we've had the Department of Forestry review the

mineral holdings with the Department of Geology and Mineral Industries

to make sure that the exchange of mineral holdings would not result in a net loss to the State.

DOGAMI has done that review, it's an appendix before you. Their review results in a finding that the State would not lose here, but in fact, may gain from the result of this exchange.

Therefore, our recommendation to you today is that you approve the exchange of 160 acres of mineral rights under Board of Forestry land for 210 acres of mineral rights under J. Spear land, based upon the findings that you'll find on Page 2 and 3 of the staff report.

GOVERNOR JOHN KITZHABER: Discussion?

STATE TREASURER JIM HILL: Yes, Governor, I move that we accept the Division's recommendation that the Land Board approve the exchange of 160 acres of mineral rights under the Board of Forestry land for 210 acres of mineral rights under J. Spear land, based upon the findings that were just mentioned.

SECRETARY OF STATE PHIL KEISLING: Second.

GOVERNOR JOHN KITZHABER: It's been moved and seconded that the Land Board approve the proposed exchange lands described by Mr. Gustafson. Discussion? Objection? Hearing none, the request is approved.

Item 4?

AGENDA ITEM NO. 4

DIRECTOR GARY GUSTAFSON: These are just approval of minutes from the meeting of December 13, 1994.

SECRETARY OF STATE PHIL KEISLING: I'll move approval of the minutes.

STATE TREASURER JIM HILL: Second.

GOVERNOR JOHN KITZHABER: It's moved and seconded that we approve the minutes of the December 13, 1994 Land Board meeting. Discussion? Objection? The request is approved.

Mr. Gustafson?

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DIRECTOR GARY GUSTAFSON: Mr. Chairman, the next two items are informational only. The first one has to do with our in-lieu land selections. It's probably appropriate that, by coincidence, this happens to be of course the 134th birthday of our state. One of the documents that is still unfulfilled is something that I'm bringing to your attention today again, and that's our in-lieu land entitlement.

One of the many benefits of statehood, of course, was the receipt of our Common School Trust lands, originally Sections 16 and 36 in all surveyed townships throughout the state. Well, as it happens, not every land conveyance necessarily goes according to plan, and in this case, certain of those sections were not available at statehood for the state to receive. As a result, we get in-lieu entitlement.

To sort of condense 100 years into a few sentences, those lands that we couldn't get eventually were accounted for and through a challenge by the State of Oregon, which occurred just recently, finally the courts have ruled in our favor. This happened a couple of years ago, and the State of Oregon is entitled to about 5200 acres of land still to select from the federal government. 1200 of those acres were already committed to a private party through a lengthy and involved legal process. But about 4000 acres, 4073 to be exact, are still due the

State of Oregon.

So we have been meeting with our compatriots at the Bureau of Land Management trying to identify these areas. We've had several meetings already with them. We've looked at maps. We're starting to get to the point now where we're actually focusing on available areas. A couple of those that seem to be the most attractive at this point are some land holdings near Redmond and Bend, on the outskirts of the city. We call those lands that have potential for revenue production.

Then also, we're looking at some areas in National Forests. Some of those have potential. They've been identified in the Clinton Forest Plan as matrix lands, meaning that the federal government would harvest them anyway. So it may be that we might be able to pick up some of those.

I must mention, though, that those also, like all land matters, have some degree of controversy because there are interests by some counties not to have the State select, because they do get in-lieu payments from forest sales from the National Forests and certain BLM lands. But those are areas we're looking at.

We still have a ways to go here as we refine these. One thing that I've learned in this business is the longer you wait the less your options. So it really pays to get out front and get moving. So this is nothing

more than a status report on our statehood birthday, and to let you know that we're getting closer to the final selection of these areas. We will be alerting you when we've got the candidate lands down to something that is actually meaningful and likely. We'll whittle it down to our final selections, and that should be done by July of this year. I just don't think we can afford to wait much longer than that.

GOVERNOR JOHN KITZHABER: Thank you. Questions?

SECRETARY OF STATE PHIL KEISLING: Just a quick one. Gus, BLM lands only, right?

DIRECTOR GARY GUSTAFSON: Yes.

SECRETARY OF STATE PHIL KEISLING: That's the universe -- 4000 acres that -- acres vary, ONC, BLM land versus range land. What kind of valuation do we have on the 4000 acres, or is it acre per acre?

DIRECTOR GARY GUSTAFSON: It's actually value for value. It's determined on the type of land that you originally selected.

SECRETARY OF STATE PHIL KEISLING: So what's our total value worth of land that we can select? So it's really not tied to 4000 acres, it's X amount of value, right?

DIRECTOR GARY GUSTAFSON: Right. We're still getting to the bottom of that, but almost all of the original selections for which we are due were located in

the National Forests. So probably worth a fair amount, assuming--

SECRETARY OF STATE PHIL KEISLING: How much are we asserting that this is worth?

DIRECTOR GARY GUSTAFSON: Well, again, we're working that out, because we have to go to the maps with BLM and get final agreement on the exact areas that we didn't get. These have to be converted to a value. So we're still in the mechanics of these are the lands, right?

SECRETARY OF STATE PHIL KEISLING: So the value is still under dispute?

DIRECTOR GARY GUSTAFSON: Yes.

SECRETARY OF STATE PHIL KEISLING: And once the value is finally concluded, then we look at how many acres we'll end up getting, and we can then make our choices between range land, forest lands, and do all the trade off?

DIRECTOR GARY GUSTAFSON: Yes.

SECRETARY OF STATE PHIL KEISLING: Interesting.

GOVERNOR JOHN KITZHABER: Questions? Okay, thank you.

DIRECTOR GARY GUSTAFSON: I'm going to ask John Lilly to come up here and join me. John Lilly is assistant director of Policy and Planning. You've heard already admitting references by witnesses before you about

our asset management plan. As we get closer to the finish line for developing that, we're going to make it a point to come forward and let you know exactly where we are. In fact, at our next meeting I think we'll have a significant agenda item to lay before you.

I'm going to ask John just to give you a quick update on where we are in the process right now.

JOHN LILLY: Good morning, Governor, members of the Board. Again, for the record, my name is John Lilly. Along with David Blum and Jeff Kroft I've been heading up the Asset Management Plan project for you and dealing with our contractor consultant Arnold Cogan of Cogan Owens Cogan, and several subcontractors.

We've heard a lot this morning about the hopes that the Asset Management Plan holds for long-term management for the real estate assets to the Common School Fund. The staff holds up those hopes as well. We think that this project is probably one of the most important projects that we've been involved in in this biennium. And it lays hope -- we hope to have laid the groundwork for a lot of future work that will go ahead.

I feel like we're on the -- on the edge of being able to launch this project. We have spent a lot of time in its -- and when I mean launch, I mean really having something tangible for us all to be able to look at. Now, we've spent a lot of time with a consultant kind of

outlining the project and doing a lot of homework, pulling a lot of information together from our staff, particularly from the financial side of performance for our various land assets.

We've broken things down into categories according to the types of lands that we own: forest land, agricultural land, waterway land, range land, of course. It's no secret that the dominant part of our real estate asset is in range land, 650-some thousand acres. We have about 1000 acres in agricultural land. 130-some thousand acres in forest land that are currently managed by the Department of Forestry. All of those land assets are on the table for us to look at.

Some very interesting things be -- are beginning to emerge, and I -- we're looking at what our operating costs are to take care of those lands and what we're receiving in return. Some interesting things starting to emerge.

Just to summarize, we'd hoped to have a draft plan out by the end of next month. We had a good meeting last week with the consultant team and making great progress. That may slip a little bit as we continue to refine this project. We -- with the draft plan out, then we're looking for a mid-summer opportunity for -- to present that to you for adoption. In between the draft plan and the final adoption, we would be doing some public

involvement. Hope to take it out on the road, show the -- the plan around. We're still struggling with just how to actually do that and get some real good dialogue with public, and something other than a public hearing type of forum.

The major objectives of the plan, as you can see in the report given to you, is to provide us with a proactive way of being managers for these assets. We expect to have goals of policies to drive these decisions. A land classification system, in which I've already began telling you about. And acquisition and disposal and land improvement strategies. We're down the road pretty well on those in terms of the talking stage. The staff and the consultant team has spent a lot of time kind of edging around and honing in on what -- what we like these -- these various asset accounts to look like. We're really in the stage now of having the consultant put those ideas down on paper and feed them back to us.

I think that's pretty much all I need to say right now, unless there is some questions.

GOVERNOR JOHN KITZHABER: Questions?

SECRETARY OF STATE PHIL KEISLING: I just -- I just have one, and I apologize since the weather kept me from -- from getting a briefing on this the other day.

We will -- we're on a time line to try to cash in this BLM chip, which could be worth \$1 million, \$10

million, we're debating -- and cash it in, and that's going to happen about the time that we finalize our Asset Management Plan. And I guess the question -- and I'm just thinking out loud -- fitting those two things together, we, in effect, have a leverage point with them, with the federal government, that is engaged in a whole bunch of stuff referred to -- concerned about the grazing lands as well. And, you know, I'm just -- it's not so much to respond to, but I'm thinking out loud about it -- that we not overlook opportunities to put those two things together in a way that makes the most sense for what it is we want -- we want to do. And I assume we're looking at Bend and Redmond, because there's already some forming an idea in our mind that if -- if we're gonna have range land or land, that's where it ought to be, but there may be some other things that -- that come together as well. So those two things are converging in about the same time under the current time line, and -- and I know -- I know you're thinking about it. It just -- it's an opportunity there that may be doubly much an opportunity, isn't it (phonetic)?

JOHN LILLY: Well, Mr. Secretary, at the same time, we're dealing with -- we've opened up discussions with the BLM to look at possible exchange opportunities on -- on lands that they're -- they may be interested in in addition to lands that -- that we may want to select.

So all these things take a good deal of time, particularly when you're dealing with exchanges and -- and selections, but we're trying to bring a lot of these things to maturity--

SECRETARY OF STATE PHIL KEISLING: Would you characterize the pace--

JOHN LILLY: As we go along.

SECRETARY OF STATE PHIL KEISLING: Of those discussions as glacial?

GOVERNOR JOHN KITZHABER: Glacial?

JOHN LILLY: No.

SECRETARY OF STATE PHIL KEISLING: Okay, good.

GOVERNOR JOHN KITZHABER: Are there questions? Thank you. Is there anything else on the agenda under 7 that you know about?

DIRECTOR GARY GUSTAFSON: Yes, sir. One other item, and included a press release in your packet, and I just want to mention it because, you know, it's on the good news side. We don't often get enough of those.

The state of Oregon is going to be the recipient of about \$1.75 million over the next ten years as a result of a recent court settlement. It's a nation-wide settlement. I want to also express appreciation to the Treasure's office for their assistance in this, because they helped make it possible. This was not certainly just the Division.

It's an unclaimed property settlement, and it requires the states of New York, Delaware, and Massachusetts to collectively pay that amount of money. It's a complex formula based on what Oregon's per rate of share was, but we get about \$1.75 million. That will go directly into the Common School Fund.

GOVERNOR JOHN KITZHABER: Thank you. Any further business to come before the Land Board? Hearing none; we stand adjourned. Thank you.

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CERTIFICATE

I, SUE K. ROBERTS, hereby certify that I am a transcribing machine operator for Business Support Services, Inc., and I prepared from a mechanical recording the foregoing typewritten transcript of the testimony and proceedings had upon the hearing of the above-entitled matter at the time and place set forth in the caption hereof; and that the foregoing pages, which are numbered 1 through 77, both inclusive, contain a full, true and correct record of all the testimony adduced in behalf of the respective parties in the said hearing, except where specifically directed to be off the record.

WITNESS my hand as transcribing machine operator this 20th day of February 1995.



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