
STATE LAND BOARD MEETING

Tuesday, September 10, 1991

State Lands Building

775 Summer Street NE, Salem, Oregon

9:30 a.m.

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1 **GOVERNOR BARBARA ROBERTS:** Have an agenda we'd like to
2 get through and people who are here to make comment and I'd like
3 to be able to do that. So let's begin with Item Number 1, the
4 request to adopt amendments to the removal and fill from that
5 program. Janet, you want to take that, please?

6 **JANET NEUMAN:** Yes, thank you.

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1 AGENDA ITEM NO. 1

2 **JANET NEUMAN:** Governor Roberts, members of the Board,
3 the first item is request to adopt amendments to the
4 administrative rules in the removal fill permit program, and with
5 me at the table is Earl Johnson, our assistant director for
6 environmental planning and permits. You have seen two former
7 sets of revisions to this particular area of administrative
8 rules. This is the third set of revisions and the materials in
9 your book set out in a fair amount of detail the kinds of changes
10 that have been made. We have had extensive revision and
11 discussion of these rules with various interests groups and
12 commenting parties, and Earl and I can take questions for
13 clarification or information, but because of the length of the
14 agenda I won't give you a detailed briefing unless you have
15 certain areas that you'd like to go into.

16 **GOVERNOR BARBARA ROBERTS:** Any questions on the part
17 of the Rules? Is there a motion?

18 **JANET NEUMAN:** Before you entertain a motion, there is
19 a modification--

20 **GOVERNOR BARBARA ROBERTS:** Oh, that's right.

21 **JANET NEUMAN:** That was passed out to you.

22 **GOVERNOR BARBARA ROBERTS:** Right.

23 **JANET NEUMAN:** Which are a couple of very clerical and
24 editorial changes that appear on the pages 12 and 13 of
25 Appendix B to Agenda Item 1, couple of changes to the hearing

1 procedure. This is not an area that received opposition or
2 comment. It's just a clarification amendment, so we would like
3 to propose adoption of the rules with those changes.

4 **SECRETARY OF STATE PHIL KIESLING:** Madam Chair, I move
5 to adopt these rules with the changes to OAR 141-85-075 that we
6 have in our attached September 10 memorandum.

7 **STATE TREASURER TONY MEEKER:** Second.

8 **GOVERNOR BARBARA ROBERTS:** It's been moved and
9 seconded. Is there discussion? Hearing none, those in favor
10 will signify by saying aye; those opposed, nay. Motion is
11 passed. Item Number 2 the wetland management initiating a
12 rulemaking. Janet?

13 **JANET NEUMAN:** Yes.

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AGENDA ITEM NO. 2

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JANET NEUMAN: This item is very simple. It is simply a request to begin rulemaking to outline standard procedures for local governments to follow in preparing detailed wetland inventories. We have found that because of the number of jurisdictions preparing wetland conservation plans at the current time we and they could benefit from some simplified standard procedures and guidelines. We have drafts of those included in the materials, but the request is simply to open the rulemaking on this subject.

GOVERNOR BARBARA ROBERTS: Janet, thank you very much. I would accept a motion on Item Number 2.

STATE TREASURER TONY MEEKER: I would move that we adopt Item 2.

SECRETARY OF STATE PHIL KIESLING: Second.

GOVERNOR BARBARA ROBERTS: It's been moved and seconded that we begin initiating rulemaking as indicated in Item 2 on wetland management. Is there discussion? Hearing none, those in favor will signify by saying aye; those opposed, nay. Motion is passed. Item Number 3, Janet?

JANET NEUMAN: Thank you.

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AGENDA ITEM NO. 3

JANET NEUMAN: Governor, members of the Board, Item Number 3 is proposed adoption of a comprehensive set of administrative rules in the sand and gravel leasing program. We have a number of people here today who would like to be heard on this subject. What I propose to do is give you a very quick background and briefing on the major areas of change and the areas on which people wish to comment, and then we can take some public testimony.

Very briefly, we have set out in a memo in your Land Board briefing notebooks the background of this item, but in summary there have been rules in place in this program only since 1975 even though leasing has been going on for many, many years, and those rules are very limited. They deal with weight and measurement and audit procedures. We began in 1987 looking at this program and attempting to clarify some of the exemptions from royalty and we quickly got into a very comprehensive review of the program and you'll see in the history materials that we've come back to the Board twice for rulemaking authority on different aspects to cover the entire gamut of the rules.

Basically, the changes proposed by the rules set forth a complete set of procedures for sand and gravel leasing from application through state agency coordination with local governments, review with interested parties, leasing procedures through auctions when appropriate, payment of royalties, audit

1 procedures, weights and measurements, the whole range of
2 activities needed to carry out a sand and gravel leasing program.
3 Rates are also included in the rules proposed for adoption. The
4 rates prior to this time have been simply a statement of Land
5 Board policy or a rate schedule adopted by the Land Board in
6 1979. They were not ever part of the administrative rules.
7 We're proposing to wrap them into the rules at this time.

8 The rates that are proposed reflect approximately a 50
9 percent increase across the Board and some telescoping of various
10 geographic categories that existed prior to this time. The rates
11 as I explain in the written materials are a process of an
12 extensive market study, survey of the sand and gravel industry,
13 and of other property owners and extensive discussion with
14 affected parties. And I believe it's fair to say that the rates
15 as finally proposed are not encountering significant opposition
16 at this time.

17 I believe that members of the sand and gravel industry
18 may be here and may wish to be heard on the subject of auctions,
19 although I don't see anyone signed up, so that may not be
20 accurate. Two other areas that the rules deal with and that are
21 the subject of comment today have to do with exemptions to
22 royalties.

23 There are certain exemptions in the statutes that are
24 prescribed for royalty-free removal of sand and gravel from
25 state-owned submerged and submersible lands. The area that's

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1 of significant interest today is that removal for use filling,
2 diking or reclaiming lands within a half-mile of the stream for
3 private lands and two miles of the stream for public lands. The
4 rules as proposed in your materials take a fairly narrow
5 interpretation of what constitutes reclamation and they would
6 propose to affect royalties or exact royalties on materials used
7 for filling above the level defined by one foot above ordinary
8 high water. Essentially, royalty-free material would be
9 available to make the lands more dry than wet on a regular annual
10 basis, but above that the material would be subject to royalties
11 at the existing royalty rates.

12 There are some folks here in the audience who would
13 like to be heard on that specific issue going to the question of
14 whether that imposition of royalties is allowed under the terms
15 of the statute given some of the legislative history and
16 interpretative legislative intent. Let me give you the list.

17 GOVERNOR BARBARA ROBERTS: We have it up here, Janet.

18 JANET NEUMAN: You do? Okay.

19 GOVERNOR BARBARA ROBERTS: Yeah. We do have a copy.
20 Let me make a comment to the Board and the audience before we
21 begin. We do have a number of people signed up and two have
22 indicated that they'd like to speak to the Board and testify on
23 this issue. Let me say to the Board before we begin this issue,
24 the section that's dealing with the filling to reclaim provision
25 or provisions that are in the rules, it is my intention when we

1 have finished listening to those who are here to testify and have
2 had a chance to discussion that I intend to ask the Board to move
3 forward on the adoption of the rules but to take those segments
4 out dealing with those filling to reclaim portions and to
5 transfer the final decision on that portion of the rules until
6 the January meeting giving us a chance to look at some
7 alternative solutions and the legal question, so I want you to
8 know that before we begin, but I still think it's very important
9 we listen to the concerns that are being raised on this segment,
10 and I thought it might be useful to know that is my intention as
11 we get to the end of those speaking to us. So, Mike Thorne,
12 would you like to come and talk with us or would you do it even
13 if you don't want to?

14 MIKE THORNE: I'm here by choice.

15 GOVERNOR BARBARA ROBERTS: Good. Welcome. We're glad
16 to have you here.

17 MIKE THORNE: Thank you, Governor Roberts and members
18 of the State Land Board. I have with me today in addition to
19 myself as executive director of the Port of Portland Cory
20 Streisinger, legal counsel, Bill Bach, and Allen Willis
21 (phonetic), both of whom are much more deeply involved in this
22 issue on a daily basis than I am.

23 What I would like to do is provide the Land Board in
24 just a couple minutes my interpretation of the importance of this
25 issue, and then we have people here that are able to and I don't

1 know just how you intend to take advantage of or use them, but
2 I'd like to have them talk more specifically about some of the
3 interpretation if that fits within your agenda.

4 GOVERNOR BARBARA ROBERTS: Fine.

5 MIKE THORNE: Let me say that as I mentioned this is
6 an extremely important issue to the Port of Portland, and at the
7 same time I say that having come from a public body in one sense
8 to dealing with a public body in another sense, I have a good
9 understanding, I hope, of the challenge that we have in those
10 respective roles to try to measure and value and put benefit and
11 cost to what the public's good is in anything that we do.

12 The Port of Portland and other Ports for that matter,
13 but specifically the Port of Portland to which this issue is most
14 important, spends a goodly amount if not all of its time in the
15 arena, in the largest sense, of trying to provide economic
16 benefit to the community that we serve. And I understand at the
17 same time the Land Board has the same type of public interest and
18 responsibility. I say that so that we sort of enter this
19 question from the same point of view. It is our understanding
20 and Cory Streisinger and others will talk to you specifically
21 about the legislative history, but it's our understanding that
22 this issue was dealt with directly in 1961 and it's on the basis
23 of the 1961 legislative decisions that we believe the proposed
24 rules would be at this point in time inappropriate or in
25 violation of what we interpret to be that legislative intent.

1 We have reviewed the specifics of the statutes as well as we've
2 tried to listen to and understand the supporting documents that
3 were presented in general testimony. So our position is that
4 there is a legislative precedent or a legislative decision that
5 was made to basically exempt, if you will, not dissimilar to
6 decisions that we make relative to property taxes or other kind
7 of fees and assessment for a public good, and I would suggest
8 that as we get into this in a little more detail we explore that
9 to its fullest. Let me try to move one step beyond that and talk
10 to you just very quickly about what I think the real policy
11 question is that we're wrestling with.

12 The Port of Portland and other ports and people that
13 are involved in economic development are not in business to
14 make a profit for themselves. I look at what the Port does and
15 essentially because of our existence we cause things to happen.
16 At the airport approximately 600 acres we are the facilitators
17 of a transportation system that allows goods and services, people
18 to move from one point to another. It is amazing to me to
19 observe the direct and tangible economic development that takes
20 place as a result of the airport where it is, it's located where
21 it is to the rising high tech industry in the state of Oregon,
22 and then most telling is the fact that recently Delta Airlines
23 initiated service to nagoya phonetic. They tell us that the
24 seats on those airplanes are 50 percent more used or the level
25 of use is 50 percent ahead of what they projected.

1 You start looking at that sort of thing and you have
2 to ask yourself, well, why does this happen? You know, what's
3 going on that we don't see. The net effect of it is is as a
4 result of the fact that we've got one of the best airport
5 facilities on the West Coast, if not maybe one of the best in the
6 country. We're able to do something that the average passenger
7 doesn't see, and that is we provide for the transportation of
8 cargo. While we're the 25th or 26th largest airport in the
9 nation on terms of passenger boardings, in terms of cargo move
10 we're in the high teens and that is improving and we're growing
11 substantially faster than national trends. It is a way of
12 getting product to market. Why did that all happen? It happened
13 because we were able to provide through filling, if you will, a
14 facility and through some good decisions made by our
15 predecessors, a facility that has capacity to grow and,
16 therefore, serve a greater public good. An economic development
17 role is critical to an industry that's crucial for Oregon's
18 future and the fact that people need to get from point A to point
19 B.

20 Using that same logic for what the Port did at the
21 marine terminals at the rivergate area where many of you are
22 familiar with, the terminals that are closer to the city itself,
23 Terminal 2 and Terminal 4, the same analogy can be drawn. We
24 estimate that if you were to take the value of cargo that moves
25 into the international market stream. And affix of dollar value

1 to just the transportation increment alone, it's somewhere in the
2 neighborhood of \$50 maybe \$60 million a year in terms of
3 transportation benefit that the Oregon shipper would have to pay
4 if those facilities weren't there. If they weren't in place and
5 product had to go to Seattle or Tacoma, for an example, to get
6 on a ship, so the point I'm trying to make is I think the real
7 question that we're wrestling with in this issue is not is the
8 Port taking a profit because it's not paying a fee for some
9 materials that are being used to fill but rather where do we as
10 a Port, you as a member of the Land Board, enter this issue to
11 try to measure the public benefit for what's being done.

12 We're aggressively pursuing an opportunity today that
13 we think is the way land will be used in the future of the Port,
14 and that is to facilitate warehousing capabilities so that we can
15 strike a greater balance between the import and the export cargo
16 moving in and out of the Port. Presently we have a nine to one
17 imbalance, nine exports per one import in containers. And
18 anybody knows that if a marketplace is truly going to be dynamic
19 you can't continue to have that kind of imbalance structure. You
20 have to figure out ways to balance it. We do that by using the
21 land that's available to help provide warehousing so that imports
22 can come in so then Oregon shippers have access to cargo
23 containers going out.

24 So allow me just to stop by saying, then, that to us
25 the issue gets much larger than just do we charge a fee for

1 another four or five million cubic feet of fill that we have
2 planned in the future, but rather what is the value of this
3 activity and who should pay and who should benefit. We've got,
4 as I said, people here to talk to you specifically about the statute
5 if you'd like to. We are encouraged by the fact that you've
6 chosen to delay the issue or the decision on the issue and allow
7 more consideration and hopefully the comments that I've made in
8 terms of the larger issue could be a part of that deliberation.
9 If there are questions I'd be happy to respond.

10 GOVERNOR BARBARA ROBERTS: Are there questions of Mike?
11 Would the Board like to have Cory Streisinger take a few minutes
12 and talk to us about the legal debate that's going on in this
13 issue? That might aid us in hearing that and obviously with
14 relation to that, the Attorney General's Office is here, as
15 always, and I'm sure the comments with regard to the position
16 there so that you can see the questions being raised legally it
17 might be useful for the Board. Cory?

18 CORY STREISINGER: Thank you, Governor, members of the
19 Board. This legal issue is--

20 GOVERNOR BARBARA ROBERTS: Would you identify yourself
21 on the microphone?

22 CORY STREISINGER: I'm Cory Streisinger, general
23 counsel for the Port of Portland. The legal issue that we're
24 dealing with here isn't a new one. And, in fact, the legislation
25 that we are looking at today came on the heels of another lawsuit

1 over the Port's use of fill material without paying royalties.
2 Back in 1960, the Port had been filling rivergate, the airport
3 and some other locations, and the Land Board sued to collect
4 royalties for that use of fill. The statute in place at the time
5 provided for the royalty-free use of material for filling,
6 diking, and reclaiming within one-half mile of the river, but the
7 Port was using fill material beyond that one-half-mile limit.
8 There were some other issues involved in the lawsuit, but
9 basically the Land Board claimed that beyond the one-half-mile
10 limit, and that is key, royalties were due and ultimately the
11 Port lost that lawsuit. But in the meantime, as many public
12 agencies would do faced with that situation, they went to the
13 Legislature.

14 GOVERNOR BARBARA ROBERTS: Gee, what a surprise.

15 CORY STREISINGER: Right. And in the Legislature the
16 case was made that pretty much the same case that Mr. Thorne has
17 made today that this fill activity was important developmental
18 fill activity and that it should be permitted without the payment
19 of royalties, and the legislation which forms the statute which
20 we're looking at today was an amendment adopted at the request
21 of the Port of Portland in 1961. The words used in that
22 amendment, which the Attorney General has now provided some
23 opinions on are the same ones as existed in the statute before
24 '61, that is, filling, diking, and reclaiming land. The proposed
25 amendment, of course, used those same words but extended the

1 geographical limit from one-half mile to two miles. I'd like to
2 make a couple of points about how that relates to the issue
3 today.

4 First of all, what do those words mean and what did the
5 Legislature think they meant? Well, the Legislature had a couple
6 pieces of information in front of it. One of them was this
7 lawsuit pending in which those same words that were at issue at
8 least could arguably been at issue in the one-half mile from the
9 river area, but the Land Board had conceded in the litigation
10 that no royalties were due within one-half mile, so the
11 Legislature looking at that would very logically have assumed
12 that those words meant no royalties, not royalties could be
13 imposed above one foot above the ordinary highwater line, but no
14 royalties.

15 The second issue that the Legislature had to consider
16 was what's the goal? What are we being asked to do? And what
17 they were being asked to do was very clearly allow the
18 development of rivergate and the Portland International Airport,
19 and at that time Mott's (phonetic) Landing, which was not then
20 complete. John Mosser (phonetic), representing the Port,
21 prepared some big maps and brought those into the committee, and,
22 in fact, they are available in the archives today. We went and
23 looked at them, and they have height limitations marked on them
24 to indicate how high the fill was taking place, and it was well
25 above the one foot above the ordinary highwater mark. In fact,

1 fill can't be used usefully to that level because building codes
2 require that fill take place at least to one foot above the
3 100-year flood plain in order to be able to build on it. And at
4 the airport, of course, we also have to conform to existing fill
5 level so that we don't have a bump in the runways, not to mention
6 utility lines which would go in each step fashion.

7 But in any case, the Legislature then had two pieces
8 of information in front of it when it was using those words
9 "filling, diking, and reclaiming." One is how have they been
10 interpreted in the past, and the way they've been interpreted in
11 the past in a half-mile area was no height limit. Limit in terms
12 of distance from the river, but not in terms of how high. And
13 then the other one is what are we intending to do and what
14 Legislature was clearly intending to do was allow the royalty-
15 free - and those words appear in the legislative history - use
16 of fill material for this development.

17 Finally, the Land Board was asked for its position on
18 this legislation. The original draft of the amendment that was
19 presented didn't contain any limits in terms of how far from the
20 river. It simply lifted that one-half-mile limit and removed it.
21 It also didn't contain any limits in terms of who could
22 take advantage of this exception. The Land Board was asked for
23 its opinion and the clerk of the Land Board came in and said, "We
24 have no problem with the legislation. We would support the
25 legislation if it's limited to political subdivisions. We don't

1 like the idea of private enterprise being able to use this
2 material royalty free," so a work group was put together and sent
3 off to come up with some compromise language. The work group
4 then reported back and had composed two limits. One of them was
5 a limit to the use by political subdivisions so that private
6 enterprise couldn't take advantage of it, and the other was the
7 two-mile limit. And if you look at those maps, two miles was
8 pretty obviously drawn so as to include the Port of Portland's
9 development activities, but not indiscriminate activities by the
10 rest of the world. And with that in place, the Land Board
11 supported the bill.

12 The position now being taken, as we understand it by
13 the Attorney General's Office, is that the Land Board
14 nevertheless has the power to intepret that statute, to limit the
15 height of the fill which is provided royalty-free. In our view,
16 that obviously wasn't what the Legislature intended. It wasn't
17 how that language had been interpreted at the time that it was
18 presented to the Legislature for expansion, and it also doesn't
19 make a lot of sense. The words used in the statute are filling,
20 diking, and reclaiming. The interpretation now being advanced
21 is essentially that filling means reclaiming, filling for the
22 purposes of reclaiming from water. In fact, fairly standard
23 principle of statutory construction is that each word in the
24 statute has to be given an independent meaning if possible, and
25 we think "filling" means something different for reclaiming. We

1 think filling when the Legislature was considering the statute
2 meant the common ordinary use of the term, which is making low
3 land higher. This is fill material, and what we do is fill with
4 it. It's not a technical or particularly mysterious concept.

5 So in our view, we're dealing not with an ambiguous
6 statute that leaves a lot of room for administrative
7 interpretation through rulemaking, but rather with the statute
8 that was adopted for a very specific purpose, and that is now on
9 the part of Port of Portland being used for exactly that purpose.
10 The Legislature made a distinction and its policy choice about
11 whether or not the Port's activity should take place
12 royalty-free, and we believe the clear choice was that it should
13 be royalty-free.

14 GOVERNOR BARBARA ROBERTS: Other questions of Cory?
15 Phil?

16 SECRETARY OF STATE PHIL KIESLING: Yeah, Cory, let me
17 posit two legal principles and I want to make sure I understand
18 what your sense of it is. One is that the State Land Board has
19 no power to interpret those words. And the second legal position
20 is that the State Land Board has power to interpret those words,
21 but it cannot interpret them any stricter than what you would
22 consider to be the legislative intent at the time the statute was
23 written. Now, which of those two legal positions is closer -
24 maybe there's a third that I'm not quite getting right - in terms
25 of what you're saying? Because it's a little unclear whether

1 you're saying that there's just no authority at all if someone
2 said, you know, "a private outfit has gone out and they've taken
3 fill and they've built a hill that's 100 feet tall whether you're
4 saying, "Gee, sorry. You don't have any authority to say that
5 that's not a reclamation." Could you elaborate on that?

6 CORY STREISINGER: Yes, Mr. Secretary. I think that
7 there may be some areas where the Land Board has authority to
8 interpret that phrase, but we haven't seen any examples of that.
9 It's a little hard to say in the abstract that the Legislature
10 left room for interpretation, because all we've seen so far is
11 some proposed rules that we are fairly clear--

12 SECRETARY OF STATE PHIL KIESLING: Right. Right.

13 CORY STREISINGER: The Legislature didn't leave room.

14 SECRETARY OF STATE PHIL KIESLING: Which arguably, and
15 you have a strong argument. Arguably the rules are a good deal
16 stricter than the legislative intent which seems to suggest that
17 things well above a foot over ordinary high water were allowed.
18 I guess I'm just - you know, in your mind do we have any legal
19 authority to put any kind of interpretation on it provided that
20 we honor legislative intent, and go back to the 100-foot hill
21 example where someone built a hill out there for whatever reason
22 they decide to do it. You know, are you saying that we wouldn't
23 have authority to say, "Oh, that's going too far"?

24 CORY STREISINGER: I can say, Mr. Secretary, that we
25 wouldn't have any reason to challenge a rule interpreting the

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1 language to mean--

2 SECRETARY OF STATE PHIL KIESLING: Right.

3 CORY STREISINGER: You can't built a hill 100 miles
4 tall, and it's possible that the Land Board could consistent with
5 legislative intent interpret the words "filling, diking, and
6 reclaiming" to mean no mountains.

7 SECRETARY OF STATE PHIL KIESLING: Okay.

8 CORY STREISINGER: That's a question that we haven't
9 looked at.

10 SECRETARY OF STATE PHIL KIESLING: Right.

11 CORY STREISINGER: Because it really exceeds the issue
12 that we've got an interest in.

13 GOVERNOR BARBARA ROBERTS: Other questions?

14 STATE TREASURER TONY MEEKER: Well, Governor, perhaps
15 it would be helpful if the Attorney General would comment at this
16 point. I do have a couple questions, but they may be answered
17 by the Attorney General.

18 GOVERNOR BARBARA ROBERTS: Why don't you go ahead and
19 then lay out the framework from the view of the Attorney
20 General's Office on this issue and then the Board will at least
21 have those two views, and I think it's fair to say two views of
22 the history.

23 BILL COOK: Governor Roberts, members of the Board, I
24 have the luxury of having my colleague, Jane Ard, with me today
25 who has been taking the lead on the issue. I'm going to ask her

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1 to tackle any questions relating to the statute on this
2 legislative history, and I'd be glad to answer any questions you
3 may have about how your general land management obligations may
4 bear on this issue, so I'll pass this onto Jane.

5 GOVERNOR BARBARA ROBERTS: All right. Thank you.

6 JANE ARD: Thank you. Governor Roberts, members of the
7 Board, I have just a couple of comments and then I'll be happy
8 to answer any questions that you have. I'd like to comment first
9 on the meaning of the lawsuit and the concession in the lawsuit
10 in particular.

11 This is a 1962 lawsuit that as Ms. Streisinger has
12 explained to you that was brought by the Land Board and by the
13 Port of Portland. The specific issue in that case was was the
14 Port outside the half-mile limit and did they have to take these
15 beyond the half-mile limit. The court opinion does say that the
16 Land Board conceded. For purposes of that suit I would interpret
17 only that they weren't claiming any right to royalty for any of
18 that material within the half-mile for purposes of that suit.
19 However, I don't think that can be used to interpret the Land
20 Board's acquisition that they had no acquiescence, I suppose.
21 They had no authority to interpret the terms "filling, diking or
22 reclaiming."

23 Second point is that the interpretation, at least as
24 I understood the Port's position was, in the beginning was that
25 really what we were talking about was no discretion. Secretary

1 Keisling's first option that he outlined, that there was no
2 authority to interpret those terms. I think our position would
3 be that the Land Board does have the authority to interpret those
4 terms and can interpret them narrowly if they so choose, and what
5 we would really be talking about then is interpreting the words
6 "filling, diking or reclaiming" to mean something that allows the
7 Port to continue developing at its current levels.

8 When we talk about filling, diking or reclaiming there
9 was a 1956 AG Opinion discussing what those terms meant,
10 "filling, diking, or reclaiming." That also was before the
11 Legislature in the 1961 amendment, and we at that time had
12 determined those terms to be that reclaiming could really be the
13 result and filling and diking could be interpreted to mean that
14 you would be allowed to fill to a level that was above ordinary
15 high water or remove the land from the effects of water or filled
16 it to a certain height, so we do have that as well as the items
17 that Ms. Streisinger has, so I'd be happy to answer any
18 questions.

19 **GOVERNOR BARBARA ROBERTS:** Tony, did you have a
20 question as a result of those comments?

21 **STATE TREASURER TONY MEEKER:** Only an observation. It
22 seems to me that if the Board were to move forward, we might end
23 up in court deciding all this. It certainly sounds that way.
24 The other observation I would make is that it's obvious that the
25 Common School Fund is in partnership with the Port in a sense,

1 and that partnership being that we offer a subsidy to the Port
2 for economic development by not charging anything we charge
3 everybody else. It is clearly a subsidy.

4 I support your idea of a delay because I do think we
5 have kind of a legal nightmare to sort through, but perhaps we
6 could encourage both the Port and AG and staff just as a
7 partnership that if we are indeed going to offer a subsidy and
8 there's commerce that is a result of it, then both the Port and
9 the Common School Fund should benefit from that commerce. If
10 there's a way to over time collect our royalty through some
11 participation and the income that's garnered by both the Port and
12 whatever enterprise occurs, then we will admit our management
13 obligation. Perhaps some long-term rental agreement that covers
14 the royalty, I don't even know if that's legal, but I would
15 certainly hope that there'd be a pursuit from that. We are
16 subsidizing economic activity, but there's been economic gain
17 from that. Say, a business sites on a fill and pays rent. We
18 should participate in that rent in some fashion since we are
19 subsidizing the activity. I don't know if that's possible,
20 Governor, but it is an observation that I would make.

21 GOVERNOR BARBARA ROBERTS: Well, Mr. Treasurer, that
22 was part of the reason for my asking that as we get into the
23 action on this item that we look at the delay of this section not
24 just to look at the legal arguments that are going on, but
25 obviously any time two government bodies are dealing with each

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1 other we can finally settle a legal question without going into
2 court we save the taxpayers' money, we do better government. But
3 secondly, because I--

4 STATE TREASURER TONY MEEKER: Make the lawyers unhappy.

5 GOVERNOR BARBARA ROBERTS: I know. But secondly,
6 because I think we have the ability in this kind of a situation
7 to look at a number of kinds of alternatives that may be more
8 creative and may look at this issue from perspectives we may not
9 have had time to do previous to this being raised as an adoptive
10 part of this rulesetting, so I really have a broader look and I
11 think the thing that the treasurer has mentioned exactly is the
12 kind of creative thinking I want us to do as we look at this
13 issue in addition to the legal questions that are being raised
14 by the issue. Any other questions of either Mr. Thorne or
15 Ms. Streisinger about this--

16 MIKE THORNE: Governor--

17 GOVERNOR BARBARA ROBERTS: Oh, go ahead.

18 MIKE THORNE: Could I just suggest as we think about
19 this that in fact the point that was raised by the treasurer, I
20 believe, is a point that in practice is already happening, and
21 could I give just a quick example?

22 GOVERNOR BARBARA ROBERTS: Go ahead.

23 MIKE THORNE: Think of Mott's Landing or Swan Island
24 as an area that was filled by the Port. We unsuccessfully, but
25 we've had success in the past and we will have in the future bid

1 on a large module project. There's a situation where the Port
2 would have put on ground approximately five million dollars
3 infrastructure. To facilitate the construction of a \$250 million
4 project to which there was an estimated \$60 million payroll and
5 if you round off the State's benefit at 10 percent it's six
6 million direct hit to the income tax system, which, in turn, part
7 helps support the basic school support formula. My point is that
8 in part the investment is being made by the Land Board today as
9 is the investment being made by the Port. Neither of us are
10 taking a return at that moment, but rather creating the
11 opportunity which accomplishes the same objective that we're
12 interested in, I would think, and that's economic activity that
13 can sustain a viable state economy.

14 So, in part, I think our activities jointly contribute
15 to the end result, and I think it was in that vein conceivably
16 that the Legislature what we believe granted the exemption, and
17 while we want to work with the Land Board, I only say that we
18 believe that as we talk about it that I'd like to leave you with
19 the notion that some of what you've suggested, I think in fact,
20 is in place and as a result of the wisdom of granting the
21 exemption, we are creating the opportunity to create a greater
22 gain for the same public that's paying a subsidy.

23 GOVERNOR BARBARA ROBERTS: And the only comment I would
24 make, and I don't think anyone can argue with the economic impact
25 that you've just described, Mike, but I think the difference

1 between the Common School Fund that we always guaranteed to go
2 into the school setting, if you will, with the basic school
3 support formula and the kinds of things that are taking place
4 right now with regard to school funding in this state we aren't
5 guaranteed that the income tax dollars coming off that economic
6 development will reach our schools. And I think the difference
7 between the Common School Fund and basic school support is a very
8 dramatic one right now in our structure, and that may be the
9 distinction that the treasurer was working towards.

10 Are there other questions of - yeah.

11 SECRETARY OF STATE PHIL KIESLING: Well, actually that
12 bears out a question. Was Bill going to address the issue of the
13 connection with our public trust responsibilities with respect
14 to this, because I think that is implicit in this point.

15 GOVERNOR BARBARA ROBERTS: Would you like to do that,
16 Bill, and then we have a couple of other people signed up who are
17 here to testify on this issue.

18 BILL COOK: Sure. Governor Roberts, members of the
19 Board, assuming as we believe is the case that the Board has the
20 discretion to define the terms "filling, diking, and reclaiming"
21 in the statute, I think you look for guidance somewhere and I
22 think you find it first in the constitutional standard that
23 you're familiar with, the greatest benefit of the people
24 standard. It falls on you basically as trustees to determine what
25 values, what public values you want to maximize from these lands.

1 I think another legal guideline you look to is the public trust
2 doctrine and it's a difficult doctrine to get a handle on
3 legally, but I think it could well call on the Board to establish
4 sort of presumption against free use of public trust resources
5 from these lands, a rebuttable presumption, perhaps, but I think
6 it certainly injects into the formula a preference for making
7 some kind of return off those resources.

8 GOVERNOR BARBARA ROBERTS: Mike, do you have others
9 that you would - I notice Allen's name on here, others who are
10 signed up to testify or today have you done what you need for the
11 Port?

12 MIKE THORNE: Governor, we're here to try to respond to
13 the question I think we have where we've tried to tell you where
14 we believe the Port's responsibilities are, vis-a-vis the statute
15 and the wisdom of the Legislature to create the situation that
16 they've created, and I don't believe, unless there's other
17 material that you would want specifically addressed that there's
18 any need for their testimony.

19 GOVERNOR BARBARA ROBERTS: We appreciate you taking the
20 time to do this today. Signed up also to testify, Paul Vogel
21 from the Port of Coos Bay. Paul?

22 PAUL VOGEL: Thank you, Governor, members of the Board.
23 Can't tell you how pleased we are that you're thinking
24 creatively. We got a little bit of a different wrinkle than the
25 Port of Portland's, but no less serious to our Port. If they

1 have 100-foot-high mountain, we have a mole hill, but it's no
2 less important to the Port of Coos Bay relatively speaking.

3 Our issue is, we hope, more simple. We certainly
4 believe it's on a smaller scale. Our analysis certainly is more
5 simple. We don't have the staff and the legal analysis that is
6 going into the Port of Portland's position, and basically it
7 boils down to economics and public purpose, which isn't that much
8 different than the Port of Portland's argument. We are asking
9 for exemption from royalties, and it's not because we want to use
10 the fill for development. That's where we go a different path.
11 This isn't an issue of advantageous use of fill. It's actually
12 an issue, if you'll pardon the phrase, of dredge materials all
13 dressed up and noplacement to go. We have places and strictly public
14 facilities. Multiple users you can't tag or user fee to a
15 specific user. For example, a large commercial and recreational
16 fishing marina, a public shipyard, the only public one on Coos
17 Bay, which must be dredged and the Port - that's the Port's
18 responsibility. Because of the nature of the use of those
19 facilities by and large with the existing regulatory environment,
20 those dredge materials cannot go to ocean disposal as can the
21 dredge materials from the main shipping channel. They must go
22 upland.

23 We hope exercised foresight a couple years ago and
24 bought an 11-acre dredge material disposal site, and that's
25 helped us out a great deal. We haven't had to stop dredging

1 altogether in the marina and the shipyard, but upland disposal
2 sites are scarce, and this one is fairly small, but it's the only
3 one that's feasible in the area. It's strictly for use of
4 dredging these multi-user public facilities and its purchase was
5 predicated on the ability to deposit the materials and then clear
6 the materials out so that we can again do another dredging cycle.

7 The royalty structure given the market conditions for
8 this material in Coos Bay make this activity cost prohibitive.
9 Unlike Portland, we have ample fill material in our area. This
10 stuff tends to be low quality. It is technically contaminated,
11 which is why it went upland in the first place. They're
12 primarily hydrocarbons and once it settles out, that's no longer
13 an issue. It's just something they don't want deposited in the
14 ocean. Once it settles out, it's not a toxicity issue. It's not
15 a hazardous material issue. It's just that the nature and the
16 composition of the material, plus the fact that they were
17 contaminated in the first place don't make them ideal fill
18 material. We have lots of great fill material in Coos Bay. And
19 this is--

20 **GOVERNOR BARBARA ROBERTS:** Maybe you should talk to the
21 Port of Portland.

22 **PAUL VOGEL:** Well, we actually gave that some thought,
23 unfortunately the economics there don't work out either.

24 **SECRETARY OF STATE PHIL KIESLING:** Like towing
25 icebergs.

1 PAUL VOGEL: Exactly. May not be far from it. DSL
2 staff has worked with us to address the issue of the royalty fees
3 and the negotiability, the flexibility and it's our belief that
4 for the amount of material we're talking about for the limited
5 nature of the activity, which is not for fill, but is simply for
6 removal and then liquidating its - however we possibly can that
7 an outright exemption, and even if it were within the two-mile
8 restriction statutorily created for other purposes, we would be
9 fine with that, but having to go back each time and negotiate and
10 make sure that we can negotiate down royalty fee from materials
11 that we can hardly give away is a difficult one for us to accept.
12 It places quite a burden on an agency such as ours.

13 We're talking about 100,000 yards per dredging cycle.
14 The royalty fee on that, I believe, is in the neighborhood of
15 \$39,000 or somewhere in there. And that is not a big drop in the
16 bucket, but it is for us, and we understand that there's a public
17 trust and you're trying to generate revenue based upon use of the
18 State's resources, but this is in our view of racheting the
19 financial burden of this down to local government where it can
20 at least be afforded. The public interest is the object of both
21 of our agency and the agencies represented and the offices
22 represented by the Land Board.

23 We believe that there is a strong philosophy here that
24 state government should be a problem resolver as well as a
25 regulator, and that's why we appeal to the Board to consider

1 our perspective as well as that of the Port of Portland's when
2 you're doing your creative thinking to find a way that a port
3 such as ours, and we're the second largest port in the state, but
4 we are quantumly below Portland. There are ports below us that
5 this could literally put out of business if applied as broadly
6 as the criteria and the rates and the rules are applied, so thank
7 you for your time. Be happy to answer any questions.

8 GOVERNOR BARBARA ROBERTS: Thanks, Paul. Any
9 questions? Clearly is a different perspective than the one from
10 the Port of Portland and useful to us here, Paul, so appreciate
11 your taking the time to come to Salem today and share that with
12 us. Thank you.

13 GREG MCCURDO: is here from the Superintendent of Public
14 Instruction's office to comment on this item.

15 GREG MCCURDO: Thank you. Good morning--

16 GOVERNOR BARBARA ROBERTS: Good morning.

17 GREG MCCURDO: Governor, and members of the Board.
18 I am here to offer perhaps a different perspective than you heard
19 from previous two witnesses.

20 I certainly cannot disagree with Senator Thorne's
21 comments about the importance of the Port of Portland with
22 respect to Oregon's economic situation. And indeed, I can
23 remember when it was very unhealthy to disagree with Senator
24 Thorne previously, but I think there is another side to this
25 client, and I do believe in an educated work force and I think

1 that Mike would agree with me is equally important, I think, to
2 Oregon's economy and particularly in the future.

3 As you're aware in, I believe, it was '77 the statute
4 was changed to dedicate the fees from gravel and sand not to the
5 distributable income account but into the corpus of the trust
6 itself, which is, I believe, the direction this Board has been
7 moving toward, and that is to increase the size of the corpus of
8 it in the future. The amount distributed will be larger, and we
9 don't disagree with that. In light of the fact that the Governor
10 has indicated her intention to postpone any final decision or
11 adoption of these rules, I don't really have much more to say.
12 I think the education community is definitely interested in
13 Mr. Marshall. The Oregon School Board Association is on the road
14 right now or I'm sure would have been here, so we will be
15 watching closely what action you take.

16 Of course, you're well aware that your counsel is the
17 Attorney General and you're very free, then, to go with his
18 recommendations and from our perspective we would prefer a narrow
19 interpretation that's set forth by the Division of State Lands
20 staff, but when this does come back before the Board I'm sure
21 you'll have an organized presentation from the education
22 community.

23 GOVERNOR BARBARA ROBERTS: Thank you. Questions of
24 Greg? Thank you very much.

25 GREG MCCURDO: Thank you.

1 **GOVERNOR BARBARA ROBERTS:** We appreciate your coming
2 today. Is there anyone else who would like to comment on this
3 item that has not had an opportunity to do that? If not, we do
4 need a motion on Item Number 3. I would like to at least then
5 add as an amendment the section or if whoever wants to make an
6 amendment wants to do it that way, I don't know. I mean, the
7 motion. I don't care which way it's done, but I would like - you
8 to notice that in the material that was passed out to you that the
9 item areas that deal with reclaiming provisions are highlighted
10 in yellow on this so that those are the areas that we would need
11 to take out of the rule adoption today and hold for the January
12 meeting, so that is useful to whomever decides to make the motion
13 would have--

14 **SECRETARY OF STATE PHIL KIESLING:** Well, I'd like to
15 take--

16 **STATE TREASURER TONY MEEKER:** Go ahead.

17 **SECRETARY OF STATE PHIL KIESLING:** I'll take a fly at
18 it. I guess it's my turn.

19 **GOVERNOR BARBARA ROBERTS:** Okay.

20 **SECRETARY OF STATE PHIL KIESLING:** I would move
21 adoption of Agenda Item 3 with the amendment that the following
22 will not be adopted but postponed until the January meeting.
23 Item 17 on page 2 of 10, 1(c) through (f) on page 3, item 2 and
24 3 under 141-14-030 on page 4, the fourth paragraph under
25 141-14-050(1) on page 8.

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1 GOVERNOR BARBARA ROBERTS: You heard the motion. Is
2 there a second?

3 SECRETARY OF STATE PHIL KIESLING: I think there's--

4 GOVERNOR BARBARA ROBERTS: Oh, now, did we get it,
5 Janet?

6 STATE TREASURER TONY MEEKER: Seconded.

7 JANET NEUMAN: Yeah. Excuse me, Governor, members of
8 the Board, I just have one comment. On page 6 of that corrected
9 version of the rules, we found one typographical error which we
10 can correct at the same time. In the very first sentence the
11 sentence reads:

12 "A blanket bond in an amount determined by the Division
13 will satisfy bond requirements for any lessee with
multiple royalty leases."

14 The copy in your notebook actually said "multiple royalty rates,"
15 so we want to correct that to read "leases."

16 GOVERNOR BARBARA ROBERTS: Okay. So we are working off
17 this copy--

18 JANET NEUMAN: Yes.

19 GOVERNOR BARBARA ROBERTS: And that would--

20 JANET NEUMAN: In all other respects minus the
21 deletions that Secretary of State just gave it is exactly the
22 same as the proposed version in your packet.

23 GOVERNOR BARBARA ROBERTS: You've heard the motion.
24 It has been seconded. Is there comment on the--

25 STATE TREASURER TONY MEEKER: Governor, just to look

1 why the - Janet or the Attorney General's Office would comment.
2 By leaving this out have we created any kind of a situation where
3 a private activity could go on between now and when the Board
4 makes some kind of a decision on these exemptions, the exempted
5 rules--

6 **JANET NEUMAN:** The portions that are deleted with the
7 passage of that motion include any activity that we would define
8 limitedly as reclamation, and that means that between now and any
9 further question fill activities within a half-mile of the stream
10 by private parties and within two miles of the stream by public
11 bodies are exempt without, you know, further limit as expressed
12 in administrative rules.

13 **STATE TREASURER TONY MEEKER:** Do current administrative
14 rules continue to cover that activity?

15 **JANET NEUMAN:** Current? Well, current administrative
16 rules contain no definition or attempt to exact royalty on
17 filling above any certain level that would be considered
18 reclamation. I mean, filling would continue--

19 **STATE TREASURER TONY MEEKER:** So in other words, we'd
20 only be delaying for another couple - three months?

21 **JANET NEUMAN:** The practice has been going on for
22 years.

23 **STATE TREASURER TONY MEEKER:** The practice has been
24 going on since statehood?

25 **JANET NEUMAN:** Correct.

1 GOVERNOR BARBARA ROBERTS: Where the status quo was the
2 segments that we are talking about removing here, so it would not
3 stop any activity--

4 JANET NEUMAN: Correct.

5 GOVERNOR BARBARA ROBERTS: It would just leave it at
6 the status quo.

7 STATE TREASURER TONY MEEKER: I guess it isn't going
8 to matter if we wait another four months, then?

9 JANET NEUMAN: It doesn't assess royalties on anyone
10 who hasn't been paying royalties before.

11 SECRETARY OF STATE PHIL KIESLING: Isn't there a
12 project to build that like 300-foot hill with a tramway within
13 100 feet--

14 JANET NEUMAN: We'll find one--

15 SECRETARY OF STATE PHIL KIESLING: Of the Columbia
16 River?

17 JANET NEUMAN: Between now and January.

18 GOVERNOR BARBARA ROBERTS: In Portland?

19 JANET NEUMAN: I would like to say just one statement
20 in clarification just to make sure that the issues are clearly
21 understood as to the difference between the Port of Portland's
22 testimony and the Port of Coos Bay. It is true that we have
23 discussed the Port of Coos Bay's issue at length with them and
24 we put a provision into the proposed rules which we believe takes
25 care of their concern, which is on the very last page of the

1 rules, Section 6, and that provision gives us the flexibility to
2 negotiate a special royalty rate when it is required to move
3 dredge spoil materials to make room for additional space for a
4 deposition, and I might point out that the difference there is
5 that the statute itself says you get to remove these things for
6 channel maintenance, and they're exempt, but if you remove them
7 from the place deposited and sell them or use them as an article
8 of commerce, then you pay royalty. And so we felt in that
9 instance in particular we're starting with a very clear statutory
10 directive that that stuff was not supposed to be exempt once it
11 went away from just being dredge spoils. We think we've made an
12 appropriate accommodation to say there may be situations where
13 they're not selling them or using them as an article of commerce
14 in the first instance. They're just trying to get them out of
15 the way so they can put more in. And I take Mr. Vogel's
16 testimony today to mean that they appreciate that provision, but
17 they're not comfortable, but it gives them enough satisfaction
18 or guarantee that they'll be able to do some of this royalty-
19 free.

20 **SECRETARY OF STATE PHIL KIESLING:** One clarification--

21 **GOVERNOR BARBARA ROBERTS:** Yes.

22 **SECRETARY OF STATE PHIL KIESLING:** Madam Chair. Janet,
23 is what you're saying is that given the statutory language we
24 might not be able even if we thought it made lots of common sense
25 to do the outright exemption if to the extent that there may be

1 a case to go that route or something even stronger, we might want
2 to visit the Legislature with it--

3 JANET NEUMAN: I think that's--

4 SECRETARY OF STATE PHIL KIESLING: The next
5 opportunity.

6 JANET NEUMAN: I think that may be correct. I think
7 it's just an issue that I want us all to be aware of as we go
8 into the next--

9 SECRETARY OF STATE PHIL KIESLING: Right.

10 JANET NEUMAN: Four months of discussion with the
11 different ports that are affected by this provision.

12 SECRETARY OF STATE PHIL KIESLING: All right.

13 GOVERNOR BARBARA ROBERTS: Other comments before we
14 take action? If not, those in favor of the amended version of
15 the Item 3 will indicate by saying aye; those opposed, nay.
16 Motion is passed as amended. Item Number 4, Janet.

17 JANET NEUMAN: Thank you.

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AGENDA ITEM NO. 4

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JANET NEUMAN: Item Number 4 is a request by Pacific Gas and Electric Company to place fill material in - or excuse me, to alter material within the scenic waterway section of the John Day River for construction and placement of a gas transmission pipeline. I believe someone from the company is signed up today to testify if you wish to hear testimony or if you have questions. This is a fairly straightfoward request to do construction in the scenic waterway section. Of course, the Board has to approve that because of the scenic waterway law, but there was no substantial opposition or no opposition of any kind to this request and it has not engendered any comments.

13

GOVERNOR BARBARA ROBERTS: My understanding of the two people who have signed up is they're here if we need to hear from them, but they don't wish to testify unless we need to hear from them, is that correct?

17

UNIDENTIFIED MALE VOICE: Correct.

18

GOVERNOR BARBARA ROBERTS: Thank you. Is there a motion or further information required by the Board?

20

STATE TREASURER TONY MEEKER: I would move we approve Item 4.

22

GOVERNOR BARBARA ROBERTS: It's been moved.

23

SECRETARY OF STATE PHIL KIESLING: Second.

24

GOVERNOR BARBARA ROBERTS: And seconded we approve Item Number 4. Is there discussion? Hearing none, those in-favor

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1 will signify by saying aye; those opposed, nay. Motion is
2 passed. Thank you very much. We have before us Item Number 5.
3 Janet?

4 JANET NEUMAN: Thank you.

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AGENDA ITEM NO. 5

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2 JANET NEUMAN: Item Number 5 is a proposed
3 administrative rule closing a state-owned river bar on the
4 McKenzie river near Eugene across from the Armitage State Park
5 to overnight camping and motor vehicle use other than boat
6 traffic. As the materials in your notebook show, we learned
7 about this site from the Oregon State Police who asked us to do
8 something in terms of better management of our property because
9 of a substantial community of squatters living on the property
10 and because of 57 law enforcement calls to the site during the
11 three-month period of May, June and July of this year. We have
12 discussed to some extent with your staff the issue of - that
13 there may be actually homeless people using this site as a living
14 space, and what we intend to do is to work carefully with some
15 Social Service personnel in effecting the closure of the property
16 so that we're not simply posting it and arresting people who are
17 not there because of criminal activity but, in fact, there
18 because they don't have a place to live. So this is a little
19 different than the Dibly Point closure the Board worked on some
20 years ago, which involved basically retired fishermen in campers
21 who were fairly well often who had just found a good fishing
22 space to live. This involves--

23 STATE TREASURER TONY MEEKER: They weren't retired.

24 JANET NEUMAN: They weren't retired.

25 STATE TREASURER TONY MEEKER: They were permanent.

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1 GOVERNOR BARBARA ROBERTS: They were retired but not
2 from fishing.

3 JANET NEUMAN: That's right. In that particular
4 instance, all we felt was necessary was a posting of the new
5 closure rule and enforcement by local law enforcement
6 authorities, and we had no trouble with that provision and no bad
7 ramifications. In this instance we feel like we have to handle
8 it a little more carefully and we intend to do that.

9 GOVERNOR BARBARA ROBERTS: I would like to comment to
10 the Board before we move forward on this item. There is a fairly
11 serious homeless problem in Eugene. It is growing and it is not
12 accommodated and it is very difficult. I would like us to
13 understand clearly that there are two issues going on apparently
14 with those people who are living at the site on the McKenzie
15 River. Those who are there who have other kinds of activities
16 going on that are clearly illegal, they create a law enforcement
17 problem, those who are there because there's not alternatives,
18 Social Services or housing in Eugene that accommodated those -
19 at least - and some of these are families, by the way, who are
20 there.

21 I think because those two issues exist we have asked
22 Social Services to begin to see what they can do with those who
23 are there who are literally homeless and they're not involved in
24 criminal activities. The criminal activity one creates a problem
25 and that's the one we're attempting to solve, and we do have the

1 ability to go in and make arrests and do other things in the
2 setting of illegal activity, but because of Social Services,
3 which is so difficult there, one of the things I had suggested
4 to Janet is that we look at actually putting an effective date
5 on this--

6 STATE TREASURER TONY MEEKER: Right.

7 GOVERNOR BARBARA ROBERTS: Issue so that we have
8 clearly sent to Eugene and to the Social Services programs there
9 in their county, city and state, this needs to be resolved.
10 We've only got until some date like November 1 to get it done.
11 That allows us time to begin the posting purposes for those who
12 need to leave for other purposes because the illegal activity
13 needs to be noncongregated, but it still allows us time for those
14 Social Service agencies in the Eugene area that are very heavily
15 taxed right now in terms of service needs to be able to have time
16 to accommodate the population that's living there who are, in
17 fact, homeless. So I'd like us to weigh those as we look at
18 those issues. Mr. Treasurer?

19 STATE TREASURER TONY MEEKER: Couple questions. As the
20 weather changes, what happens to these sites? Do they get
21 covered up with water perhaps later on in the year?

22 JANET NEUMAN: A good portion of this site will, in
23 fact, become inundated. I mean, we own it because it is in
24 effect a submersible river bar. I'm not quite sure given the
25 years of drought we've had at least in some parts of our state

1 whether this is a year when we'll have a completely wet site,
2 which may make the problem moot during the wintertime, but, yes,
3 a good portion of this site does go under water.

4 **STATE TREASURER TONY MEEKER:** Another question is one
5 of legal liability. We have - since those people are on our
6 land, if something were to happen there, do we end up being
7 liable?

8 **JANET NEUMAN:** Bill?

9 **BILL COOK:** Governor Roberts, members of the Board, I
10 haven't had a chance to review what kinds of activities allegedly
11 have been going on. My conservative legal advice would be there
12 may well be some kind of liability, but I haven't assessed it.

13 **GOVERNOR BARBARA ROBERTS:** And the people who are
14 housed or many of them - "house" is a very unusual term in this
15 case - have been there for some months. I mean, this is not a
16 new congregation of people living there. They have been there
17 for some time and the illegal activities have presented problems
18 with the police department and the State Police, and that's how
19 it came to our attention, but the homeless population prior to
20 the illegal activity problem were there as well. I have only one
21 thing to say in question, that the weather will change a number
22 of people who are there. The water will change if it comes up,
23 the number of people who are there.

24 My only concern is before that water rises and before
25 the weather becomes really inclement we still have a period of

1 time here where we've got families down there on the river
2 living, and what I want to do is to at least look at whether an
3 effective date will allow us time to deal with that population
4 and obviously the police may continue - have to deal with the
5 other population that exists there. It doesn't mean a notice
6 couldn't be posted saying, "As of this date this will" - you
7 know, but my major concern is the social service agencies having
8 time to deal with that population. So--

9 SECRETARY OF STATE PHIL KIESLING: Is a motion in
10 order?

11 GOVERNOR BARBARA ROBERTS: Yes, it is.

12 SECRETARY OF STATE PHIL KIESLING: I would move
13 adoption of Item 5 with an amendment that the effective date be
14 posted as November--

15 GOVERNOR BARBARA ROBERTS: Janet, in dealing with the
16 social services do you think November 1 would give us - that
17 basically gives us about six weeks.

18 JANET NEUMAN: I think that's an appropriate time
19 period.

20 SECRETARY OF STATE PHIL KIESLING: 1991.

21 GOVERNOR BARBARA ROBERTS: Is there a second?

22 STATE TREASURER TONY MEEKER: Second.

23 GOVERNOR BARBARA ROBERTS: It's been moved and seconded
24 that we pass Item Number 5, the administrative rule, with an
25 effective date of November 1, 1991. Further discussion? If not,

1 those in favor will signify by saying aye; those opposed, nay.
2 Motion is passed. Item Number 6 is our Consent Agenda. Is there
3 anyone who wishes to have any one of the Items A through F on
4 number 6 on the Consent Agenda set aside for discussion or action
5 separately from the Consent Agenda? If not, I would accept it--

6 JANET NEUMAN: Okay. I have one comment.

7 GOVERNOR BARBARA ROBERTS: Oh, Janet?

8 JANET NEUMAN: Because our August meeting had to be
9 cancelled, the E Board requests Item Number 6A actually went to
10 the E Board for consideration on September 5, last week, and they
11 approved it except for the amount of \$150,000 that was requested
12 for open-ended receipt of federal grants that, you know, nothing
13 that we had applied for yet. We were trying to get some ability
14 to respond to short-term, short time line federal grant
15 availability and the E Board was not willing to let go of that
16 oversight responsibility, but the remainder of their request was
17 approved.

18 GOVERNOR BARBARA ROBERTS: Now, does that mean you need
19 to alter Item Number 6A?

20 JANET NEUMAN: Actually the materials you have have
21 been stated in terms of ratification, so the motion on the
22 Consent Agenda does what it needs to do.

23 GOVERNOR BARBARA ROBERTS: Okay. If there is no one
24 who wishes to - removing of these items from the Consent Agenda,
25 I would accept a motion.

1 **SECRETARY OF STATE PHIL KIESLING:** Madam Chair, I move
2 the adoption of the Consent Agenda.

3 **STATE TREASURER TONY MEEKER:** Second.

4 **GOVERNOR BARBARA ROBERTS:** It's been moved and seconded
5 that we accept the Consent Agenda. Those in favor will signify
6 by saying aye. That is done. We have before us two information
7 items, I believe?

8 **JANET NEUMAN:** Yes. I will make this discussion very
9 brief.

10 You have written materials before you on informational
11 items 7A and that is simply for your own use because of the
12 national interest and press interest in the change in federal
13 policy on wetlands delineation. We prepared materials for you
14 just explaining where we are in this process. We are
15 coordinating state responses to the revised federal wetland
16 delineation manual that was published in the Federal Register in
17 mid-August, and those comments are due on October 15, so we're
18 working with state agencies, with local governments, and with
19 consultants to get together a unified set of responses to that
20 revised manual.

21 Part of what we're doing to obtain that material is we
22 have two short-term, small amount personal service contracts we
23 have let to individuals to help us do a technical comparison of
24 the old manual and the new manual in certain technical criteria,
25 and we're also doing some field testing of the manual in areas

1 where delineations had been done under the previous manual and
2 how would those delineations change under the revised manuals so
3 that we can really have a good set of comments to go to the
4 federal government.

5 In the meantime, we have elected by staff discussion
6 to continue using the 1989 federal manual for our own delineation
7 purposes. Meanwhile, Congress has prohibited the Corps of
8 Engineers from using that manual through an appropriations bill
9 and that adds confusion to the picture. We carefully considered
10 that and felt like it was still appropriate to use the 1989
11 manual because it has so much more explicit detail in how to make
12 field determinations on wetlands. We think and we hope that the
13 determinations made by us and the Corps during this interim
14 period will not be materially different because most of those
15 folks are really used to using the 1989 manual and they will
16 probably read between the lines and fill in the blanks from their
17 current experience when they go back to the more sketchy 1987
18 manual. But we've put out that word to people that that's what
19 we're going to do and haven't had any negative comment to that
20 effect.

21 So this is just a briefing for you to use because you
22 may get questions about it from other sources.

23 **GOVERNOR BARBARA ROBERTS:** Okay. Tony?

24 **STATE TREASURER TONY MEEKER:** Governor, what was the
25 philosophy behind the Congressional line?

1 GOVERNOR BARBARA ROBERTS: You think there is one?

2 JANET NEUMAN: Do I have to answer that?

3 STATE TREASURER TONY MEEKER: There must have been some
4 at least.

5 JANET NEUMAN: There's a lot of anger or there's a lot
6 of move afoot in Congress to go after this whole wetlands issue
7 and to limit what has been considered wetlands for jurisdictional
8 purposes, and I think it's just one aspect of some of that
9 political attack on a broad definition of what constitutes
10 wetlands, and there's a feeling that the 1989 manual went too
11 far.

12 STATE TREASURER TONY MEEKER: Oh, okay.

13 JANET NEUMAN: And so--

14 STATE TREASURER TONY MEEKER: That was my interest is
15 the--

16 JANET NEUMAN: Yeah. Sticking--

17 STATE TREASURER TONY MEEKER: Which direction are we
18 going?

19 JANET NEUMAN: Right. They're trying to go back.

20 Last thing is informational item 7B and that is just
21 a very quick description of what we're doing as part of the
22 Measure 5 review process that's going on. Of course, all
23 agencies are being required to do an internal program review.
24 You don't have any written materials on this.

25 GOVERNOR BARBARA ROBERTS: No.

1 JANET NEUMAN: And I just wanted to let you know what
2 we're doing as staff. We have engaged in a complete internal
3 review, all staff review, section by section, analyzing our
4 programs and trying to answer the specific questions that have
5 been given to us by the executive department for ranking and
6 prioritizing and proposing 25 percent reductions in our budgets
7 and the instruction, of course, that the exec department is using
8 is that source of funds at this point is not determinative and
9 so even though we are Common School funded, we are going through
10 the same exercise as all other agencies. The deputy director,
11 Gus Gustafson (phonetic), and I are in the process of reviewing
12 all the materials developed by staff and trying to bring it
13 together into a whole.

14 And then we're going to participate with an external
15 review panel that's made up of some individuals who either have
16 contact with us or whom we think bring a good perspective to this
17 issue whether or not they've got dealings with the Division of
18 State Lands.

19 In a couple of weeks we intend to go over the results
20 of our internal program review with that body kind of as a dry
21 run for going to the program review subcommittee which, of
22 course, consists of all non-natural resource people, and we're
23 scheduled for October 22 for that review.

24 Of course, Martha is heavily involved in taking all the
25 natural resource agencies through that program review. It's

1 obviously a painful process for everyone, but we think we've had
2 a lot of good input from staff and we will probably share more
3 of those specific ideas with you as time goes on, because you may
4 have some thoughts about how we prioritize programs, so stay
5 tuned.

6 GOVERNOR BARBARA ROBERTS: Other questions, comments?

7 SECRETARY OF STATE PHIL KIESLING: Wonder why they did
8 it October 22. I've got to go up September 16.

9 GOVERNOR BARBARA ROBERTS: I don't know why that is,
10 though. It's just because they know you haven't been very busy
11 lately. Yeah. And they thought that because you'd been sort of
12 sitting over there twiddling your thumbs--

13 SECRETARY OF STATE PHIL KIESLING: That's--

14 GOVERNOR BARBARA ROBERTS: You'd move forward on this.
15 Yes. I don't know. Maybe you can get them to change places,
16 you know. I don't think Janet is going to do that.

17 SECRETARY OF STATE PHIL KIESLING: I don't want to do
18 that.

19 GOVERNOR BARBARA ROBERTS: Anything else, Janet, that
20 needs to come before the Board?

21 JANET NEUMAN: No, that is the entire agenda, thank
22 you.

23 GOVERNOR BARBARA ROBERTS: Okay. And thank you and
24 thank those in our audience who are here listening for whatever
25 purpose today. We're delighted to have you here. Is there a

1 motion to adjourn?

2 SECRETARY OF STATE PHIL KIESLING: I move.

3 STATE TREASURER TONY MEEKER: Seconded.

4 GOVERNOR BARBARA ROBERTS: Moved and seconded, we are
5 adjourned.

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CERTIFICATE

I, RUTHEY HAGER, hereby certify that I am a transcribing machine operator for Business Support Services of Salem, Inc., that as such transcribing machine operator I prepared from a mechanical recording the foregoing typewritten transcript of the proceedings had upon the meeting of the State Land Board at the time and place set forth above and that the foregoing pages; which are numbered 1 through 54, both inclusive, contain a full, true and correct record of all the proceedings held.

WITNESS my hand as transcribing machine operator this 16th day of September 1991.

Ruthey Hager / dsj
Transcribing Machine Operator

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