
DIVISION OF
STATE LANDS

STATE LAND BOARD

BARBARA ROBERTS
Governor
PHIL KEISLING
Secretary of State
ANTHONY MEEKER
State Treasurer

The Oregon State Land Board met in regular session on September 10, 1991, at 10:00 a.m. in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon, 97310.

Present were:

Barbara Roberts	Governor
Phil Keisling	Secretary of State
Tony Meeker	State Treasurer

<u>Assistants</u>	<u>Dept. of Justice</u>	<u>Staff</u>
Martha Pagel Nina Johnson Michael Ryan	Bill Cook	Janet Neuman Gary Gustafson Earle Johnson Gary Van Horn Steve Purchase agency staff

The meeting was called to order by Governor Roberts. The topics discussed and the results of those discussions are listed as follows. Further details of the discussions may be obtained in the written transcript of the meeting available at the Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310.

Administrative Rules Request to adopt amendments to administrative rules for the removal-fill permit program including several definitions, as well as general authorizations for small erosion control and construction projects.



Director Neuman introduced this item, explaining that this is the third in a series of revisions to these rules that the Board has had before them. She told the Board that extensive revision and discussion of the rules with various interest groups and commenting parties has taken place. She also explained that a couple of clerical and editorial changes had occurred since the Board received their briefing materials. These changes were given to the Board at the meeting.

Secretary of State Keisling moved the item be approved including the modifications to pages 12 and 13 of those rules. Treasurer Meeker seconded the motion, and the approval was unanimous.

Administrative Rules Request to initiate rulemaking on administrative rules for the wetland management program to provide guidance for local wetland inventories.

Director Neuman introduced this request to begin rulemaking to outline standard procedures for local governments to follow in preparing detailed wetland inventories.

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

Administrative Rules Request for adoption of administrative rules governing the leasing and royalty requirements for the removal of sand and gravel from state-owned submerged and submersible lands.

Director Neuman introduced this item. She told the Board that, although the Division has administered this program since 1969, there have been only a few formal administrative rules in place since 1975. The current rules are very limited, dealing basically with weighing and audit procedures. She explained that the proposed rules are a complete set of procedures for the sand and gravel leasing program, covering the application process, state agency coordination with local governments, review with interested parties, auction procedures, payment of royalties, audit procedures, weights and measurements, etc. Royalty rates have also been included in the rules proposed for adoption. Prior to this, rates weren't set by rule, but by Land Board policy. The rates proposed are an approximate 50 percent increase. No significant opposition to the proposed rate increase has been encountered.

Some individuals asked to be heard regarding exemptions in the statutes prescribed for royalty-free removal of sand and gravel from state-owned submerged and submersible lands when used for reclamation. Governor Roberts stated that her intention was to request the Board move forward on the adoption of the rules, excluding the segments dealing with reclamation. She would ask that a decision on that portion of the rules be deferred until the January meeting, allowing the Board time to consider alternate solutions and to deal with any legal questions.

Mike Thorne, Executive Director of the Port of Portland, stressed the use of royalty-free materials as being very important to the Port. He explained that the Port of Portland, like other ports, is not in the business of profit making, but rather economic development for the public benefit. He outlined several projects benefitting the general public today, accomplished by the Port with the use of royalty-free materials.

Cory Streisinger, general counsel for the Port of Portland, reminded the Board that the 1961 Legislature extended the geographical limit of royalty-free material for filling, diking and reclaiming from 1/2 mile to 2 miles from the river for public entities. She commented that the Legislature knew that the words "filling, diking, and reclaiming," when they applied to the previous 1/2-mile limit, had not been interpreted to limit the height of the fill which was provided royalty free. She also noted the purpose or the intention of the allowance was for development, which, she said, couldn't occur at the level of one foot above ordinary high water, the height limit for royalty-free use of materials as proposed in the rules today. Ms. Streisinger suggested that fill material couldn't be useful for development unless allowed to one foot above the one hundred year floodplain. She indicated that the legislation was adopted for a very specific purpose, and was not open for administrative interpretation through rulemaking.

Assistant Attorney General Jane Ard commented on the meaning of a 1962 lawsuit over some of the same issues. She stated that the Land Board does have the authority to narrowly interpret the statutory terms such as "reclaim," if they so choose. A 1956 AG Opinion discussed what the terms, "filling, diking, and reclaiming" meant. At that time, she stated, it was determined that reclaiming could really be the result, and filling and diking could be interpreted as the means by which you would be allowed to fill to a level that was above ordinary high water to remove the land from the effects of water or fill it to a certain height.

State Treasurer Meeker stated that if commerce results from the Port's activities with the royalty materials they are using, that both the Port and the Common School Fund should benefit. Since the Board is subsidizing the activity, it should gain from any profits.

Governor Roberts said that while rulemaking is being delayed on the reclamation portion of the rules, this time should be used for creative thinking and developing alternatives, as well as investigating the legal issues involved.

Assistant Attorney Bill Cook said that, assuming the Board has the discretion to define the terms "filling, diking, and reclaiming," the Board must look for guidance to the constitutional standard of the greatest benefit to the people. It is the Board's responsibility, as trustees of the Common School Fund, to determine what public values they want to maximize from these lands. The other legal guidance would be the public trust doctrine, which gives a preference for making some kind of return off those resources.

Paul Vogel, Manager of the Port of Coos Bay, told the Board they are requesting exemption from royalties for a different reason than the Port of Portland. The Port must dredge the fishing marina and public shipyard on Coos Bay. These dredge materials, since technically contaminated, cannot go to ocean disposal but must go upland. An 11-acre site was purchased by the Port to dispose of these materials until the hydrocarbons settle out. The materials must then be cleared out before the next dredging season. Mr. Vogel said they don't want to negotiate a royalty fee each time for these dredge materials that they can barely give away. Their average dredging cycle produces 100,000 yards, translating to approximately \$39,000 in royalties. To require the Port to pay this, he said, is racheting a financial burden down to local government, where it can least be afforded.

Greg McMurdo, Department of Education, said he would prefer the narrow definition of the terms as set forth by the Division of State Lands. He said the educational community is very interested in the issue, and will have an organized presentation when the rules come before the Board again in January.

Secretary of State Keisling moved the request be approved with the exception of those portions of the rules dealing with reclamation. Director Neuman pointed out a typographical error which she asked to have corrected at this time on page 6, where the word "rates" should have been "leases." This correction was accepted in the motion. State Treasurer Meeker seconded the motion, and the approval was unanimous.

Scenic Waterway Request by Pacific Gas Transmission Company/Pacific Gas and Electric Company to alter up to 1,750 cubic yards of material for the placement of a 42" natural gas pipeline across a scenic waterway section of the John Day River.

Director Neuman introduced this item, pointing out that there was no opposition to the project, but because the location was in a scenic waterway, the Board must approve it.

State Treasurer Meeker moved the request be approved. Secretary of State Keisling seconded the motion, and the approval was unanimous.

Administrative Rules Request for approval of an administrative rule prohibiting overnight camping and motor vehicle use on state land along the McKenzie River.

Director Neuman introduced this item. She stated the Oregon State Police had made the agency aware of a substantial community of squatters on the property. During the period of May through July, 57 law enforcement calls were made to the site.

Governor Roberts commented that there is a fairly serious homeless problem in the Eugene area. She clarified that two issues are going on with the people living at the site. There are those who have activities going on that are clearly illegal, then there are those who are not involved in illegal activities, but are there simply because they don't have housing. She stated that the social services people in the Eugene area have been contacted to begin to see what alternatives can be found for those who are literally homeless. To enable these agencies to have time to work on this problem, she suggested an effective date of November 1 be set for this rulemaking to go into effect.

State Treasurer Meeker asked what will happen to the site when the weather changes. He also asked about the legal liabilities of the state, if something were to happen to individuals living there, since it is property owned by the state. Director Neuman responded that a good portion of the site will be submerged during the winter. Assistant Attorney General Bill Cook responded that he hasn't reviewed the activities happening there. He said there may be some kind of liability, but he hasn't assessed it yet.

Secretary of State Keisling moved the item be approved with the addition of an effective date of November 1 being added to the rulemaking. State Treasurer Meeker seconded the motion and the approval was unanimous.

Consent Agenda

- Emergency Board** Request for approval to accept federal grant monies and seek Legislative Emergency Board approval for a related expenditure limitation increase to fund management, research, and education projects at the South Slough National Estuarine Research Reserve.
- Treasure Trove** Request to extend the existing moratorium on issuance of treasure trove permits on land managed by the State Land Board.
- Easement** Request by Pacific Gas Transmission Company/Pacific Gas and Electric Company for three perpetual gas pipeline easements crossing the John Day, Williamson, and Lost Rivers.
- Easement** Request by the City of Harrisburg for a perpetual easement to place a sewer outfall in the Willamette River near Harrisburg.
- Scenic Waterway** Request by the USDA Forest Service, Long Creek Ranger District for approval to place fill material in the Middle Fork John Day River Scenic Waterway to improve streambank stability in the Deerhorn Campground.
- Minutes** Request for approval of July 9, 1991, State Land Board minutes.

Secretary of State Keisling moved the consent agenda be approved. State Treasurer Meeker seconded the motion, and the approval was unanimous.

Federal Wetland Delineation Manual

Director Neuman informed the Board that the Division is working with other state agencies, local governments and consultants to prepare a unified set of responses to the revised federal policy manual on wetland delineation that

was published in the Federal Register in August. An informational item was prepared and presented at the Land Board meeting, outlining why the agency has decided to continue using the 1989 federal manual for wetland delineation.

Measure 5 Program Review Summary

Director Neuman discussed the internal review process the agency has been through in its response to the Executive Department's request for ranking, prioritizing and proposing a 25 percent reduction in our budget. She explained that the Division of State Lands is scheduled to appear before the program review committee on October 22 to present the review to them.

The meeting was adjourned.

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