

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 February 11, 1992, 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 Steve Smith	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 (phone: 378-3805).



Minutes Request for approval of regular session minutes of the January 28, 1992, Land Board meeting.

Secretary of State Keisling made a motion that the minutes be approved. State Treasurer Meeker seconded the motion and the approval was unanimous.

Minutes Request for approval of the executive session minutes of the January 28, 1992, Land Board meeting.

Secretary of State Keisling made a motion that the executive session minutes be approved. State Treasurer Meeker seconded the motion and the approval was unanimous.

Timber Sales Update on progress to proceed with prepared and planned timber sales within the Elliott State Forest which complies with the State Land Board's motion of December 10, 1991.

Director Neuman introduced this item, stating this is a follow-up on the directions given to the staff of the Division of State Lands, Department of Fish and Wildlife, and the Department of Forestry at the December 10, 1991, Land Board meeting. During this meeting the Board discussed the owl surveys done the prior summer on the Elliott State Forest, the requirements of federal and state endangered species laws and how these would affect planned and prepared timber sales, and long-range management plans for the forest.

State Treasurer Tony Meeker asked if the motion that was approved at the December meeting to move forward with one-quarter of the prepared sales had been carried through. Director Neuman replied that the instruction from the Board in December was to review the prepared sales and move ahead with one-quarter of the prepared sales--those that would have the least impact on preserving our long-range management options. This was an attempt to deliver us from the circle paradigm system of management. She reported that this review has been taking place and is still in process, and that several sales are close to being released.

Deputy Director Gary Gustafson said that after the December meeting, he met with representatives from Forestry, Department of Fish and Wildlife, and the Department of Justice to begin implementing the Board's instructions on this motion. This group reviewed the

existing contract between the Department of Forestry and the State Land Board for management of the Elliott, as well as the existing Department of Forestry Long-Range Management Plan for the Elliott. Briefings were also received from experts relating to the requirements of the Federal Endangered Species Act, the State Endangered Species Act, status of the spotted owl protection and recovery efforts, the U.S. Forest Service Spotted Owl Management Environmental Impact Statement, and the U.S. Fish and Wildlife Service Owl Take Guidelines.

At the time of the December Land Board motion, Forestry had 15 prepared timber sales in process totaling approximately 51.6 mmbf. At this time, he said, there are 257 acres constituting 13.1 mmbf that can be marketed within the next one to four months. Two other prepared sales totaling about 3.4 mmbf are expected to be released within the next few months, if some additional information that is required shows no conflict.

He reported that Forestry has 11 other planned timber sales totaling approximately 20 mmbf scheduled for the remainder of 1992 and 1993. Forestry and the Department of Fish and Wildlife will begin their review and consultation of these planned sales under the Board's motion and in accord with other requirements and proceed to market immediately those which do not violate the State Endangered Species Act or the intent of the Board's motion.

Gustafson reported that periodic updates will be given to the Board as additional sales are reviewed.

State Treasurer Meeker asked about the Attorney General's advice on determining the application of the Endangered Species Act to the Elliott State Forest. He distributed copies of Attorney General Opinion #8201, dated April 10, 1989, and copies of ORS 530.490. He stated that these show the Land Board and the Forestry Department have the power of management to maximize revenue to which these lands are dedicated, notwithstanding the provisions of any other law or authority granted. He asked whether the Attorney General has issued a new opinion regarding use of these lands.

Assistant Attorney Bill Cook agreed with State Treasurer Meeker that the traditional opinion has been that the Land Board has the ultimate policy authority and that the trust obligation requires revenue maximization. He said that in recent years, there have been authorities that have called this theory into question. He said it would be prudent to have the Attorney General's office again analyze the theory in the light of new court cases.

Director Neuman reiterated that more than a quarter of the prepared sales are moving forward as the Board had requested, and the rest are in various stages of examination to be considered in the future.

Long-Range Management Plan

Gustafson said the second task to be implemented from the Board's motion made in December 1991, was to complete a preliminary analysis of options in a proposed time frame for a new long-range management plan. He said the same team looked at a number of options, rejecting those which didn't appear compatible with the Board's motion. The results were a recommendation that a plan be developed using a landscape based management-type process whereby a range of opportunities would be explored, including a review of the sustained yield objectives and harvest rotation cycle, alternate uses of land in the Elliott including recreation, mining, watershed enhancement, growth and harvest of Pacific Yew, and habitat protection to the extent that it is required under state and federal law. He said all this would be influenced by ongoing, outside processes like the federal recovery plan, the Forest Service's final EIS on owl management, the US Forest Service's revised take guidelines, and the Department of Fish and Wildlife's second year of owl surveys.

State Treasurer Meeker expressed his concern that the Board has a mandate under the Constitution as well as current legal requirements to manage the land to produce revenue. He feels we are rejecting options and not moving forward with our legal requirements. He considers not following that mandate as having just as large a legal impact as a potential taking problem with the owl.

Secretary of State Keisling made a motion that the Land Board assistants work with the Attorney General's office to obtain updated legal advice regarding the Admissions Act and the Board's trust responsibilities. State Treasurer Meeker seconded the motion, and the decision was unanimous.

Ward Armstrong from the Oregon Forest Industries Council addressed the Board, suggesting that the Elliott could be used as a laboratory to determine the compatibility of our forest management and the spotted owl. He felt the 70-acre protection rule should apply to confirmed sites within the Elliott, stating this is a prudent legal risk the state should take. The second part of his proposal would be to establish an operational research and monitoring project on the Elliott to study the relationship between forest management and owl behavior.

Allyn Ford, Roseburg Forest Products, said because there is no available federal timber, that Elliott timber is crucial to the continuance of their company and the survival of the community. He said while planning is being done, that timber must be available in order for businesses to survive. He asked whether a comprehensive planning process is really needed at this time. State Treasurer Meeker questioned him about what is happening with the price of wood. Allyn Ford replied that, as the demand increases, with supplies being limited, prices will explode.

Scott Horngren, with the law firm of Haglen & Curtley, representing Northwest Forest Resources Council, said he agrees the Board should develop a plan, but should apply the 70-acre guidelines and continue to sell timber consistent with the sustained yield existing plan in effect currently.

Chris West, Northwest Forestry Association, reiterated that precluding timber harvest activities within a 70-acre core area (required by the Forest Practices Act) will guarantee that resident owls will not be harmed. Aside from this, he stated, there are no other valid state or federal rules, regulations or guidelines for protecting spotted owls on state or private lands. He said his association is opposed to the Board establishing further delays in offering the entire sustainable allowable sale quantity of 52 mmbf per year or proposing any protection measures for the spotted owl beyond those currently required by the Forest Practices Act.

Gordon Ross, Coos County Commissioner, said that to drastically reduce the timber supply because of setting land aside for the owl is inappropriate. He reviewed some history of the Elliott State Forest. He presented State Forester Jim Brown with a nest box that could be used for the spotted owl and promised to build as many of these as can be used.

Mike Miller, Associated Oregon Loggers, stressed the trust requirements of the Board in relation to the Elliott. He said that we don't want to preclude future options, but we can't wait because of the lives and jobs in the community that are dependent on the timber from the Elliott. He stated that if the guidelines for development of the long-range plan as outlined in the written materials presented today are followed, the Board will end up in court.

Governor Roberts stated that the Board has moved on releasing 13.1 mmbf of Elliott timber today and has full intention to release other planned sales as the process is completed for each. She stated that the steps being taken are laying a sound foundation for future management of the Elliott.

State Treasurer Meeker stated that he believes the Board has a fiduciary responsibility to aggressively move forward on the harvesting of timber under the current contract with Forestry and to be consistent with Constitutional requirements. He made a motion that the Department of Forestry be instructed to implement the 70-acre take concept mentioned previously on the balance of the 51 mmbf that is available for sale. Governor Roberts voiced her concern regarding the motion being raised so late in the meeting, since she was needing to leave. No second was offered, so the motion failed. Secretary of State Keisling indicated that he would like to receive the legal advice requested from the Attorney General's office before making a decision to move in this direction. He suggested the Treasurer again raise the issue at the next meeting.

Danielle Mathews expressed her concern that we are losing the character of our coastal range to those who are logging without regard to our environment. She stated that she supports efforts made on the part of the state to restore the natural quality of our forests.

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

slbmin:65