
STATE LAND BOARD MEETING

Monday, September 14, 1992

State Lands Building

775 Summer Street NE, Salem, Oregon

9:00 a.m.

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1 **GOVERNOR BARBARA ROBERTS:** --late this morning.
2 We'll see if we can't make up some time here. I would
3 first like to announce that you will hear an explanation
4 in a few minutes about Item 4 coming off the agenda, and
5 I would like to announce because we have had requests for
6 participation from a couple of people in the audience, that
7 Item 5B, which is now on the consent calendar, will be
8 removed from the consent calendar and become a new number
9 4, and as we get to number 4, we'll explain why the old
10 number 4 is going to be removed from the agenda. So I
11 thought anyone who thought that might be handled as a
12 consent item, 5B, will now know that it is, in fact, back
13 on the agenda as an item in which we can hear testimony
14 and discussion. So Gus, do you want to -- we're going
15 to start with Item Number 1. I thank all of you for
16 being here today, and we'll start with the request for the
17 interim timber harvest plan.

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AGENDA ITEM NO. 1

ACTING DIRECTOR GARY GUSTAFSON: Thank you and good morning, Governor, and members of the Board. Once again, we've got a substantial agenda, so we'll do our best to get through it with dispatch.

Joining me at the table for this item, of course, is State Forester Jim Brown. As you recall, where we last left this issue at the last meeting, the Land Board had directed that the Department of Forestry return at this meeting with a proposed interim timber harvest plan for the Elliott State Forest. The Board intended that this interim timber harvest plan be used by Forestry until such time as a long-range management plan is adopted. That long-range management plan now is under way, being conducted by the Department of Forestry.

I'd also like to direct your attention to an errata (phonetic) sheet that has been hopefully inserted or handed out in your agenda, and that is to page 5 of the Agenda Item Number 1. It's a very simple change. It's at the bottom of page 5, the last paragraph, the simple change merely insures that it is understood that Option Number 5 includes reliance upon the U.S. Fish and Wildlife Service rescinded guidelines. And that change, basically, is instead of "in addition to avoiding incidental take of spotted owls," we've crossed out "avoiding incidental take

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1 of spotted owls," and inserted "In addition to reliance
2 upon the rescinded guidelines. See number 3 above."
3 That's, again, for purposes of clarification.

4 Okay. I'm going to provide a very brief
5 explanation of the process and then turn to Jim to outline
6 the substance of the recommended option to you.

7 Following the July 28 meeting, several meetings
8 were held among all affected state agencies led by the
9 Department of Forestry, Department of Fish and Wildlife,
10 Division of State Lands, and the Department of Justice.
11 A great number of possible options were identified and
12 analyzed. Seven of them were finally selected for
13 forwarding to the Land Board for your consideration. Those
14 are included in the staff report.

15 Finally, the parties agreed to a recommended
16 option that Jim will explain in just a moment. It is
17 entitled, "The Stewardship Approach," and very specifically,
18 it was given that name to reflect the stewardship
19 responsibilities that the Board has as stewards of the
20 common school trust land as well as natural resources in
21 place.

22 With that, Jim, if you could lead us through The
23 Stewardship Approach.

24 **JIM BROWN:** Okay. For the record, I'm Jim
25 Brown, the State Forester. The Stewardship Approach has

1 several components to it. The first would be that it
2 would include following the incidental take guidelines as
3 the best biology for avoiding a take, and if you remember,
4 that's a series of concentric circles, a 70-acre core area,
5 and then retain 50 percent for the next half mile and then
6 40 percent on the next mile and a half.

7 And the key difference from what we're doing now
8 is that we would harvest inside the mile and a half circle.
9 Today we're staying outside that mile and a half circle,
10 but we would harvest inside the mile and a half circle as
11 long as we can comply with those incidental take
12 guidelines.

13 The second key component then is what's called the
14 reserve pair (phonetic) area or areas. The reserved pair
15 areas would reserve the long-term options for the Land
16 Board, contributing towards recovery of the owl in some
17 appropriate way. That feature is important if the Board
18 is going to pursue an incidental take permit with the U.S.
19 Fish and Wildlife.

20 At this point the number and size of those
21 reserve pair areas has not been defined. We are still in
22 the process of analyzing the 1992 spotted owl survey data
23 in conjunction with the 1991 survey data.

24 The third feature is the falling of what's called
25 the 50-11-40 rule, which 50 percent of the stands of the

1 land base is retained at 11 inches in diameter and 40
2 percent crown canopy in order to provide a dispersal
3 (phonetic) habitat outside the reserve pair area and to
4 provide a feed into the surrounding federal habitat
5 conservation areas.

6 Now, the reserve pair area, I think it's important
7 to note, is different than what's called clusters under the
8 Federal Recovery Plan. The draft Federal Recovery Plan of
9 U.S. Fish and Wildlife proposes using clusters of 15 to 20
10 pairs of owls and acreage of anywhere from 30 to 100,000
11 acres for those clusters. That is not what we have in
12 mind in terms of reserve pair areas. We're talking about
13 much smaller areas that would provide suitable habitat for
14 the owl that, in turn, could feed into the federal DCAs
15 or HCAs, as they're called.

16 **GOVERNOR BARBARA ROBERTS:** Questions? Comments?
17 I've got two people signed up to testify, and I don't know
18 whether the Board would like to hear their comments prior
19 to any activity we might have. Would that be useful?
20 Okay. Why don't we just do that. Jim, thank you very
21 much. We'll probably be back to you in a minute. Greg
22 Miller is here and then Mike Miller following him.

23 **GREG MILLER:** Good morning. For the record, my
24 name is Greg Miller, and I represent a new division at
25 Oregon Forest Industries Council called the State Timber

1 Purchasers Division. The purchasers of state forest
2 gathered together and organized a group to speak and track
3 specifically the management activities on the State Forest
4 lands.

5 We've had a bit of an opportunity to review The
6 Stewardship Approach, and I guess in terms of general
7 comments, we'd like to say that it's a very good faith,
8 good start effort. We recognize that the Board is
9 seriously taking its role for providing a short-term interim
10 plan. We recognize that the opportunity to go forward
11 with the long-term plan and the discussion that happened
12 in terms of providing your long-term options is certainly
13 critical in your thinking. However, after reviewing some
14 of the discussion and meeting with some of the folks that
15 have been involved with crafting this, we think that it
16 goes a bit too far in terms of a short-term plan.

17 There's a particular point of interest to us and
18 a development that occurred maybe after some of your
19 discussions, and that was an interim memo that came forward
20 as a recommendation from the Assistant Secretary of
21 Interiors Office to the U.S. Fish and Wildlife Service that
22 basically reinforced a notion that the incidental take
23 guidelines are rescinded and that there is an opportunity
24 to adopt, in terms of enforcement, but also in terms of
25 a discussion of take, which we believe is all the Elliott

1 (phonetic) really needs to be addressing in the short term
2 is the issue of take, a level of protection somewhere in
3 the neighborhood of less than 500 acres around an activity
4 center.

5 We'd hope that maybe in your deliberation over The
6 Stewardship Approach that you could have some discussion
7 about that memo, and that that would provide you some
8 flexibility in your discretion as a Board to look at an
9 option that might get you to a little bit more volume in
10 the interim plan.

11 I'd be happy to answer any questions as to why
12 we've taken that position. We do believe that the effort
13 that was put forward by the agencies and the Board
14 assistance was very well taken.

15 **GOVERNOR BARBARA ROBERTS:** Any questions of
16 Mr. Miller? I just want to make one comment just as you
17 mentioned the federal memo, as you well know, we did a
18 revision about every two weeks, a federal memo on some
19 portion of this issue and it is a very fluid situation
20 from time to time. And one of the things that the
21 interim timber harvest plan would allow us to do,
22 obviously, while we are awaiting a long-range management
23 plan under a different kind of view of the long range is
24 to be able to know that an interim plan can always be
25 revised if new information or changes come forward that

1 allow that, and an interim plan is not necessarily in
2 concrete while it awaits the long-range plan. So if new
3 information comes or federal changes come that affect the
4 way we can handle the interim while we're working on long-
5 term stewardship, I don't think that is without possibility,
6 and I think that's one of the things I think with the
7 interim plan that we have really not said verbally and
8 which I was discussing this morning with staff, and so I
9 want to add that now because I think it's important that
10 we may find ongoing federal changes specifically or even
11 legislative changes during the session that might affect
12 where we are. So I think that might be valuable to think
13 about in terms of an interim plan.

14 **GREG MILLER:** Yeah, we can appreciate that
15 certainly. The ground shifts daily, and when the memo did
16 come out, I'm sure that there's many different
17 interpretations of the memo. We would hope that one
18 interpretation might allow you that flexibility and
19 certainly it's an opportunity as maybe you've got some
20 further interpretation from either the Fish and Wildlife
21 Service or whoever, the Assistant Secretary's office that
22 this was a little more concrete in terms of a take
23 guideline, that you might incorporate that.

24 **GOVERNOR BARBARA ROBERTS:** Mike Miller? Good
25 morning.

1 **MIKE MILLER:** Good morning. For the record, I'm
2 Mike Miller, Executive Vice-President of Associated Oregon
3 Loggers, and I'm not related to Greg, by the way. He
4 does call me granddad every once in awhile.

5 Just a couple of observations. Did we hear what
6 the proposed sale level would be for the interim plan?
7 Maybe I missed that. Was there a volume figure that was
8 mentioned?

9 **UNIDENTIFIED MALE VOICE:** About 16 million.

10 **MIKE MILLER:** About 16.

11 **GOVERNOR BARBARA ROBERTS:** Yeah, 16 million.

12 **MIKE MILLER:** Okay. I wasn't real sure. Well,
13 this month does mark the first anniversary of the Land
14 Board dealing with this issue, in the way of the timber
15 sale pro--

16 **GOVERNOR BARBARA ROBERTS:** It seems longer.

17 **MIKE MILLER:** It seems longer, it really does.
18 In the way of the interim, so far, as I understand it,
19 the Department has sold about 13.9 million board feet of
20 which about half of it, I understand, has been held back
21 because of some concerns about owls.

22 On Friday, as Greg mentioned, we did have a
23 chance to sit down with Jim Brown, Gus, and some of the
24 people, to talk about the various options here, and we
25 certainly appreciate the opportunity to sit down and

1 discuss, you know, what goes in to making these
2 recommendations. I think as we proceed to look at both
3 short-term and long-term solutions, that would be helpful
4 so that we don't come in to the meetings of the Land
5 Board and simply say, "Because we don't understand, we have
6 to object to what you're proposing." And I think that's
7 been the case in the past, so I see that as a positive
8 step to try to resolve this problem.

9 I guess as far as the short-term plan, as Jim
10 points out, there would be harvest within the mile and a
11 half circles. I guess the question would be somewhat
12 along the lines that Greg raised that if we were to adopt
13 the 500-acre guidance as far as enforcement of the take
14 guidelines that came out of U.S. Fish and Wildlife Service,
15 what would be the implications as far as harvest if those
16 were adopted? Certainly the reserve pair areas that Jim
17 talks about, because there's no size that's been set forth
18 as to what they would cover, there's also obviously some
19 concern about what's going on there.

20 I am glad to hear that we're not talking about
21 cluster areas, because those, if they were the same size
22 that the federal agencies are using, there would be no
23 Elliott left, because theirs usually are larger than that.

24 The 50-11-40 rule, as I understand it, by virtue
25 of past management of the Elliott, that is the physical

1 structure of the Elliott, and the adoption of that rule
2 simply places maybe some more constraints as far as the
3 timing and the spacing of where these timber sales might
4 be, who would not have a great deal of impact on the
5 volume.

6 Like I say, I think we're raising more questions
7 than we are answers. I would like to see an analysis of
8 what would happen if the 500-acre guideline was adopted as
9 far as the short-term solution. I guess also, I don't
10 know if we're going to hear anymore about where the
11 Stewardship plan would go long-term, what the steps would
12 be there, but I think it would be interesting to see how
13 this all ties together to meet the motion of the Board
14 that we meet our fiduciary responsibilities, that we don't
15 preclude future options and what might go ahead in the
16 long term, and what that volume might be.

17 As I understand in talking with Jim Brown and his
18 people, the plan would be to take the elements of this
19 short-term plan, and in essence, move forward with U.S.
20 Fish and Wildlife Service to try to get a habitat
21 conservation plan that would then allow an incidental take
22 permit, a 30-year permit, and as I understand it, also the
23 volume level would be somewhere around the 38 million board
24 feet, and I think that that's a figure that -- I mean,
25 none of us, I think, says that it will be business as

1 usual. I mean, with the listed species on the Elliott,
2 obviously, there's going to be some constraints placed on
3 the old 50 million board foot level.

4 But I would urge, maybe, that the Land Board
5 adopt that 36 to 38 as a target that you would like to
6 see attained as they go through this planning process. It
7 kind of sets maybe what would be a level that would meet
8 your fiduciary responsibilities and deal with these other
9 things that you propose to do in December.

10 So with that, I appreciate the opportunity to
11 visit with you. Be glad to try to answer any questions.

12 **GOVERNOR BARBARA ROBERTS:** Questions of Mike?

13 **MIKE MILLER:** Thank you.

14 **GOVERNOR BARBARA ROBERTS:** Mike, thanks very much.

15 Now, I don't show anyone else signed up on Item Number 1.
16 I just want to make certain that there's someone else who
17 wishes to make a comment. It appears not. Okay. Thank
18 you very much, I appreciate that. Questions from the
19 Board or the Forester or Gus or other comments?

20 **SECRETARY OF STATE PHIL KEISLING:** First a
21 comment. I appreciate what Mr. Miller and Mr. Miller both
22 said and their efforts to work on this. I know this is
23 the devil to many of us as we struggle in an atmosphere
24 of through a glass darkly, trying to assess just what it
25 is that the goal posts are, feeling that the goal posts

1 are moving. And of course, the 500-acre memo that came
2 out, both I think tells us that it again reinforces just
3 how those goal posts are moving, and makes our job very
4 difficult as we struggle to try to get to a long-term
5 strategy that's going to -- I think, as Mr. Miller put it,
6 doesn't get you back to business as usual, but tries to
7 restore substantially what was harvested from the Elliott
8 prior to the discovery of spotted owls.

9 I think it's important that we're going to have
10 a discussion, maybe the way to move it along is to make
11 a motion. I do make this motion, having concerns,
12 specifically, Jim, about the reserve pair areas, that I
13 don't feel comfortable today approving going ahead with
14 that, maybe approving it in concept but waiting until the
15 next Land Board meeting so we know exactly what's involved
16 there. I do understand it's not the cluster, but I
17 understand there's work to be done between the Fish and
18 Wildlife and the Department of Forestry to make sure that
19 we get everything off on the right foot on that and don't
20 have any misunderstanding.

21 So why don't I make the following motion: to
22 adopt Stewardship Approach that was recommended as an
23 interim measure but with the following modification, that
24 the reserve pair areas be approved in concept only, and
25 that the State Forester return to the next meeting with

1 the identification of the number, location, and size of the
2 proposed RPAs for final board approval, the first condition.

3 Secondly, that the State Forester proceed with any
4 and all sales consistent with this interim sale policy.
5 I think it's very important that we move immediately to
6 identify those sales that are consistent with that and to
7 get them on the market.

8 That the State Forester take advantage of any
9 change in state or federal policy that would increase
10 harvest.

11 And four, that our long-range planning continue
12 quickly so that we can meet that target of 36 to 40
13 acres, if practicable, as soon as possible. This motion
14 does not substitute the 500-acre model in it. I'd like
15 to just speak very briefly as to why it doesn't. But
16 we--

17 GOVERNOR BARBARA ROBERTS: But--

18 SECRETARY OF STATE PHIL KEISLING: Oh, okay.

19 GOVERNOR BARBARA ROBERTS: I want to make sure
20 that I've got your motion and that we have a second.

21 SECRETARY OF STATE PHIL KEISLING: Okay.

22 GOVERNOR BARBARA ROBERTS: And so I'm going to
23 see now if I can do the motion just--

24 SECRETARY OF STATE PHIL KEISLING: Yeah.

25 GOVERNOR BARBARA ROBERTS: That we adopt The

1 Stewardship interim model, modifying it that the reserve
2 pair areas are conceptual only, and the next Board meeting,
3 the detail of that concept so that we know what we're
4 dealing with. To instruct that we proceed immediately with
5 sales consistent with the interim timber policy and that
6 we take advantage of any changes in state or federal law
7 or policy that would allow changes that would reflect other
8 opportunities for responsible harvest. Is that--

9 **SECRETARY OF STATE PHIL KEISLING:** And that the
10 long-range plan move very quickly, proceed.

11 **GOVERNOR BARBARA ROBERTS:** I don't know what
12 quickly means, so, I know that it is a difficult process
13 and I don't think anyone's going to be back with it
14 overnight, so I--

15 **SECRETARY OF STATE PHIL KEISLING:** Oh, I agree
16 with that.

17 **GOVERNOR BARBARA ROBERTS:** Okay. Anyway, that we
18 move to complete the long-range plan in as timely a
19 fashion as possible or something to that. Okay. That's
20 what the motion is, and we'll see if we can't get more
21 clarity on that. So is there a second? I will second.
22 Now, Phil, if you want to discuss your motion.

23 **SECRETARY OF STATE PHIL KEISLING:** I think we are
24 down to, in effect, one issue at this point, from what I
25 can tell, and that's how do we deal with the 500-acre

1 enforcement memo point. The 500 acre is not a policy.
2 It doesn't tell us that to manage according to 500 acres
3 is permissible or that it is in compliance with the law.
4 All it tells us is that a 500-acre approach is how a
5 certain member of the U.S. Department of the Interior
6 believed that we ought to enforce -- where we ought to
7 focus our enforcement efforts with limited amounts of
8 resource.

9 If it had been a declaration, the 500-acre
10 approach would indeed let us be consistent with federal
11 law. I think it would be a different kind of situation.
12 I continue to think that our long-term fiduciary
13 responsibility includes trying to be as smart as possible
14 to give us the ability to get into that long-range
15 planning that will enable us to make the best decision.
16 I know people will disagree about that 500-acre approach,
17 and I appreciate and respect that disagreement, but I think
18 it's a disagreement about strategy as opposed to a
19 disagreement about the goal.

20 I believe that this, in a sense to borrow a
21 phrase from a former U.S. president, staying in course that
22 we have laid out so meticulously over the last year or
23 longer is our best strategy to, in fact, keep the Elliott
24 open and operating and keep our timber harvest there in a
25 way that's consistent with sound management and sound

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1 environmental protection, and which will best allow us to
2 fulfill our fiduciary obligations.

3 So I make the motion in that spirit and defer to
4 the Board to adopt it.

5 **GOVERNOR BARBARA ROBERTS:** May I just ask a
6 question? Jim, the Secretary of State's instruction in
7 this motion that the issue of reserve pair areas is in
8 concept only, by the next meeting, would it be possible
9 for us to have the kind of detail to let us know whether
10 that concept was one in which there was a comfort level
11 in terms of the Board?

12 **JIM BROWN:** It's my understanding, Governor, that
13 your next meeting is November, is that correct?

14 **GOVERNOR BARBARA ROBERTS:** Yes.

15 **JIM BROWN:** I think it was our plan to have that
16 done in November, wasn't it, Roy?

17 **UNIDENTIFIED SPEAKER:** Yes.

18 **JIM BROWN:** Yes.

19 **GOVERNOR BARBARA ROBERTS:** Okay. So that that--

20 **ACTING DIRECTOR GARY GUSTAFSON:** Excuse me,
21 Governor, we do have an October meeting scheduled.

22 **GOVERNOR BARBARA ROBERTS:** Oh, somehow I thought--

23 **JIM BROWN:** I don't think we could have it in
24 October. We could in November, because we are still in
25 the process of analyzing the data.

1 **GOVERNOR BARBARA ROBERTS:** Does that make a
2 difference to your motion?

3 **SECRETARY OF STATE PHIL KEISLING:** No, why don't
4 we say return to the November meeting? We said next
5 meeting, I thought the next meeting was in November.

6 **GOVERNOR BARBARA ROBERTS:** Yeah, I don't know why
7 we didn't think we had an October meeting. Are you
8 meeting with us, Gus, or--

9 **ACTING DIRECTOR GARY GUSTAFSON:** I hope so.

10 **GOVERNOR BARBARA ROBERTS:** Maybe it was just
11 wishful thinking, I don't know.

12 **SECRETARY OF STATE PHIL KEISLING:** It's a very
13 busy month.

14 **GOVERNOR BARBARA ROBERTS:** Yeah. Somehow, I
15 thought we weren't having a meeting next month either, so,
16 any other discussions?

17 **STATE TREASURER TONY MEEKER:** I have some
18 questions, Governor.

19 **GOVERNOR BARBARA ROBERTS:** Okay.

20 **STATE TREASURER TONY MEEKER:** My questions relate
21 to the original motion. There's a memo that was drafted
22 September 4 from Mike Lane to Ray Craig, and on the last
23 page, it lays out three options.

24 Option one, which is really where we were before
25 the listing of the owl, shows that the Elliott State

1 Forest was harvesting about 50 million board feet annually.
2 Then the second line shows the August 24 memo, the
3 infamous memo that has been referred to a number of times
4 here, will harvest 30 million feet annually. And then
5 option six, which is the motion before us, the original
6 motion before us, was 15 million feet.

7 My first question is, as amended or as it's
8 proposed to be amended, what will be the number of board
9 feet harvested under The Stewardship Approach?

10 **JIM BROWN:** Mr. Meeker, at this time, we estimate
11 that it would be about 15 million feet. That--

12 **STATE TREASURER TONY MEEKER:** With or without the
13 amendment?

14 **JIM BROWN:** In either case. That could change,
15 based on our analysis of the '92 data (phonetic) in
16 conjunction of '91, but it may go up just because there
17 will likely be fewer activity centers on the Elliott, but
18 we won't know that until we get the analysis completed.
19 But in the neighborhood of 15 million feet.

20 **STATE TREASURER TONY MEEKER:** Does it make any
21 difference how we proceed or how quickly we will proceed
22 with this interim plan with the proposed amendment from the
23 Secretary of State or without it? I mean, does it alter
24 the process with which we would move forward?

25 **JIM BROWN:** No, it does not.

1 **STATE TREASURER TONY MEEKER:** So literally, we're
2 talking about with the Secretary of State's amendments,
3 moving forward with stewardship, and at 15 million feet
4 annually roughly?

5 **JIM BROWN:** Yes. I think the key difference in
6 the motion is the Land Board, you know if it's passed,
7 would basically be saying, "We want to approve the reserve
8 pair areas, rather than staff doing that." In other
9 words, "We, the Land Board, want to have a greater hand
10 in fixing those reserve pair areas, to make sure that
11 that's consistent with your constitutional duty."

12 **STATE TREASURER TONY MEEKER:** Governor, I'd like
13 to make a couple, three comments about our fiduciary
14 responsibility. It's been referred to a number of times.
15 And I know that it's a to-be-interpreted area.

16 If you look at the Elliott State Forest over the
17 last four, five years, I can remember sitting here in 1987
18 approving a long-range harvest plan for the Elliott, that
19 was producing 50 million feet a year. And we were advised
20 at the time that we would be able to harvest 50 million
21 feet a year virtually in perpetuity. That was producing,
22 in dollar value, somewhere around \$20 million. If you
23 were to look at the Elliott State Forest as an income-
24 producing asset, that would put the value at about \$250
25 million, using an eight percent return, yielding \$20 million

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1 a year.

2 Currently, the current harvest plan drops us down
3 to \$8 million. Operating on the same assumption of an
4 eight percent return, that puts the value at the Elliott
5 at \$100 million.

6 So the current harvest plan has done one of two
7 things. It's either reduced the value of the Elliott, or
8 it shows that we are not managing to our fiduciary
9 responsibilities to obtain a maximum yield. With this
10 amendment, we would move to 15 million feet, which is
11 slightly more than \$8 million, placing the value of the
12 Elliott at \$100 million, and I think does, in fact,
13 violate our constitutional fiduciary responsibilities, given
14 the fact that we know two years ago, it was worth at
15 least a quarter of a billion. Now, it's only worth, under
16 this strategy, \$100 million.

17 And that's why I think the better course would
18 be to attempt that August 24 memo, which takes us to 30
19 million board feet or about 16 million in return. That
20 makes the value of the Elliott, if you look at it from
21 a prudent person point of view, somewhere around \$200
22 million.

23 You know, there's always been discussions of the
24 Board potentially being sued by someone because we violate
25 the Endangered Species Act, and if we continue to treat

1 the Elliott State Forest in the manner that we're proposing
2 to treat it, with only \$8 million yield annually, I don't
3 think there's much doubt that we've also violated our
4 fiduciary responsibilities, because we, in effect, have
5 reduced the value of the asset from a quarter of a billion
6 down to \$100 million.

7 And perhaps the better course of valor, if we
8 can't harvest it, a prudent person would put it on the
9 market to see what kind of value we really could get out
10 of it. Maybe we'd be better off to have cash than the
11 Elliott. I'm inclined -- in fact, what I'd like to do,
12 Governor, is move to amend the motion to target the 500-
13 acre rule so that we can increase our harvest and more
14 readily meet our fiduciary responsibility.

15 **GOVERNOR BARBARA ROBERTS:** Is there a second to
16 that motion? Hearing none, the amendment dies for lack of
17 a second. Mr. Treasurer, I just want to comment on the
18 issue I think is at hand on the fiduciary question. To
19 treat an interim plan as if it's a long-term plan, I
20 think, does not speak to the long-term fiduciary issue that
21 we generally deal with on this Board. We sometimes spend
22 money to make money, we sometimes invest for the long-term
23 and temporarily make less money and spend more money in
24 order to get the long-term return. I think we could look
25 at areas like Tongue Point is one of those places where

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1 we've made some investments over the long haul for the
2 hope of the long-term return.

3 From my concept, this is, indeed, an interim plan.
4 It's intended to allow us to position ourself to have the
5 responsible long-term plan that then allows us to harvest
6 at a greater level than that 15 million. I don't think
7 my expectation is that is the permanent harvest off of
8 that land, but rather an interim period that we're
9 estimating while we're dealing with the issue of the long-
10 range plan.

11 The other place that I believe, and I know that
12 you and I could argue on this, that there is no return
13 off of the land. It would tie up everything in litigation
14 because we take the short-term approach that literally
15 forces us almost into the court setting, which we've
16 avoided at this point in time. Obviously, we're harvesting
17 much less, but we're avoiding a great deal of that. So
18 I think in looking at the financial responsibility we have,
19 our job is to position ourself for the long term, and what
20 I think we're doing is trying to do it under very adverse
21 circumstances, where we can't get the federal people or the
22 courts to give us a bottom line where everything is
23 literally in flux in terms of planning. So the interim
24 gives us an opportunity to move to harvest, and hopefully
25 and clearly design to give us position for a much higher

1 harvest as we've laid the foundation for responsible
2 harvesting and responsible forestry and avoided the takes
3 even in that process. So I don't think of it as some
4 kind of a place that we're placing ourself permanently that
5 would ever move us toward the sale of anything as
6 productive as the Elliott can be if we do the long-term
7 job correctly. So I have trouble thinking of it on such
8 a short-term basis as sort of a lack of responsibility for
9 a long-term issue that has changed dramatically, as you
10 know, since 1987, when we had a harvest plan for the
11 Elliott. The whole world, in terms of forestry, has
12 changed since 1987. So I think it's a very different
13 circumstance than that, and what we're trying to do is to
14 lay down a harvest plan that will allow us to continue to
15 harvest and reap the financial benefits as well as the
16 long-term forestry benefits off of that land. So I guess
17 that's a distinction in how I view this interim process.
18 Interim to me means interim. It doesn't mean permanent.
19 So, any other comments on the motion? I didn't know
20 whether you were done with the questions. I'm sorry.

21 **STATE TREASURER TONY MEEKER:** No, I made a
22 motion, I got no second, for about the fourth time.

23 **SECRETARY OF STATE PHIL KEISLING:** Actually, I
24 think it's important at this meeting to ask a question
25 very specifically to Jim. Jim, the 500-acre approach, is

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1 it your judgment that there'd be a substantial likelihood
2 that if we followed that approach that we would be in
3 violation of federal law as you understand it?

4 **JIM BROWN:** Mr. Secretary, we've actually had Bill
5 Cook, your attorney, look into that, as well as we've done
6 some background work. And I think it's both of our
7 judgments that the 500-acre is just an enforcement guideline
8 of U.S. Fish and Wildlife, that they still stand behind
9 the biology associated with the rescinded guidelines as
10 what's necessary to avoid a take. So simply put, we
11 believe the 500-acre would result in a take and that they
12 would be in a position then to take enforcement action.

13 **SECRETARY OF STATE PHIL KEISLING:** Or a citizen.

14 **JIM BROWN:** Or a citizen, through a third-party
15 lawsuit.

16 **SECRETARY OF STATE PHIL KEISLING:** You know, six
17 months ago, they rescinded guidelines that they, of course,
18 didn't have to promulgate in the first place, but I think
19 the approach was a good one, because it tried to give some
20 certainty to this area. They then rescinded them,
21 promising they would put ^{forth} more guidelines so we would have
22 some certainty. And six months later, we have no
23 guidelines proposed from the Fish and Wildlife Service.
24 And I'm very disappointed in that, because I think it's
25 put everybody on the hook. It's created far more

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1 uncertainty than we needed to.

2 I'd also just like to comment that I certainly
3 appreciate Treasurer Meeker's concerns about reducing the
4 value of the assets. I feel very strongly, though, that
5 it's not the plan that reduces temporarily the value of
6 this asset. It's not anything we've been struggling to
7 do. What has reduced is the economic value of this
8 particular asset has been federal law, has been the
9 presence of spotted owls on our land that we did not
10 heretofore know, and that the strategy that I think Jim
11 and your department has worked on, and that all of us has
12 struggled with, is indeed our best opportunity to maximize
13 the economic value over the long run. We're trying to get
14 to that goal, as we get into a habitat conservation plan
15 or a similar approach to get to a harvest level of 36 to
16 40 million board feet. Yes, it's not 50. But it is a
17 substantial portion of that, and I think the disagreement
18 that I have about the 500-acre program really boils down
19 to a disagreement about what's the best course of action
20 to, in a sense, protect the asset over the long run. We
21 are in an interim right now. I hope it lasts, you know,
22 just 18 to 24 months that we'll have the planning process,
23 we'll proceed, and we'll be able to move on with this.
24 But it is, I think, a very important part of getting to
25 that long-range protection of the asset.

1 The final point I'll make is the Catch-22 that
2 we're all in, which is an ironic one, and it's a maddening
3 one. As long as we stay locked into any kind of circle
4 approach, our success on the one hand becomes our failure
5 on the other, that if we succeed in growing spotted owls
6 on the Elliott State Forest because of sound management
7 technique, we will have more circles. The more circles we
8 have, whether they're 500 acres or whether they're larger
9 or whether they're smaller, the more circles we have, the
10 fewer options we then have in terms of timber harvest, and
11 breaking out of that straight-jacket, to me, is the single
12 most important thing that we need to do with this motion
13 and with this approach that we're trying to take. If at
14 a later time, there's more clarity and people come forward
15 and say, "Yeah, it's our belief that we can do it with
16 just 500 acres or maybe even less." We may find biology
17 that suggests you can do even less and we'll get new
18 guidelines then, but yes, by all means, let's move ahead.
19 But I think at this point, this is the prudent way to go.

20 **GOVERNOR BARBARA ROBERTS:** I think the thing that
21 we sometimes forget in the midst of this complicated
22 situation we're in is that the intention of the Endangered
23 Species Act was when you found a species in trouble, you
24 did whatever was necessary to prepare a recovery plan so
25 that you could then make that species healthy again and

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1 then not operate within that framework on a permanent
2 basis, but having altered your thinking and your process,
3 move forward, and you're right. Obviously, if we're
4 successful in recovery plans, if we ever get a recovery
5 plan, if recovery plans then work, then you take the
6 species off the endangered species list. I mean, that is
7 the way it ought to work in the optimum situation, but if
8 we had to work within circles and you had more and more
9 owls, obviously, you would have no Elliott, you would have
10 no other kind of forest, and that would apply to other
11 areas besides the spotted owl, so I think that is a
12 growing frustration of trying to think about this. Success
13 may be failure if you're not very careful, and I don't
14 think that would make any sense.

15 So is there any other discussion on the part of
16 other Board members?

17 **STATE TREASURER TONY MEEKER:** Yes, Governor, I'd
18 like to make a few comments. I think we've lost sight
19 of what the Elliott State Forest is. When this Land Board
20 first acquired it in the 1860's, it was burned-over ground.
21 It was nothing. It was consumed by a forest fire. And
22 then for 80 to 100 years, with contracts with the Forest
23 Department, we've managed increasing the harvest yield over
24 time with investments by the former Land Boards and former
25 Boards of Forestry to reach a perpetual harvest of 50

1 million feet a year.

2 Now, I've been advised that the majority of the
3 owls, and I know we can't talk about their location,
4 because it's confidential, but the majority of the owls are
5 on that area of the Elliott where it's been most intensely
6 harvested. The Forestry Department has run a very
7 conservative harvest program there with very small clear
8 cuts, from 40 to 80 acres, as I understand. More
9 conservative than the industry.

10 We cannot lose sight of the fact that the Land
11 Board, over a long period of time, has invested a great
12 deal of money in this asset, constantly increasing its
13 value, using the eight percent return figure of about a
14 quarter of a billion dollars. And I'm simply reminding
15 the Board that we do have a fiduciary responsibility. And
16 that continuing to harvest at an eight percent yield on
17 \$100 million, does not give us a return on immense amount
18 of time, energy, money and investment on that forest.

19 And I understand that this is an interim process.
20 We are currently harvesting eight million feet, which has
21 a value of about \$4 million, and that, most assuredly,
22 does not meet our fiduciary responsibility. It is
23 something we cannot lose sight of, that over time, we are
24 either going to move or yield on this higher (phonetic),
25 or we should do what any prudent person would do with any

1 investment, and that's to seek alternatives to create cash
2 or yield on an investment. And that's why I made the
3 motion.

4 **GOVERNOR BARBARA ROBERTS:** Any other comments?
5 Jim? Gus? Anything else? Okay. I'm going to see if
6 I can again restate the motion for purposes of a vote,
7 then. The motion is that we adopt this stewardship
8 concept, that we modify the reserve pair area or at least
9 accept the reserve pair area in concept only, so that when
10 we come back to the November Board meeting, we'll have the
11 detail of that, and the Board can respond accordingly, that
12 we proceed with all sales consistent with this interim
13 timber sale policy, and that we take advantage of any
14 state or federal changes that would allow modification in
15 the interim timber harvest planned in terms of the
16 increased harvest and that we move as rapidly as possible
17 toward the long-range plan so that we can have a long-
18 range rather than a short-range interim policy to deal
19 with. Does that fairly clearly state your complicated
20 motion? Those in favor will signify by saying "Aye."
21 Aye. Those opposed, "Nay."

22 **STATE TREASURER TONY MEEKER:** No.

23 **GOVERNOR BARBARA ROBERTS:** The motion is passed,
24 two to one. Thank you very much, Jim.

25 **SECRETARY OF STATE PHIL KEISLING:** Madam Chair?

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1 **GOVERNOR BARBARA ROBERTS:** Yes?

2 **SECRETARY OF STATE PHIL KEISLING:** May I just
3 make one comment? Many, many people worked very hard for
4 the DSL, the Department of Forestry, Fish and Wildlife, on
5 this. I do sense the real constructive changes and the
6 good relationship that we have, and I just want to staff
7 (phonetic) people often that just don't get recognized for
8 the midnight oil that they burn, weekends and like, to try
9 to help us struggle with this very complicated issue. I
10 just want to express my thanks for them.

11 **ACTING DIRECTOR GARY GUSTAFSON:** Thank you.

12 **GOVERNOR BARBARA ROBERTS:** Well, I appreciate,
13 too, the working relationships that have allowed the meeting
14 with the two Mr. Millers and others to try to make as
15 clear as possible these complex issues as we move through
16 these changes, so I appreciate all of you making that
17 happen, too.

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AGENDA ITEM NO. 2

GOVERNOR BARBARA ROBERTS: Item Number 2 is the issue of the 1992 adoption of the Lower Willamette River Management Plan. Gus, do you want to get us moving, you and John, in that arena?

ACTING DIRECTOR GARY GUSTAFSON: Thank you, Governor, members of the Board. I'd like to introduce John Lilly. Come on up, John. John was hired with the Division of State Lands about two years ago, and his main purpose in life the last two years, has been to develop the new version of the Lower Willamette River Management Plan. John does do other things for us, I want to clarify that, but he has been actively involved in this, and it's consumed much of his time over the past two years.

I'd like to just, after introducing John, also mention that we also have in your packet in one of the appendices, a resolution from the City of Portland accepting and endorsing the 1992 Lower Willamette River Management Plan, and I think we also have a representative from the City of Portland here to testify, if I'm not mistaken, although I don't see that on the list. Oh, she is here. Linda Dobson from the City of Portland.

GOVERNOR BARBARA ROBERTS: She's here, she did not sign up, but we can hold that in abeyance if she has

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1 comments she'd like to make.

2 **ACTING DIRECTOR GARY GUSTAFSON:** Okay. I'd like
3 to ask John just to give you a very brief overview of
4 this two-year process if that can be done, and so we have
5 before you now, this plan as well as a request to move
6 ahead with adoption of administrative rule to accept the
7 plan. John?

8 **JOHN LILLY:** Good morning. It's a pleasure to
9 be here after the time that it's taken us to get this
10 far. I think that one of the hallmarks of this project
11 has been that while it's taken us a long time, we've
12 gotten here with a lot of support, and the product that
13 we're presenting to you today, we can wholeheartedly endorse
14 and say that we worked out all of the tight issues and
15 that we have the support and the endorsement of the City
16 Council of the City of Portland, which I think is a
17 critical issue for us.

18 Just briefly, I'd like to point out that we got
19 some major accomplishments that we've done with this plan,
20 and I would direct you to the last couple of pages of the
21 handout that I just gave you. This project and the plan
22 that we're asking you to adopt this morning protects the
23 fish and wildlife and aquatic wildlife habitat along the
24 river. At the same time, it protects special river areas
25 for public navigation, for public use, recreation, and for

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1 the maritime traffic that goes on up and down the river.
2 We're protecting a navigation channel, proposal to designate
3 certain areas along the river for development, and certain
4 areas for conservation, as well as for public access.

5 The plan outlines performance standards for
6 projects that will occur along the river, be they a marina
7 or a set of pilings to be put in the river or a boat
8 ramp or fill or anything of that nature. It provides for
9 a public access and river bank rehabilitation in areas
10 particularly where the river bank has been developed in the
11 past and left to go to seed, so to speak, with piling and
12 concrete and things of that nature, that need to be
13 cleaned up as a result of new work that would be proposed,
14 consistent with this plan.

15 It protects water quality and the plan's
16 consistent and proposes to work closely with the City's own
17 efforts to eliminate combined sewer outfalls and improve the
18 water quality of the lower Willamette.

19 And one of the key things that the plan is able
20 to do is bring together into a consistent format, I think,
21 all of the myriad of state, federal and local requirements
22 that come to play when you do things in waterways these
23 days.

24 And finally, and I think this is probably one of
25 the most critical accomplishments of the plan is that it

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1 does meld both the agency's values and goals and the
2 public's values and goals to work for this area. And
3 we've done that, I think, primarily through the planning
4 process that was heavily oriented towards public
5 involvement.

6 We started in October of 1990 with two public
7 workshops in the Portland area, in St. Johns and at Oaks
8 Park, and we followed that up with about ten technical
9 team meetings that were basically public meetings, always
10 open to the public, anyone could attend and participate.
11 They reviewed all of the documents that went into this
12 plan, we went through them line by line and word by word
13 and heard from everybody, gave everybody a chance to be
14 heard.

15 We had a policy review committee and you have a
16 list of the participants in that, in addition, that
17 represented the key federal, local and state agency people
18 and the public at large.

19 And finally, we held a public hearing in June of
20 this year, and we had five folks show up and give us
21 input on this plan, and I think that again is a mark that
22 we did our job and we got folks involved early on so that
23 by the time we got to that public hearing phase, we'd
24 covered the major bases along the way.

25 The plan differs in some regard to the existing

1 plan by the fact that we didn't deal with trying to direct
2 development along the upland. We limited the study area
3 to the river itself and the banks of the river that are
4 within the regulatory jurisdiction and the public trust
5 responsibility jurisdiction or ownership jurisdiction of the
6 Board and the Division. And with that, I think I'll
7 entertain any questions that you may have.

8 **GOVERNOR BARBARA ROBERTS:** Thanks very much, John.
9 Questions from members of the Board? Well, having been
10 through this process before, it's really a fine document,
11 and I spent some time with it last weekend and with the
12 maps again this morning. I'm pleased to see in the
13 writings and the plan the emphasis on the public access
14 areas. There's still a lot of areas on the river where
15 I have concern. I think of the Linnton area,
16 to see that huge area on the south side of the river
17 without any public access, and I know it's mostly private
18 ownership, and I would hope as time goes on, that there
19 will be opportunities to encourage that private ownership
20 to look at public access as one of the ways they
21 contribute, both economically and to the public's ability
22 to use the river more adequately, particularly in long
23 stretches like that.

24 But you've done a wonderful job, and the people
25 who worked on it from the committee and you, John, have

1 done an outstanding job of revising the plan with some
2 emphasis that clearly was not there the last time it was
3 done, and I think it's a much better plan.

4 **STATE TREASURER TONY MEEKER:** Governor, I thought
5 that we would pack the hearing room on this issue, and I
6 think that John deserves huge credits for taking care of
7 all of those little sidebar issues that are bound to crop
8 up. You did a great job.

9 **JOHN LILLY:** Thanks.

10 **STATE TREASURER TONY MEEKER:** Super job.

11 **GOVERNOR BARBARA ROBERTS:** The sidebars that look
12 very differently--

13 **SECRETARY OF STATE PHIL KEISLING:** The sandbars.

14 **JOHN LILLY:** Well, we had over 165 people
15 involved in this project, giving us input, so at times it
16 was like an air traffic controller, trying to get everybody
17 in the right position.

18 **STATE TREASURER TONY MEEKER:** Better you than us.

19 **JOHN LILLY:** And there are many people on staff
20 that have contributed to this effort. John Smith did the
21 mapping, and Barb Hilts (phonetic) with all of the work to
22 put together the document and so, it has not been a
23 solitary effort by any means.

24 **STATE TREASURER TONY MEEKER:** I'll move that we
25 approve it.

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1 **SECRETARY OF STATE PHIL KEISLING:** I'll second it.

2 **GOVERNOR BARBARA ROBERTS:** It's been moved and
3 seconded to approve the 1992 Lower Willamette River
4 Management Plan. Is there further discussion?

5 **SECRETARY OF STATE PHIL KEISLING:** I'd just like
6 to add my third to the John Lilly and company appreciation
7 of this former chair of a neighborhood association that
8 abuts the Willamette River, the Brooklyn (phonetic)
9 neighborhood association. I know folks there really
10 appreciate the input they were allowed to have, to
11 coordinate with their own neighborhood planning as well.
12 It's a good example of state cooperation.

13 **JOHN LILLY:** Thank you.

14 **GOVERNOR BARBARA ROBERTS:** Thank you. And our
15 thanks to the committee and to the City of Portland for
16 its support. I know there were lots of people from the
17 Port and other places involved as well, so we appreciate
18 all the work. Other discussion? Those in favor of the
19 motion will signify by saying "Aye." Aye.

20 **SECRETARY OF STATE PHIL KEISLING:** Aye.

21 **STATE TREASURER TONY MEEKER:** Aye.

22 **GOVERNOR BARBARA ROBERTS:** Those opposed, "Nay."
23 Motion is passed. Thank you very much, and we appreciate
24 all the work of the people who were involved in this very,
25 very outstanding plan.

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1 AGENDA ITEM NO. 3

2 GOVERNOR BARBARA ROBERTS: Now, Item Number 3 is
3 shown on your agenda as a request for Land Board approval
4 of an interim policy. I think Gus is going to discuss
5 with us a change in the handling or potential change in
6 the handling of that item.

7 ACTING DIRECTOR GARY GUSTAFSON: I will do that,
8 Governor. Let me ask first in the previous item, since
9 Linda Dobson from Portland was here, and we didn't really
10 give her a chance to speak if she wished to. Maybe we
11 could do that.

12 GOVERNOR BARBARA ROBERTS: She didn't sign up, so
13 I thought she'd raise her hand if she's ready. I could
14 have done that.

15 LINDA DOBSON: No, that's fine. I think you got
16 our--

17 GOVERNOR BARBARA ROBERTS: Oh, there you are.

18 LINDA DOBSON: Letter of support. We're just
19 happy to see it through.

20 GOVERNOR BARBARA ROBERTS: Well, thanks for all
21 your support and help. Thank you, Linda.

22 ACTING DIRECTOR GARY GUSTAFSON: Okay. Thank you.
23 On with Agenda Item Number 3. This is a request for Land
24 Board approval to interim policy for issuance of temporary
25 permits for emergency circumstances in state scenic

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1 waterways.

2 At the last Land Board meeting, we had a lengthy
3 discussion about emergency circumstance, temporary permits.
4 And at that time, the Board asked staff to develop a
5 policy to help guide these activities, including
6 consideration of an application fee, if that could be done.

7 In response, we have drafted an interim policy
8 which is included in your packet as Appendix A. It
9 provides review criteria for handling these kind of permits,
10 and it has been reviewed by other effective state agencies,
11 and the reason we ask for this policy, essentially right
12 now is to go ahead with rulemaking on it. And that was
13 the original intent of this item in your packet.

14 However, as things happen, sometimes circumstances
15 change, and I'd like to explain a change that we've got
16 at this time. We have taken a look at the bigger picture
17 and feel that it is certainly useful and would be useful
18 rather than just to proceed ahead with a policy that's an
19 interim policy that only addresses emergency circumstance-
20 type permits in state scenic waterways, that rather it
21 might be more useful to propose a policy that deals with
22 all activities that the Land Board and the Division of
23 State Lands have responsibility for in state scenic
24 waterways.

25 As you recall, we have from time to time had a

1 number of these issues come before the Board, and it
2 certainly would assist the process if we were able to get
3 our point in a proactive (phonetic) sense, have policies
4 in place so that the Division of State Lands would be
5 better apt to act in response to these kinds of things.
6 And it, in fact, is possible that if we were to adhere
7 to the policy and you had reviewed the policy, that some
8 of these things might not even have to come to the Board,
9 and if they were required to come to the Board, we might
10 be able to stick them on a concurrence calendar.

11 So that's the intent of what I'm about to say,
12 and that is simply instead of going ahead with an interim
13 policy that is restricted just to emergency circumstance-
14 type permits in scenic waterways, that you authorize us to
15 move ahead to develop a policy that deals with all
16 activities within state scenic waterways, and that we come
17 back with that policy at a later date when it's ready.

18 **GOVERNOR BARBARA ROBERTS:** So the intent would be
19 to take the interim policy that was in the agenda, to set
20 that whole issue aside, and that can be handled in the
21 emergency fashion that's already allowed and then to have
22 your staff directed to prepare this whole policy and then
23 allow public input and other normal activities into that
24 broader policy or fuller policy?

25 **ACTING DIRECTOR GARY GUSTAFSON:** That's essentially

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1 correct, and let me just add one thing, that we would roll
2 the emergency circumstance interim measure into the full
3 range of issues that we look at in the big policy.
4 That's it.

5 **SECRETARY OF STATE PHIL KEISLING:** Gus, what's
6 your estimate as to when that policy would come back to
7 the Board for review?

8 **ACTING DIRECTOR GARY GUSTAFSON:** Well, now that
9 Mr. Lilly has completed LWRMP
10 may have some opportunities here.

11 **GOVERNOR BARBARA ROBERTS:** You have a staff person
12 here again.

13 **ACTING DIRECTOR GARY GUSTAFSON:** Yes. I would
14 venture that we're talking, you know, in a process like
15 this, at least several months.

16 **SECRETARY OF STATE PHIL KEISLING:** It won't take
17 long to run, that's why.

18 **ACTING DIRECTOR GARY GUSTAFSON:** Certainly not.

19 **GOVERNOR BARBARA ROBERTS:** Good.

20 **ACTING DIRECTOR GARY GUSTAFSON:** Yes. And also,
21 let me address one other issue that was raised at the
22 last meeting, and that was the issue of application fees.
23 There was a concern about could we get application fees
24 integrated in this process, and we've looked at that, and
25 I've talked with Bill Cook about it, and we do have an

1 application fee right now, of course, for removal fill
2 permits if there's 50 cubic yards or more being moved
3 around.

4 Unfortunately, we don't have, apparently, statutory
5 authority for an application fee if the activity involves
6 less than 50 cubic yards. And so Bill's told me that we
7 can't charge an application fee. And as unfortunate as
8 that sounds, I guess I have to accept that for now, but
9 it's an issue maybe we can address in our rulemaking.

10 **GOVERNOR BARBARA ROBERTS:** Well, if you address
11 it in rulemaking, then we need to be cautious of whether
12 there may be a statutory change--

13 **ACTING DIRECTOR GARY GUSTAFSON:** Right.

14 **GOVERNOR BARBARA ROBERTS:** That you might like to
15 look at with the legislative process not very far away at
16 this point in time.

17 **ACTING DIRECTOR GARY GUSTAFSON:** Yes.

18 **GOVERNOR BARBARA ROBERTS:** Is there motion or
19 comment on the party by the Board member to direct the
20 staff to move forward for the policy?

21 **SECRETARY OF STATE PHIL KEISLING:** I'll move that
22 the staff move forward with the policy.

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

24 **GOVERNOR BARBARA ROBERTS:** We've heard the motion.
25 Is there discussion? Hearing none, those in favor will

1 signify by saying "Aye." Aye.

2 STATE TREASURER TONY MEEKER: Aye.

3 GOVERNOR BARBARA ROBERTS: Those opposed, "Nay."

4 Motion is passed.

5 STATE TREASURER TONY MEEKER: Governor, I don't
6 know about the rest of the Board, but I would encourage
7 staff to review with the Attorney General the possibility
8 of introducing legislation to allow for the application fee
9 if that is what it takes.

10 GOVERNOR BARBARA ROBERTS: 'Cause this may be
11 based less on fill and removal than it might be--

12 STATE TREASURER TONY MEEKER: You bet.

13 GOVERNOR BARBARA ROBERTS: On some other--

14 STATE TREASURER TONY MEEKER: Well, sandbags are
15 not fill and removal.

16 GOVERNOR BARBARA ROBERTS: Yeah. It is a
17 different kind of issue, and I think it might be handled
18 separately with a statutory change, and I think we ought
19 to at least examine that.

20 STATE TREASURER TONY MEEKER: Right.

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1 AGENDA ITEM NO. 4

2 **GOVERNOR BARBARA ROBERTS:** Okay. Now, Item Number
3 4, as I indicated to you as it showed on the agenda
4 previously is going to be taken off. If you want to make
5 a brief comment about why it's not going to be on there.

6 **ACTING DIRECTOR GARY GUSTAFSON:** Yes, I would.
7 For the benefit of those who may have an interest in this
8 and the fact that it was on the agenda, the state law
9 that provides for this kind of activity specifies that the
10 filling beds or removal of material shall be prohibited
11 except as permitted by the Director of the Division of
12 State Lands upon a finding that such activity would be
13 consistent with the state scenic waterway policies, and then
14 if the Director finds that it's consistent, then it goes
15 to the Land Board for approval. But the caveat here is
16 that first the Director has to find it is consistent.

17 I have reviewed four applications that have come
18 in to place sandbags to divert water in periods of low
19 flow in the Rogue River, and I have concluded that those
20 proposed activities are inconsistent with the state Scenic
21 Waterway Act. Specifically, the provision that in the
22 policy and statute that identifies the need to manage the
23 waterway to preserve the free-flowing condition and preserve
24 the natural setting of a state scenic waterway.

25 I have made that finding and therefore, I'm acting

1 to deny these requests. As a result of that, there is
2 no need for these activities to go now before the Land
3 Board.

4 I also want you to know and also in fairness to
5 the folks who have made application that I wanted to get
6 a decision out quickly so that we would maximize the time
7 frame that these tour boat operators, which is who the
8 applicants are, that they would know as much in advance as
9 possible so they could make contingency plans to alter the
10 size of the boats that they might be using, or to go to
11 different areas or some other contingency that might fit
12 for their instance. And so I am already, in fact,
13 communicated verbally my decision to these individuals and
14 will follow up in writing.

15 **GOVERNOR BARBARA ROBERTS:** By the way, I missed
16 that there were two people signed up on Item Number 3.
17 Liz Frenkel (phonetic), did you wish to comment and Louise
18 Beilheimer (phonetic)? Okay. I'm sorry. I neglected to
19 call on you and you were both signed up, so I'm sorry
20 about that. I guess you would have hollered at me if you
21 really needed. Thank you. Okay. Thank you very much,
22 Gus, for Item Number 4.

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1 review and act upon it before the first of September. We
2 came to the conclusion that in the final analysis after
3 examining this and talking to all the affected parties,
4 that we should approve this primarily because it met the
5 criterion established in statute for emergency circumstances.
6 You'll notice in your packet that there is an appendix
7 including a letter to myself from the Public Utilities
8 Commission, in which the Public Utilities Commission
9 concludes that the natural gas supply to portions of the
10 State of Oregon, I believe their main concern was southern
11 Oregon, but portions of their distribution system in Oregon,
12 could be jeopardized to the extent that public life and
13 property could be jeopardized. And as a result, we
14 concluded that it was appropriate to issue a temporary
15 permit.

16 We were very concerned, however, about the kinds
17 of operating conditions that might need to be attached to
18 this. And so we worked with the company and with others
19 to try to design a package including a restoration plan,
20 list of conditions that we would attach to this permit.

21 We did that. We also reserved a performance bond
22 to insure that restoration would occur as indicated. The
23 company did go in, as a result of our permit issuance, and
24 place the pipeline across the river. I had a report late
25 last week that there may have been a violation of the

1 terms of the permit by the operator being in there longer
2 than the time that was specified.

3 My staff is investigating this right now. If it
4 turns out to be true, then we may be forced to take legal
5 action of some sort or assess a penalty, but again, at
6 this point, we're in the investigation mode of that.

7 I know that a number of property owners have
8 expressed concerns about this activity. We have included
9 also in an additional appendices in your packet, letters
10 from property owners and their attorney, letting you know
11 what their concerns are.

12 I want to finally add that in our reclamation
13 package, we did, as a matter of fact, include a great
14 number of the conditions that were requested by the
15 adjacent property owners.

16 **GOVERNOR BARBARA ROBERTS:** I have a number of
17 people, as I look more closely at this, maybe five, who
18 have signed up potentially to make comment. I don't know
19 whether you have arrived together and would like to comment
20 together. I can't tell that, so I'm going to see if I
21 can read all the names. It looks like Andy Daniel. Do
22 you have others who are going to tes--

23 **ANDY DANIEL:** My client, Chris Tabor--

24 **GOVERNOR BARBARA ROBERTS:** Okay.

25 **ANDY DANIEL:** Would like to--

1 **GOVERNOR BARBARA ROBERTS:** Okay. Fine. Why
2 don't you come to the table? You're Chris?

3 **CHRIS TABOR:** Yes, I'm Chris.

4 **GOVERNOR BARBARA ROBERTS:** Okay. Make sure I
5 don't miss anybody as I did earlier, so--

6 **ANDY DANIEL:** Good morning, Governor Roberts,
7 Mr. Keisling, Mr. Meeker. My name is Andy Daniel, I'm an
8 attorney in Oregon City, and I represent Chris Tabor, who
9 owns a piece of Clackamas River frontage in the approximate
10 location of Carver, Oregon. The Clackamas River is a
11 scenic waterway, and what I'd like to do is go ahead and
12 defer to Chris Tabor and let her have an opportunity to
13 address some of her concerns, reserving a right to go
14 ahead and make some comments after she's finished, if that
15 would be appropriate.

16 **CHRIS TABOR:** Thank you, Andy.

17 **GOVERNOR BARBARA ROBERTS:** Yeah, there's another
18 mike right beside you if you just want to move it over.

19 **CHRIS TABOR:** Okay.

20 **GOVERNOR BARBARA ROBERTS:** That might be simpler
21 for you.

22 **CHRIS TABOR:** Good morning. Thank you for this
23 opportunity. I am Chris Tabor, I do reside near Carver
24 along the Clackamas River. I didn't make time to be here
25 today because I'm trying to stop this expansion project,

1 but I am here because I'm very concerned about how flawed
2 the entire process of this project has been.

3 And I need to give you a little bit of
4 background on that because I've been involved in it for a
5 long time. Ten years ago, during the 1982 Clackamas
6 crossing, Northwest Pipeline representatives assured me that
7 my downstream property would not be affected. They offered
8 no type of compensation for rerouting the Clackamas River
9 across my land, nor for the loss of privacy and loss of
10 use of my riverfront beach during that summer. We have
11 almost seven acres there.

12 Once the crossing project was done and the water
13 had receded, I was stunned to find that Northwest Pipeline
14 had actually trespassed onto my property, dug my road into
15 a trench, left my land with giant sinkholes. When my
16 phone calls were not returned, I finally had to hire an
17 attorney to help get my land restored.

18 Well, now it's 1992, and my property is not
19 mentioned as being involved in the final environmental
20 impact statement for this expansion project. You can
21 imagine my surprise when I went out for dinner on April 6
22 in 1992 and came home to find a message on my answering
23 machine from a land representative with Northwest Pipeline
24 Corporation. It was placed to my home between 6:00 and
25 8:00 p.m. at night. The message left a phone number,

1 asking me to call with no further message.

2 I intended to return the call during my lunch
3 hour the next day, but by 10:00 a.m. the next morning,
4 Northwest Pipeline already had a crew of men with machetes
5 on my land.

6 Based on my prior experiences in 1982, I sought
7 legal counsel, intending to cooperate, but at the same time
8 exercise my rights. While walking my land and my
9 neighbor's properties with numerous state agency personnel
10 and Northwest Pipeline representatives, it became very
11 apparent to me that the selected route was straight off of
12 a surveyor's map. I had to point out that angling the
13 route 25 or 30 feet south, and there was ample acreage to
14 do that, would preserve the Rice's (phonetic) 20-year-old
15 grape vineyard and some of the old growth trees on my
16 property. Fortunately, the person doing the wetland survey
17 agreed the change would also benefit impact on some of the
18 wetlands.

19 Jim Payne, with Oregon Scenic Waterways was there
20 that day. He assured me restorations and restrictions are
21 much tighter than they were ten years ago, and that the
22 permit process will protect us from ending up with trashed
23 land.

24 I don't want to end up with a huge strip of land
25 that is little more than a rock pile instead of the lush

1 vegetation that it is today. It's natural wooded forest.
2 A landscape architect has designed a modest plan for me,
3 and much of it was incorporated into the original permit
4 by DSL.

5 But who's going to be responsible to make sure
6 that Northwest Pipeline carries that out? Does the state
7 have funds to assign an inspector to monitor each step?

8 August 17, 1992, Judge Jones dismissed the lawsuit
9 and motion for immediate occupancy filed by Northwest
10 Pipeline Corporation against myself and my neighbors. But
11 even then, a few days later, Northwest Pipeline sent over
12 a crew from Wisconsin called Northern Clearing -- they had
13 to go all the way to Wisconsin to find loggers -- with
14 the instructions to clear the trees down there.
15 Fortunately, we were home to challenge them. We pointed
16 out the property lines and asked the supervisor from
17 Northwest Clearing to make sure nothing was cut on my
18 side. About ten minutes later, they loaded up and stopped
19 at the top of the hill to say there wasn't any point now
20 that they knew approximately where the lines were. The
21 supervisor from Northwest Clearing said they were
22 independent and frequently get told, "Everything's already
23 settled with the landowners," when it really isn't. And
24 he wished us luck.

25 Northwest Pipeline public relations department has

1 constantly stressed their good neighbor policy, yet the
2 company failed to negotiate with landowners in good faith.
3 Northwest Pipeline doesn't seem to think they have to
4 comply with permit procedures. I witnessed them long after
5 they were supposed to be in the river, as well as the
6 entire community did.

7 Northwest just doesn't feel they have any
8 commitment for public safety, and speaking about public
9 safety, before more permits are issued, please, I urge each
10 of you to watch a five-minute tape that was videotaped all
11 after hours of when they should be in the river that
12 Mr. Sam Doane, another Carver resident, has made available
13 to Earle Johnson, Division of State Lands.

14 Also, I've provided you with a copy of a letter
15 stating the near tragedy that Barbara Artz witnessed. It's
16 truly a miracle no one was hurt during this Clackamas
17 crossing. And who would have been responsible had they
18 been?

19 Somehow, Northwest hasn't learned to use all of
20 its available resources to professionally complete projects
21 of this size. It's time someone steps up and reins
22 Northwest Pipeline Corporation in. Based on their past
23 performances, it is no longer enough to let Northwest say
24 whatever they think we want to hear. Northwest Pipeline
25 needs to be held accountable, and it's time their words

1 match their actions while they're working in Oregon.

2 Is this a company who has had ten years of
3 growing pains and still can't get its act together to
4 coordinate projects of this size, or does Northwest Pipeline
5 just have a negative, ugly attitude and it doesn't care
6 how it does business here? Either way, it's a company
7 that has to be watched.

8 **GOVERNOR BARBARA ROBERTS:** Thank you.

9 **CHRIS TABOR:** And this is the letter of Barbara
10 Artz, who is not an affected landowner. And you might
11 notice the last paragraph on that. Thank you.

12 **GOVERNOR BARBARA ROBERTS:** Thank you very much,
13 Ms. Tabor. Questions on the part of the Land Board
14 members of either Mr. Daniel or Ms. Tabor?

15 **ANDY DANIEL:** I have some comments I'd like to
16 make, Governor, if I may.

17 **GOVERNOR BARBARA ROBERTS:** Okay. We're running
18 on a fairly short time limit--

19 **ANDY DANIEL:** Okay.

20 **GOVERNOR BARBARA ROBERTS:** And I don't want to
21 cut out your input, but if you--

22 **ANDY DANIEL:** I'll try to--

23 **GOVERNOR BARBARA ROBERTS:** We want to make sure
24 we get all the information.

25 **ANDY DANIEL:** Be as brief as possible. I know

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1 that the issue is a hindsight, essentially, a validation
2 of the grant of the emergency permit. I recognize that
3 what we're trying to do is we're trying to establish a
4 system that takes into account the concerns that we're
5 going to raise here, but I also think that some of the
6 background associated with this matter is relevant and it's
7 important, especially in light of the scenic river
8 designation and also for future scenic rivers in this
9 state.

10 And there are plans for additional crossings by
11 Northwest Pipeline on the Molalla River and other rivers
12 of this state. And we want to avoid precisely what
13 happened here from happening ever again.

14 I became involved in this case this past summer.
15 On July 29, we received an offer of compensation from
16 Northwest Pipeline. On August 10, they filed a federal
17 condemnation action in United States District Court,
18 District of Oregon. The case was assigned to District
19 Judge Jones and three days after they filed the lawsuit,
20 they filed a motion seeking immediate occupancy of my
21 client's property. They requested an expedited hearing.
22 The basis for the grant of the expedited hearing was the
23 fact that they have this window that they had been granted
24 the DSL permit to cross the Clackamas River, which was not
25 true, which is in the agenda article, which talks about

1 the affidavit which was filed in federal court. That was
2 the entire reason, the basis for the exigent circumstances
3 which they wanted to use to get immediate occupancy of our
4 client's property.

5 A hearing was held on the 17th, exactly one week
6 after they filed this lawsuit. We had an expedited
7 hearing, the issue was, "When are they going to take our
8 property?" And what's the value? How much money are they
9 going to deposit into court at that time? Well, we were
10 fortunate enough to address some substantive issues
11 associated with the filing of the complaint, the pipeline's
12 failure to negotiate in good faith before they filed this
13 lawsuit. They violated state statute in terms of making
14 a good faith offer 20 days before they filed the lawsuit.
15 The complaint was defective, and we got the complaint
16 dismissed, and the motion for immediate occupancy was
17 denied.

18 Shortly thereafter, they began to get the
19 emergency permit process in effect. Now, the problem with
20 that is, they knew in the summer that they were going to
21 be crossing the Clackamas River, and what are they doing
22 waiting until the 19th, I believe it was, or thereabouts,
23 of August to get the ball rolling on this thing? The
24 emergency that was created was an emergency that they
25 created themselves. This whole thing was procedurally

1 defective. It was also morally defective, and it continues
2 to be morally defective.

3 I'd like to give you a memorandum from Don Yon,
4 who's with the Department of Environmental Quality. He's
5 the gentleman who showed up and witnessed the dredging in
6 violation of the terms of the emergency permit, and a
7 particular note. Before he went out there and observed
8 these violations, he called the company. He talked with
9 two people. They denied that the dredging was occurring,
10 and they also denied that turbidity levels were greater
11 than that which they would have expected.

12 He went out there, he found the dredging, and he
13 also got them to admit they were violating the terms of
14 the emergency permit. He got them to admit that the
15 turbidity levels were greater than they had ever anticipated
16 because the south shore of the Clackamas River was so
17 unstable. They didn't have silt nets in place. He noted
18 that.

19 I'd like for you to take a look at the
20 videotape, and I'd like for you to take a look at Don
21 Yon's memo. Thank goodness for Don Yon, who apparently
22 wasn't even supposed to work on this day, that he had the
23 incentive and the initiative to get out there and validate
24 the concerns of these people, who really are getting
25 bulldozed in this entire process. And incidentally,

1 Northwest Pipeline filed another complaint in federal court
2 on Friday. But in any event, we'll go back and we'll do
3 it again. And they're going to be right back where they
4 were the first time.

5 The process was defective because there was
6 inadequate opportunity to comment. All of the information
7 that the PUC based its decision on came from gas
8 companies. Industry-related interests, no one had an
9 opportunity to analyze the information. There was no
10 public notice, there was inadequate public comment. I had
11 people calling my office, saying "What are you doing to
12 the Clackamas River?" People calling my clients, saying,
13 "Why are you doing that?" Thinking that she's the one
14 who's responsible for crossing the river.

15 A project of this magnitude, \$373 million, six-
16 state project, and then we have to deal with these sort
17 of procedural inefficiencies. And I apologize when I start
18 to get somewhat emotional about this, but it really hits
19 home, and I think it's important that you understand that
20 all of the people that are involved as landowners are very
21 concerned about whether or not the crossing was done
22 properly and what's going to happen because you're all
23 familiar with pipeline projects and explosions that happen
24 in different states and leakages, which may happen in the
25 Clackamas River. We could just go on and on and on about

1 that.

2 **GOVERNOR BARBARA ROBERTS:** Please don't.

3 **STATE TREASURER TONY MEEKER:** Governor, has this
4 issue been withdrawn?

5 **GOVERNOR BARBARA ROBERTS:** No, what we did was
6 take it off of the consent agenda and move it on to the
7 regular agenda, and I think the permit was issued -- I'm
8 going to see if I can get this right. The permit was
9 issued on an emergency basis and I believe the work has
10 taken place and the question now was both to allow the
11 input that you're hearing and I believe for us to
12 basically hear the concerns, and we have other concerns
13 that have now been brought to our attention on not
14 complying with the permit. And I think this was an
15 opportunity for people who were sharing some of the
16 frustration they are feeling and to help us understand
17 further what had occurred contrary to the permit. And the
18 permit is issued. I mean, it's not undoable, I don't
19 believe, at this point in time. So that question is
20 probably moot, but--

21 **ANDY DANIEL:** It is, it is, Governor.

22 **GOVERNOR BARBARA ROBERTS:** But DSL does have some
23 enforcement opportunities and some restoration opportunities,
24 I believe, that we can enforce. I'm looking at Gus to
25 be sure that I'm correct on that, but I believe we have

1 some opportunity here to move forward, both the Division
2 of State Lands and the Land Board to make certain that --
3 I mean, what we're really doing is approving something in
4 retrospect that we can't undo, but any further action that
5 might exist in terms of enforcement of and restoration, we
6 do have some ability to act there.

7 **STATE TREASURER TONY MEEKER:** The reason I asked
8 the question, I was wondering what it is that we're being
9 asked to do, and--

10 **GOVERNOR BARBARA ROBERTS:** I think this is
11 mostly--

12 **STATE TREASURER TONY MEEKER:** Just listen, really.

13 **GOVERNOR BARBARA ROBERTS:** Yeah. To make us
14 aware, and Earle has a tape. I think we probably won't
15 see it today, but it's available for the three of us and
16 our staff to be able to see, which I think we'll want to
17 do that. So--

18 **ANDY DANIEL:** The permit was issued on the 21st
19 of August and they are across the river. Our concerns are
20 with the process and that there is adequate comment,
21 adequate notice, adequate oversight through the remaining
22 terms of the permit, reclamation efforts, and everything
23 else, and then also, I'm glad that you had the other
24 agenda item up for today on the emergency permit issuance
25 and everything else. It ties hand in hand, and it's the

1 place where it needs to be, but Northwest Pipeline is
2 going to have a lot of state involvement. They've tied
3 up a lot of time in the state and with the fiscal
4 integrity of the state, we think that it would be
5 appropriate for Northwest Pipeline to have to foot the bill
6 for what they're causing our taxpayers to pay for, and
7 it's only fair. It's only fair. Thank you.

8 **GOVERNOR BARBARA ROBERTS:** We do expect companies,
9 both in-state and out-of-state companies when they get a
10 permit for a given purpose with a given set of frameworks
11 to abide by that, and I think that that's not generally
12 an acceptable way to behave when you are working within a
13 limited permit for an emergency. And I think we were
14 aware that it could have been done much earlier, it was
15 a very late request for something, and from our standpoint,
16 if I remember correctly, the Public Utility Commission
17 office was concerned that if the pipeline did not go
18 across, people in southern Oregon would be without the
19 natural gas that was part of that operation. We
20 appreciate your being here today. We want to take time,
21 we've got two other people signed up who may wish to make
22 comment. Let me see. It looks like Ken Beck, is that
23 correct?

24 **KEN BECK:** Yes, that's correct.

25 **GOVERNOR BARBARA ROBERTS:** Okay. Sorry.

1 Sometimes these are difficult to read when people sign in.

2 **KEN BECK:** Governor and State Land Board, I am
3 one of the neighbors of Chris, also have land which the
4 pipeline is crossing. Chris and her attorney addressed
5 most of my concerns. An additional concern would be the
6 bond that you mentioned, the amount of the bond, would
7 that be adequate to cover, say, the erosion problems that
8 may result after the pipeline is through working out there?
9 And I think also, the erosion control that's mentioned in
10 the environmental impact statement.

11 In 1982, the pipeline came through our property,
12 and we lost about three acres. And I'm concerned there's
13 going to be loss of land again with the bond monies you
14 have, are they adequate to cover loss of land, or would
15 you be in there monitoring and say there won't be a loss
16 of land?

17 Another concern I have would be we need to
18 negotiate with the pipeline, we realize that. We've
19 requested many times that they mark the cutting boundary,
20 the clear boundary, on our property. We have not had
21 anyone from the pipeline come out and tell us what trees,
22 what improvements they're going to be taking. Our barn
23 may be lost to the pipeline. And we don't have feedback
24 on that.

25 So again, another concern, I think there may be

1 one or two more people out in my neighborhood that have
2 something to say. Thank you.

3 **GOVERNOR BARBARA ROBERTS:** Thank you, Mr. Beck.
4 We appreciate you coming.

5 **KEN BECK:** I also have photographs of the before
6 and after 1981, 1983, of what the land looks like out
7 there before and after--

8 **GOVERNOR BARBARA ROBERTS:** That would be useful.

9 **KEN BECK:** The pipeline came through.

10 **GOVERNOR BARBARA ROBERTS:** Thank you very much.
11 Okay. Jack Williamson? You've been very patient, thank
12 you.

13 **JACK WILLIAMSON:** Well, Governor and the Board,
14 I'm a neighbor of the Becks and Chris. We have the same
15 problem with this careless, arrogant corporation. And they
16 showed up on our property the morning of the condemnation
17 hearing to cut down our trees, and the hearing hadn't even
18 been held yet. But this is only one of many items.

19 To shorten this up, I've got two things I'd like
20 to ask of the Board. Why did you allow the crossing of
21 the Clackamas River at all? There's seven loops to be
22 made in the state, why did you have to make it on a
23 fragile wetland and river, number one. Why the river?
24 All they want is seven stories (phonetic) loops.

25 We're the major taxpayers in this case. When I

1 look at all the landowners up the line that this involves,
2 this out-of-state corporation is not, and when I call them
3 arrogant, I'll say they've got the nerve to approach us
4 initially and offer us \$25 for the damage they'll do on
5 our land. We have to pay tens of thousands of dollars
6 in attorney's fees, and so do they, before this issue is
7 resolved. It doesn't make sense.

8 We don't get the money, when it's all said and
9 done. We're the ones who are damaged. We have to live
10 with two 600-pound per square inch pressure pipelines in
11 our front yard, and how do you think that affects our
12 resale value?

13 My last question to you is I'm curious why your
14 Board granted them the permission to cross that river after
15 the federal judge had informed them, dismissed their appeal
16 for condemnation, that they weren't negotiating in good
17 faith with the landowners. You people came along right
18 behind it and granted them the permission to cross the
19 river. In effect, you sold us off. That's my opinion.

20 **GOVERNOR BARBARA ROBERTS:** Mr. Williamson, I want
21 to be clear. This is the first time this Board has had
22 this issue before us. This was an issue that can be
23 handled by staff, and this is the first time this Board
24 has heard this issue. So I want to be very clear this
25 has not been before the Board before.

1 **JACK WILLIAMSON:** I'd like to know if you people
2 had an inspector on the ground while they did this work
3 that they claim they were doing, and if you had seen the
4 contamination of that river. You talk about fish and
5 wildlife, I wonder how they live from Carver to Oregon
6 City, the fish. That river was muddy. It's a shame they
7 got away with this. I don't believe they ever had to
8 cross that river.

9 **GOVERNOR BARBARA ROBERTS:** Well, clearly, the Land
10 Board issue is with the river and we do not, as I
11 understand it, have anything to do with the private
12 property issue, and if you have been treated badly, and it
13 appears that you have, by this company on private property
14 that's not something we gave anyone permission to do. The
15 river issue was one that was handled by the staff of the
16 Division of State Lands and that's the reason it's back
17 before us now on an emergency basis. But this is the
18 first time the Board has had the issue in front of us or
19 the matter of the resulting problems before us. So it
20 wasn't done without a concern for the property owners, nor
21 was it done without a concern for the river.

22 **JACK WILLIAMSON:** Our point is to prevent this
23 again in the future.

24 **GOVERNOR BARBARA ROBERTS:** Absolutely. And I
25 understand that.

1 **JACK WILLIAMSON:** We appreciate your--

2 **GOVERNOR BARBARA ROBERTS:** We appreciate having
3 you here very much. Is there anyone else here who wishes
4 to -- yes?

5 **KENT JAMES:** My name is Kent James, I'm a
6 resident on the river here.

7 **GOVERNOR BARBARA ROBERTS:** Okay. Would you like
8 to -- since you're not signed up on the list, would you
9 identify yourself with a name and address, Kent?

10 **KENT JAMES:** Okay. It's 17424 Southeast Highway
11 224, it's on the Beck residence. I'm a renter there.
12 The thing that I'd like to point out here is that this
13 problem with the pipeline has been going on for ten years.
14 And that their existing crossing on the river is deficient.
15 In 1982, they went across and lowered the pipeline
16 into the river. They put rip rap (phonetic) in, it washed
17 out, you have photographs of the destruction that was
18 caused by their putting the existing line in, not this
19 proposed one, but the existing one.

20 **GOVERNOR BARBARA ROBERTS:** Right.

21 **KENT JAMES:** That land is washing out now. It
22 is uncovering their existing pipe. This is an article
23 that was in the Oregonian on August 19, I'll give to you,
24 showing approximately ten feet of soil washed off the top
25 of that pipeline after it was buried. That does not

1 include the depth into the river.

2 These people have got a problem of their own line
3 being uncovered. And now they've created a second problem.
4 This whole thing wasn't even necessary. If they'd
5 addressed the problem in the first place of their existing
6 line, which still exists. This land is still washing
7 away. It's washing the Beck property away, and the
8 Williamson property away. That problem has to be solved.
9 So now we've got two problems.

10 The existing crossing is under your jurisdiction.
11 You've got a gas line being uncovered, folks. And now
12 you've got two problems. What I am asking to be done
13 here is that this corporation be pulled up short, they be
14 forced to put in revetments (phonetic) or whatever's
15 necessary to stop the erosion that they've already caused,
16 and that their proposed crossings be enforced over time.

17 I brought this matter up at the FERC meeting,
18 Federal Energy Regulatory Committee meeting in February, as
19 a matter of public record. And they have not addressed
20 this problem.

21 And Mr. Meeker, you talk about fiduciary
22 liability, is this Land Board liable for any problems
23 caused by the existing noncompliance?

24 **STATE TREASURER TONY MEEKER:** Probably.

25 **KENT JAMES:** As you look at this, and I'll give

1 it to your secretary, this picture taken by the Oregonian,
2 the rip rap put in in 1982 is in the middle of the river.
3 Their own employees have admitted to knowledge of this.
4 If you look in the material that you presented over here,
5 their vice-president acknowledges in there that they've
6 known of this problem for some time. These banks are
7 unstable. Why are they crossing here at all?

8 Who developed the data for a need of gas farther
9 south? Have these people gone around state law concerning
10 storage of gas? Why are we storing gas in this river?
11 There's a lot of vacant land farther south or farther
12 north where this can be done. Why are these people doing
13 it? They developed the data, they presented it to FERC,
14 they present that data to you. And you passed on it, and
15 FERC passed on it.

16 These people have something to account for. Thank
17 you.

18 **GOVERNOR BARBARA ROBERTS:** Thank you very much.
19 But let me say two things. I would hope that this Board
20 would be interested in asking staff to investigate the
21 situation with the existing pipeline. That's a new issue
22 for us, and I think it's one we need to examine and see
23 what's going on.

24 I also want to make clear that we will pursue
25 the question of whether they violated the permit and if,

1 in fact, they did, it is customary on the part of this
2 Land Board and DSL staff to take action when people
3 violate permits, and so that is obviously one of the
4 concerns you have here. Some of it has to do with the
5 river, some has to do with the permit, some of it has to
6 do with the existing pipeline, and obviously some of it
7 has to do with private concerns you have on your private
8 land that, of course, are outside of our range of
9 authority but certainly something that I'm sure has raised
10 the concern on your part about the whole issue.

11 So, Gus, do you have anything else on this as to
12 what -- I mean, we're going to have to take action
13 basically on a permit that is almost moot action because
14 it's already been issued. But anything else that you
15 would like to comment about where we're going on this?

16 **ACTING DIRECTOR GARY GUSTAFSON:** Governor, I just
17 have two comments. First of all, this is sort of
18 reinforcement for the need to come up with a policy for
19 all kinds of activities in scenic waterways. There's no
20 question about that.

21 **GOVERNOR BARBARA ROBERTS:** Clearly, yes.

22 **ACTING DIRECTOR GARY GUSTAFSON:** Secondly, if you
23 have read the agenda item, you'll note that we put
24 something in this agenda item we don't normally do, and
25 that was a sense of frustration that perhaps this

1 particular company could have done a better job to get out
2 front of this situation. And frankly, my staff firmly
3 believes that, that had that occurred, I think we could
4 have avoided a great number of, perhaps, these problems.
5 Not all of them, but it would have made the entire process
6 run a bit more smoothly.

7 And that's something that we encourage,
8 particularly when you've got a large company and a very
9 ambitious statewide project like this, is to come in in
10 advance, a year or so if it is necessary in a project like this,
11 sit down, we'll go through a pre-application process with
12 them, identify what the expectations are, and work these
13 things out in advance. And frankly, we just did not have
14 the time afforded to us to react in that way this time.

15 **GOVERNOR BARBARA ROBERTS:** Well, I'm particularly
16 concerned to see someone tell that a permit has been
17 issued in terms of private land and that it has not been
18 issued and then we respond accordingly. That is
19 particularly of concern to me.

20 **STATE TREASURER TONY MEEKER:** Governor, is the
21 river navigable at that point or not?

22 **ACTING DIRECTOR GARY GUSTAFSON:** Well, it may very
23 well be. There's not been a navigability determination.
24 Our sense is that it probably is, but that, of course,
25 would await a court decision.

1 **STATE TREASURER TONY MEEKER:** Okay. And when was
2 the Clackamas declared a scenic river? Do you know the
3 answer to that?

4 **JOHN LILLY:** '75.

5 **ACTING DIRECTOR GARY GUSTAFSON:** 1975, we hear.
6 That was John Lilly.

7 **GOVERNOR BARBARA ROBERTS:** That sounds about
8 right.

9 **STATE TREASURER TONY MEEKER:** Did the Land Board
10 in '75 approve a permit for the original crossing?

11 **ACTING DIRECTOR GARY GUSTAFSON:** It was 1982, that
12 the--

13 **STATE TREASURER TONY MEEKER:** Excuse me, '82.

14 **GOVERNOR BARBARA ROBERTS:** And that was the
15 original crossing on the pipeline?

16 **ACTING DIRECTOR GARY GUSTAFSON:** When we're--

17 **UNIDENTIFIED SPEAKER:** That was the re-digging of
18 the original pipe that had--

19 **GOVERNOR BARBARA ROBERTS:** So it had been there
20 previous to the '82 decision. Does anybody know how long
21 it's been there?

22 **UNIDENTIFIED SPEAKER:** The pipeline was placed in
23 approximately 1960.

24 **GOVERNOR BARBARA ROBERTS:** So it's been there a
25 long time.

1 basically, we can't unissue the permit. It's been issued.
2 We just basically are taking action, but we will move
3 forward to examine the potential permit violation and any
4 other issues of the existing pipeline problem. Is that
5 factual?

6 **ACTING DIRECTOR GARY GUSTAFSON:** Precisely.

7 **ANDY DANIEL:** Governor, I apologize. Andy Daniel,
8 for the record again. Is the pipeline company even here
9 to address some of our concerns? I'm just curious--

10 **GOVERNOR BARBARA ROBERTS:** Not that--

11 **ANDY DANIEL:** To see if they even have enough
12 incentive to show up at this--

13 **GOVERNOR BARBARA ROBERTS:** Oh, is there someone
14 here from the pipeline company?

15 **FRANK SEMPLE:** Yes, we actually do have several
16 people, Governor. If it's appropriate--

17 **GOVERNOR BARBARA ROBERTS:** Well, I want to be
18 clear. We're not going to get into a public hearing on
19 this issue. All the Board is doing today, we don't want
20 this to turn into a legal hearing here, all the Board is
21 doing today is to take action to approve something that's
22 already been approved. We can't undo that, but basically
23 to take the formal action on what has been done by staff.
24 That's our only rule today, so they are here, but we don't
25 want to turn this into a public rebuttal setting, and I

1 want to be very cautious. We were to have been finished
2 15 minutes ago, and all three of the members of the Land
3 Board have appointments and they're running very tight.

4 We need to take action, Gus, do I understand, to
5 basically formalize what has already been done? That
6 doesn't stop movement forward, to talk about the current
7 pipeline, the permit issues, and all of the things that
8 have been raised with regard to that. Is that correct?

9 **ACTING DIRECTOR GARY GUSTAFSON:** That's right,
10 Governor.

11 **GOVERNOR BARBARA ROBERTS:** Okay.

12 **ACTING DIRECTOR GARY GUSTAFSON:** And my staff and
13 I will be willing to sit down with the pipeline and the
14 landowner representatives and hear further concerns.

15 **SECRETARY OF STATE PHIL KEISLING:** Can I clarify
16 a question? Gus, is there a possibility at a future
17 meeting, after we approve what has been done, ex post
18 facto, and all that, is there a possibility at a future
19 meeting that we may be asked to approve some kind of
20 action taken against anybody that we would determine had
21 done something that they shouldn't have?

22 **ACTING DIRECTOR GARY GUSTAFSON:** I doubt it,
23 although anything is possible. But we're investigating this
24 permit violation. If there is a violation, we would move
25 forward at the staff level, without needing to come back

1 to the Land Board.

2 **SECRETARY OF STATE PHIL KEISLING:** Okay.

3 **ACTING DIRECTOR GARY GUSTAFSON:** That would be a
4 violation of--

5 **SECRETARY OF STATE PHIL KEISLING:** But you may
6 come back to us with more information, telling us if you
7 have proceeded with some action that has essentially risen
8 out of information that we've received here today?

9 **ACTING DIRECTOR GARY GUSTAFSON:** Yes.

10 **GOVERNOR BARBARA ROBERTS:** Okay.

11 **STATE TREASURER TONY MEEKER:** Governor, I think
12 that's instructional about what we've heard today is the
13 earlier motion, which instructs the Division to develop over
14 a period of several months, an appropriate policy for
15 scenic waterways. I really think that's what we're gaining
16 here is the long-term impact and long-term policy that can
17 address this kind of thing. I would move the item.

18 **GOVERNOR BARBARA ROBERTS:** Is there a second?

19 **SECRETARY OF STATE PHIL KEISLING:** I'll second it,
20 but--

21 **GOVERNOR BARBARA ROBERTS:** We left somebody out.
22 Item, what was 5B, now Number 4, has been moved and
23 seconded. Is there further discussion? Hearing none,
24 those in favor will signify by saying "Aye." Aye.

25 **STATE TREASURER TONY MEEKER:** Aye.

1 **SECRETARY OF STATE PHIL KEISLING:** Aye.

2 **GOVERNOR BARBARA ROBERTS:** Those opposed, "No."

3 And I thank all of you for being here today and bringing
4 this to our attention.

5 **SECRETARY OF STATE PHIL KEISLING:** Yes, I want
6 to thank people who came down. It's important that people
7 are willing to bring this stuff to our attention, even
8 when it's after something has happened, but we will pursue
9 it.

10 **GOVERNOR BARBARA ROBERTS:** Okay. Thank you very
11 much.

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1 AGENDA ITEM NO. 5A, C, and D

2 **GOVERNOR BARBARA ROBERTS:** We have now before us
3 consent items 5A, C and D. Is there a motion?

4 **STATE TREASURER TONY MEEKER:** I'll move to consent
5 agenda.

6 **SECRETARY OF STATE PHIL KEISLING:** Second.

7 **GOVERNOR BARBARA ROBERTS:** The consent agenda has
8 been moved and seconded. All those in favor will signify
9 by saying "Aye." Aye.

10 **STATE TREASURER TONY MEEKER:** Aye.

11 **SECRETARY OF STATE PHIL KEISLING:** Aye.

12 **GOVERNOR BARBARA ROBERTS:** Those opposed, "Nay."
13 We have one informal item. Is this going to be lengthy,
14 Gus, since we're running on a very--

15 **ACTING DIRECTOR GARY GUSTAFSON:** I could do it
16 in about 60 seconds, Governor.

17 **GOVERNOR BARBARA ROBERTS:** Okay.

18 **ACTING DIRECTOR GARY GUSTAFSON:** In your packet
19 is a draft policy that the Division has developed. It
20 deals with how we're going to administer grazing practices
21 on state land. This is something that is long overdue.
22 We have, for years, been conducting our grazing activities
23 without formal policies. We decided earlier this spring
24 to change that. We worked with interest groups with other
25 state agencies to develop this draft. It is currently out

1 for the first round of public review. Following the
2 receipt of comments at the end of September, we will
3 revise the draft and make a draft two and take it out for
4 an even more widespread review, to the public, to agencies,
5 to interest groups, and so on. We're also going to hold
6 public information meetings, primarily in eastern Oregon, so
7 that people understand where we're coming from. The intent
8 is that we would adopt a policy sometime around the end
9 of this year, so it would be in place by the beginning
10 of the year.

11 **GOVERNOR BARBARA ROBERTS:** Well, I appreciate the
12 staff moving on this issue. Obviously, in the meantime,
13 it has become an issue of fairly intensive legislative
14 study and obviously is increasing in public attention and
15 concern, and I believe, also as these things do, in public
16 controversy. So I think this is an issue that I'm pleased
17 to know that the staff has moved forward and is attempting
18 to lay a foundation for us to make good decisions about
19 the grazing lands for which we are responsible. So I
20 appreciate it.

21 Anything else to come before the Board? Any
22 other? I would accept a motion to adjourn.

23 **SECRETARY OF STATE PHIL KEISLING:** So moved.

24 **STATE TREASURER TONY MEEKER:**  Seconded.

25 **GOVERNOR BARBARA ROBERTS:** We are adjourned.

1

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