

DIVISION OF
STATE LANDS

STATE LAND BOARD

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

The Oregon State Land Board met in regular session on September 14, 1992, at 9:00 a.m. in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon, 97310.

Present were:

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

| <u>Assistants</u> | <u>Dept. of Justice</u> | <u>Staff</u> |
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| Anne W. Squier Nina Johnson Steve Smith | Bill Cook | Gary Gustafson Earle Johnson Gary Van Horn Steve Purchase agency staff |

The meeting was called to order by Governor Roberts. The topics discussed and the results of those discussions are listed as follows. Further details of the discussions may be obtained in the written transcript of the meeting available at the Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310 (phone: 378-3805).

The Governor announced that Item #4 had been removed from the agenda (request by commercial tour boat operators for approval to place sandbags in the Rogue River Scenic Waterway to adjust channel flows). She also explained that item #5B was being moved from the consent agenda to the regular agenda, so it could be handled separately (review of a temporary emergency permit to allow a natural gas line across the Clackamas River State Scenic Waterway).



Elliott Forest

Request for approval of an interim timber policy for the Elliott State Forest to guide timber sales until the new long-range management plan is adopted.

Acting Director Gustafson stated that at the previous meeting the Board requested that the Department of Forestry prepare an interim timber harvest plan for the Elliott State Forest to be used until the long-range management plan is adopted. He also explained that a change had been made to the written agenda item on page 5 in the last paragraph to ensure that Option Number 5, described in the item, included reliance upon the U.S. Fish and Wildlife Service rescinded guidelines. The words "in addition to avoiding incidental take of spotted owls," were changed to read, "in addition to reliance upon the rescinded guidelines. See Number 3 above."

Gustafson said that several meetings were held and attended by the Department of Forestry, Department of Fish and Wildlife, Division of State Lands and the Department of Justice to identify and analyze possible options for an interim policy. These were reduced to the seven options outlined in the written materials presented to the Board. The recommended option, "The Stewardship Approach," was selected to reflect the responsibilities of the Board as stewards of the common school trust land as well as the natural resources. He introduced State Forester Jim Brown to discuss this option further.

Brown said the Stewardship Approach follows the incidental take guidelines and uses several components--one being a series of concentric circles (a 70-acre core area, retaining 50 percent the next one-half mile, then 40 percent the next mile and one-half). He said under this approach, that harvesting could happen within the mile and one-half circle, if done in compliance with the incidental take guidelines.

Another component of the Stewardship Approach is the "reserved pair areas," contributing towards the recovery of the owl in some appropriate way and reserving some long-term options for the Land Board. He said this feature would be important if the Board pursues an incidental take permit with the U.S. Fish and Wildlife Service. The 1992 spotted owl survey is currently being analyzed in conjunction with the 1991 data, and at this time the number, size and location of the reserve pair areas has not been defined.

A third feature of the Stewardship Approach, he explained, is the use of the 50-11-40 rule in order to provide dispersal habitat outside the reserve pair areas and contribute to the surrounding federal habitat conservation areas.

Greg Miller from the Oregon Forest Industries Council said he was pleased to see the Board taking seriously its role for providing a short-term interim plan for the Elliott. He cautioned, though, that the Stewardship Approach goes too far for a short-term plan and that the level of protection should be less than 500 acres around an owl activity center. He said as discussions are being held regarding the Stewardship Approach, the Board should consider the recent memo from the Assistant Secretary of the Interior for the Fish, Wildlife and Parks which reinforces the notion that the incidental take guidelines are rescinded.

Governor Roberts said that an interim harvest plan allows the Board the opportunity to make revisions as new information or changes occur. She said new memos are received frequently and that the situation is very fluid.

Mike Miller, Vice President of Associated Oregon Loggers, asked what volume of annual timber sales was expected with the Stewardship Approach. He said it appeared to be about 16 mmbf. Although the Forestry Department had sold about 13.9 mmbf during the past year, he noted that around one-half has since been withheld because of owl concerns. He asked what the harvest implications would be if the Board adopted the 500-acre guidance from the U.S. Fish and Wildlife Service. He also mentioned his concern over the reserve pair areas, since the size they would cover hasn't been defined. He said that in talking with Jim Brown, the plan is to take the elements of the short-term plan and apply for a habitat conservation plan with the USFWS that would allow a 30-year incidental take permit, and create a level of harvest close to 38 mmbf. He urged the Board to adopt 36-38 mmbf as a target to be attained through the planning process, which he felt would meet their fiduciary responsibility.

Secretary of State Keisling moved the Board adopt the Stewardship Approach as an interim policy for timber harvest with the modification that the reserve pair areas be approved in concept only, and that the State Forester return to the next meeting with the number, location, and size of the proposed reserved pair areas for final Board approval. Other conditions would be that the State Forester proceed with any and all sales consistent with

this interim sale policy, that he take advantage of any change in state or federal policy that would increase harvest and that our long-range planning continue in a timely fashion, to ensure an annual target of 36-40 mmbf, if practicable, as soon as possible. He clarified that the motion does not substitute the 500-acre model. Governor Roberts seconded the motion.

Secretary of State Keisling discussed the 500-acre approach according to the USFWS memo, saying that the Board needs to stay on the course they have laid out in the past to keep the Elliott open and operating and maintain timber harvest in a way that is consistent with sound management and environmental protection, to allow for fulfillment of their fiduciary obligations.

It was presumed by some there would be no meeting in October. After clarification that there would be an October meeting, State Forester Jim Brown stated it would be difficult to bring back the information requested by the Board that quickly. The motion was modified to allow the State Forester to return to the November meeting with the information.

State Treasurer Meeker asked what the harvest level would be under the Stewardship Approach as it has been amended. Jim Brown stated about 15 mmbf. He said it could change depending on the analysis of the 1992 data. Meeker asked to make comments regarding the Board's fiduciary responsibilities. In 1987, he said a long-range harvest plan was adopted by the Board for the Elliott which produced 50 mmbf a year, or about \$20 million, which the Board was told could be done in perpetuity. Looking at the Elliott as an income-producing asset and using an eight percent rate of return, that would put the value of the Elliott at about \$250 million. However, the current harvest plan drops to \$8 million. Operating on the same assumption of an eight percent return, he said, that puts the Elliott's value at around \$100 million. This approach therefore either reduces the value of the Elliott or shows that the Board isn't managing its fiduciary responsibilities to obtain a maximum yield. He stated a better course would be to adopt the standard set forth in the recent Interior Department memo, which would return the annual harvest level to 30 mmbf. He said there have been prior discussions of the potential for the Board being sued for violating the Endangered Species Act, but continuing to treat the Elliott in this manner, he said, violates the fiduciary responsibilities by reducing the value of the asset from a quarter of a million dollars down to \$100 million. He said if it can't be harvested, a

prudent person would put it on the market. He moved to amend the motion to target the 500 acre rule to increase the harvest and meet the fiduciary responsibility. There was no second for the motion, and it therefore failed.

Governor Roberts stressed this plan is a short-term interim plan intended to position the Board for a long-term plan allowing for a greater permanent harvest. She cautioned against a short-term approach that might force the Board into litigation.

Secretary of State Keisling asked Jim Brown if following the 500-acre approach would violate of federal law. Jim Brown replied that he believes the 500-acre is an enforcement guideline of the USFWS and that they still stand behind the biology associated with the rescinded guidelines to avoid a take. He feels the 500-acre guideline could result in a take and in enforcement action.

Secretary of State Keisling said as we get into a habitat conservation plan or similar approach, the annual harvest level target would be 36-40 mmbf. He feels this is the best course of action to allow for long-range protection of the asset. He pointed out the Catch-22 situation of staying locked into the circle paradigm, saying that if we succeed in growing spotted owls, we will have more circles and fewer options.

Governor Roberts said the intention of the Endangered Species Act is to do whatever is necessary to prepare a recovery plan to make the species healthy again and to avoid having to operate within that framework permanently.

State Treasurer Meeker said when the Board acquired the Elliott in the 1860's it was nothing but burned over ground. For nearly 100 years, using contracts with the Forest Department, the managed harvest yield was brought to over 50 mmbf per year. The majority of the owls found on the Elliott have been on the areas that have been the most intensely harvested. He said the Board needs to seek other alternatives to create cash or yield on this investment.

Governor Roberts restated the prior motion by Secretary of State Keisling. The motion passed two to one with a nay vote from State Treasurer Meeker.

Secretary of State Keisling commended the Division of State Lands, the Department of Forestry, the Department of Fish and Wildlife and the Department of Justice for the hard work that went into the short-term planning process. The Governor also expressed her appreciation.

LWRMP

Request to adopt the 1992 Lower Willamette River Management Plan (LWRMP) and for final adoption of an administrative rule.

Acting Director Gustafson introduced John Lilly of the Division who coordinated the development of the LWRMP for the past two years. Lilly reviewed the process that was used to bring the plan to completion and explained the elements of protection that have been incorporated into the final plan. He stated that over 165 people have been involved in this project. He commended John Smith and Barb Hilts of the Division of State Lands for their staff work.

Governor Roberts said she is pleased to see the emphasis on public access areas in the plan. She commended John Lilly and others who worked on the revision of the plan for the wonderful job done.

State Treasurer Meeker moved the plan be approved along with adoption of the administrative rule. Secretary of State Keisling seconded the motion and the approval was unanimous.

Scenic Waterways

Request for approval of an interim policy for issuance of temporary permits upon a finding of emergency circumstances in order to conduct removal-fill activities within state scenic waterways prior to Land Board approval. Request for authority to initiate rulemaking to result in Land Board adoption of a final policy.

Acting Director Gustafson said at the last meeting the Board directed the staff to develop a policy to guide temporary permits issued in state scenic waterways in emergency circumstances, including possible application fees. He explained that a proposed interim policy had been prepared for the Board, but said that during the development of this interim policy the need for a comprehensive scenic waterway policy had been realized. A comprehensive policy wouldn't be restricted to just emergency circumstances, but would encompass any activities done in state scenic waterways which fall under the jurisdiction of the State Land Board. He asked that the proposed interim policy be set aside in favor of authorization for development of a comprehensive policy dealing with all Land Board activities within state scenic

waterways. Furthermore, this proposed policy should be brought back to the Board for approval at a later date. The proposed interim emergency circumstance policy would be rolled into the comprehensive policy, which he felt would take at least several months to develop. Gustafson said the application fee issue was discussed with Assistant Attorney General Bill Cook, who said the agency doesn't have statutory authority for that at this time. Instead, there is only the standard removal-fill application fee related to activities which involve more than 50 cubic yards of material.

The Secretary of State moved the Board authorize development of the policy. State Treasurer Meeker seconded the motion and the approval was unanimous. State Treasurer Meeker encouraged staff to review with the Attorney General's office the possibility of introducing legislation to allow for an application fee.

Scenic Waterway Request by three commercial tour boat operators for Land Board approval to place sandbags to adjust channel flows within the Rogue River State Scenic Waterway.

Governor Roberts asked Acting Director Gustafson to explain why this item was being removed from the agenda. Gustafson said that state law specifies that the filling of beds or removal of material in state scenic waterways shall be prohibited, except as permitted by the Director of the Division upon a finding that such activity would be consistent with the state scenic waterway policies, and then if approved by the Director, it goes before the Land Board. Gustafson said he reviewed the applications to place sandbags to divert water in the Rogue River during periods of low flow and concluded the activities were inconsistent with the provision in the State Scenic Waterway Act identifying the need to manage the waterway to preserve the free-flowing condition and the natural setting of the waterway. Therefore, based upon this denial, the matter did not require Land Board review.

Scenic Waterway Request for review of a temporary permit issued by the Division under emergency circumstances to allow the Northwest Pipeline Corporation to place a natural gas pipeline across the Clackamas River State Scenic Waterway.

Governor Roberts said this item had been moved to the regular agenda to allow for individual comments on the issue. Acting Director Gustafson explained that the Northwest Pipeline Corporation had applied for a temporary permit to place a buried pipeline across a state scenic waterway stretch of the Clackamas River. The late receipt of the application allowed only a very brief period during which the company could operate within the river, due to a Department of Fish and Wildlife standard that no in-water work be done after the first of September, since Fall Chinook salmon arrive about that time. This gave the Division just a short space of time to review and act upon the permit. Gustafson said a letter from the Public Utilities Commission concluded the natural gas supply to portions of Oregon could be jeopardized if this application was not approved, to the extent that public life and property could be in danger. After discussing this with the affected parties and finding the criterion in the statutes for emergency circumstances had been met, the Division approved the application. A list of conditions were attached to the permit as well as a performance bond to ensure restoration would occur. The project has been accomplished. Gustafson said staff is also investigating a report that the company may have violated the terms of the permit by working in the river longer than the specified period. A number of property owners have expressed concerns about the activity, and a great number of conditions requested by adjacent property owners were included as conditions in the permit.

Chris Tabor, adjacent property owner to the Clackamas River project, relayed her difficulties with Northwest Pipeline Corporation. She said the entire process had been flawed. Northwest Pipeline representatives assured her before the 1982 Clackamas River crossing that her downstream property would not be affected. She explained the damages that took place on her property due to the company's irresponsibility during that first crossing and that she was required to seek legal assistance for compensation. She said the company doesn't care how it does business and asked who would be responsible to monitor the work they are now doing in Oregon.

Andy Daniel, attorney for Chris Tabor, shared that, though work for the current crossing had already been done, he felt it important to establish a system that will take into account the concerns raised by property owners for future scenic waterway projects in the state. Additional crossings by Northwest Pipeline are being planned on the Molalla River and others.

He stated that the "emergency" situation was actually of the company's own creation, since they knew in advance they would be crossing the Clackamas River, but waited until the last minute to make application. He said the process was defective, because there was inadequate opportunity to comment. He said the information from the PUC was based on industry-related interests, that no one had adequate opportunity to analyze the information, and that no public notice was given. He said with a project of the proportions of this (\$373 million), there were procedural inefficiencies. He discussed the property owners' concerns about possible improper pipeline installation and potential leakages and/or explosions. He discussed a memorandum from Don Yon of DEQ, who apparently witnessed the company's dredging in violation of their permit. He stated he felt that Northwest Pipeline had tied up a lot of state time and that it would be appropriate for them to foot the bill for what they are requiring the taxpayers to pay.

Governor Roberts stated that the permit had been issued and the work had already been done, but the Division has some enforcement opportunity, to ensure that restoration takes place. She suggested the Board view the video tape that has been made available of the work being done in possible violation of the permit.

Ken Beck, adjacent land owner, said that Chris Tabor and her attorney addressed many of his concerns. He said that as a result of erosion due to the 1982 pipeline crossing, he lost about three acres of his land. He asked whether the amount of the bond that was required of the company was adequate to cover any erosion control problems that might occur. Another concern, he said, is the company's neglect in marking the cutting boundary to tell individuals what trees or improvements will be taken. His barn could be lost to the process and he's been unable to get information from them regarding that. He distributed a photo of what the land looked like before and after the 1982 pipeline crossing.

Jack Williamson, adjacent property owner, said he had the same problems with the company. He asked why the Board allowed the crossing of the river and fragile wetlands because there were seven pipeline loops proposed in the state. He said property owners will pay tens of thousands of dollars in attorneys fees while the company offers \$25 to them for the damage they do on the land. He asked why the Board gave permission for this after a federal judge dismissed the company's appeal for condemnation because they weren't negotiating with neighbors in good faith.

Governor Roberts assured Mr. Williamson that this was the first time the issue had come before the Board, that it was previously handled by other agencies and Division staff.

Kent James, adjacent property renter, also stressed the deficiency of the 1982 pipeline work. He said that land is washing out and uncovering that existing line. He said the company has now created a second problem, and land is still being washed away by the improper methods used during the 1982 work. He asked that the company be forced to put in revetments or whatever else might be necessary to stop the erosion that is taking place. He asked whether the Land Board could be held liable for any problems cause by their permit noncompliance, to which State Treasurer Meeker affirmed they might be. Mr. James asked why gas is being stored in the pipeline crossing the river when there is an abundance of vacant land farther south or north.

Governor Roberts said that staff will pursue whether the company violated the permit and take action on that. She said the concerns held by the citizens on their private land is outside the range of the Board's authority.

Acting Director Gustafson said this issue reinforces the need to develop a comprehensive policy for all activities within scenic waterways. He also encouraged a pre-application process for projects such as this, so that the staff work can be done in a proper manner.

An audience discussion took place and for the record Governor Roberts clarified that the original pipeline was laid around 1960. In 1975 the river became a scenic waterway and the pipeline was already existing. In 1982 erosion had caused the pipeline to surface and therefore additional work was needed.

Secretary of State Keisling asked if it is possible the Board could be asked at a future meeting to approve an action taken against a violation. Gustafson said if there is a violation, the agency would move forward at the staff level and would probably not need to return to the Board, though they would be informed.

State Treasurer Meeker moved to approve the item. Secretary of State Keisling seconded it and the approval was unanimous.

Consent Agenda

Scenic Waterway Request for review of a temporary permit issued by the Division to Rogue Mail Boat Services for placement of sandbags on an emergency basis to adjust channel flows within the Rogue River State Scenic Waterway.

Scenic Waterway Request for Land Board ratification of the Division's appearance before the Legislative Emergency Board on September 10-11, 1992 for increased expenditure limitation authority to receive and implement five grants submitted by the South Slough National Estuarine Research Reserve.

Minutes Request for approval of July 28, 1992, minutes of the meeting of the State Land Board.

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

Grazing Policy Status report on the Division's development of a policy to govern management of state land for grazing.

Acting Director Gustafson discussed the draft policy to administer grazing practices on state lands. He explained the Division has been conducting grazing activities for years without formal policies and are long overdue. He said that other state agencies and interest groups worked with the Division to develop the draft policy and that it is currently out for public review. At the end of the comment period the draft will be revised and sent for more public review. Public informational meetings will be held, primarily in Eastern Oregon, to help with the public's understanding of the policy. It is expected that the policy will be final and in place by the beginning of 1993.

Governor Roberts said she is pleased to see staff laying a foundation for good decisions about grazing lands.

Secretary of State Keisling moved the Board adjourn. State Treasurer Meeker seconded the motion and the decision was unanimous.

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