

Oregon

DIVISION OF
STATE LANDS

STATE LAND BOARD

BARBARA ROBERTS
Governor

PHIL KEISLING
Secretary of State

JIM HILL
State Treasurer

The Oregon State Land Board met in regular session on January 12, 1993 at 10:00 a.m. in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon 97310.

Present were:

Barbara Roberts	Governor
Phil Keisling	Secretary of State
Jim Hill	State Treasurer

<u>Assistants</u>	<u>Dept. of Justice</u>	<u>Staff</u>
Anne W. Squier Nina Johnson Rollie Wisbrock	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 in the regular session of the meeting 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).

Governor Roberts opened the meeting by welcoming State Treasurer Jim Hill to his first meeting as a new member of the State Land Board.



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Director Appointment of Director of the Division of State Lands.

The Governor introduced this item by requesting a motion be made to appoint a new director. Secretary of State Keisling moved the Board approve the appointment of Gary Gustafson as director of the Division and moved that his salary be set at step seven of the Principal Executive Manager G range, to be reviewed in six months.

State Treasurer Hill seconded the motion and the approval was unanimous. Secretary of State Keisling commended Gustafson on his job as deputy director, saying he looks forward to continuing working with him as director. Governor Roberts congratulated Gustafson on his new appointment.

Scenic Waterways Request to concur in concept with the Division's policy related to administration of removal/fill permits in scenic waterways and request for authority to initiate rulemaking.

Director Gustafson introduced this item. He said the issue of proposed placement of sandbags in the Rogue River State Scenic Waterway in September 1992 prompted the Board to request the development of a policy related to the administration of removal/fill permits in scenic waterways. Director Gustafson acknowledged John Lilly of the Division staff, who led the staff effort to develop the policy. Director Gustafson said the agency would like to transfer the policy into administrative rules to be final by the end of 1993. A series of public meetings were held and the draft policy was circulated with an invitation for public comment. Over one hundred comments were received. Individual briefings were held with many interest groups and individuals and comments were incorporated into the second draft policy, which is the copy being presented to the Board.

Director Gustafson reviewed the need for any removal-fill activities or alteration in any state scenic waterway to be approved the Division of State Lands and the Land Board. He said that coordination with the State Parks Department and their scenic waterway program is necessary. Gustafson said a primary issue during the policy formation had been the impact of the policy on tour boat operations, and whether this policy would make it difficult for these businesses to continue.

The policy articulates the standards for review and consideration of applications for any activity, removal or fill

in a state scenic waterway as well as emergency circumstances or requests for temporary permits. According to statute, when an emergency arises and there is a need for quick approval for activities in a state scenic waterway, the director of the Division of State Lands can approve an emergency circumstance permit, but in so doing needs to consult with the Parks and Recreation Department, the Department of Fish and Wildlife, and also first make a finding. Under emergency circumstances, it isn't always possible to follow those steps completely, which has posed a problem. Over the next several months as we prepare to go to rulemaking, the agencies will be working toward a memorandum of agreement to obtain a preapproval process for use as emergencies arise.

Governor Roberts discussed the incidence of the chemical spill that occurred and the need for an immediate response at that time. She stressed that there are occasions that do require immediacy.

Another issue raised in comments was the issue of recreational prospecting. The statutes specifically prohibit placer mining in scenic waterways, but it is the responsibility of the Water Resources Department to define "placer mining." Some years ago they developed a rule saying that placer mining includes the use of motorized dredges of larger than four inches in diameter. Many people expressed concerns last year over the Water Resources Department rule and asked that they review the rule, which they have agreed to do. Many people feel strongly that any kind of motorized activity, or anything related to placer mining, should be prohibited.

Bob Meinen, Director of the Department of Parks and Recreation said they approve of the direction of the policy and support it. He said they are ready to go forward with a memorandum of understanding to assist in the emergency permit process. He encouraged the Board to support this policy and to direct the Division to begin rulemaking.

State Treasurer Hill asked whether the memorandum of understanding had been used for things such as this before. Director Gustafson said it is used many times by state agencies on similar types of activities. The main reason is to preapprove the consultation process for certain emergency permit activities.

Rich Bastasch, Water Resources Department, said his agency supports the policy and has found it to be extremely useful in spelling out the roles of the different agencies and their involvement with scenic waterways. He said it will be very helpful to the agencies involved and to the public in setting up

review standards for the permit approval process. He said the Water Resources Department is reviewing the definition of placer mining, as well as all of the other definitions relating to the beneficial use of the water, and hopes the definitions will be ready for distribution and hearings by early summer. He said the Water Resources Department looks forward to continuing to work with the Division in refining the policy and in any subsequent rulemaking.

Governor Roberts expressed her concern over the Water Resources Department's definitions and hearings not taking place until summer, saying that will again be a time of year that placer mining would take place more frequently. Mr. Bastasch said the point was well taken. He said the process will be fairly comprehensive and they want to be as thorough as possible. Governor Roberts said she understood the need to be thorough, but said it should be easier, since it is a revision rather than starting with a brand new policy. She said she doesn't want to have the public concerned, as they were last summer, about inappropriate mining activities occurring in a scenic waterway without having an answer for them.

Governor Roberts invited any other public comment on the issue. Secretary of State Keisling said he believes the Division and the Board has discretion within the policy they set to not allow use of any motorized dredging equipment. Director Gustafson agreed and said the overriding interest here is the scenic waterway act itself and the removal-fill law.

Secretary of State Keisling moved the Board concur in concept with the Division policy and also add to that motion a provision to be included in the proposed rules explicitly prohibiting motorized dredging of any kind associated with recreational mining. State Treasurer Jim Hill seconded the motion and the decision was unanimous.

Grazing

Request to concur in concept with the Division's proposed policy related to management of state land for grazing and request for authority to initiate formal rulemaking.

Director Gustafson introduced this item saying it was the first step to rulemaking. He said the request was for the Board to adopt the policy and authorize the Division to proceed with rulemaking. He said the policy should be translated into rules no later than the end of 1993. Director Gustafson acknowledged Jeff Kroft, a DSL staff member, for being the key staff associated with this process. Gustafson said the first step

used in development of the process was to canvas the western states to discover what policies already exist, to be able to utilize what information has already been gleaned and to possibly avoid some known problem areas. The Bureau of Land Management and the US Forest Service programs were also reviewed for extra information.

Director Gustafson said increased scrutiny on what is occurring with rangelands regarding riparian areas, watershed health and problems with drought, have caused the agency to see the need for a review of the program. Another factor was the Elliott State Forest trust opinion which highlighted the need for understanding that the trust responsibility applies to all lands, including grazing lands, that we maximize revenue over the long term--which means we must get market value for these lands.

Director Gustafson said the initial draft was sent for review to all existing lessees on state lands (approximately 170). At the same time, participation took place with a senate interim committee looking at both state and private grazing practices. After incorporating comments, a second draft was developed and public hearings were held in Jordan Valley, Burns, Lakeview, Bend, Portland and Salem. A good number of comments were received and incorporated into the third draft which is being presented to the Board at this time. This draft was also widely circulated to an extensive mailing list.

Grazing fees have not been addressed as part of the policy. Director Gustafson said the federal government is currently looking at grazing fee increases, and the Division also needs to review fees. He said this will be done as the rules are promulgated.

Key parts of the policy are a ten-year lease term, a provision for competitive bid and, a good stewardship approach (rewarding lessees utilizing that have utilized their leasehold in a good manner and complied with all terms of their lease--allowing a preference for obtaining a renewal). Findings of fact will also be required for each leasehold area to assist the public in understanding how decisions were made. Another component is a grazing management plan concept for use over the long term to monitor pasture rotation, the number of cattle, and how riparian areas might best be managed. These management plans will be implemented on high priority areas first, such as sensitive watersheds, wetland areas and larger tracts. After that the agency will systematically include the remainder of the leasehold areas over the next six years, so that by 1998 all leaseholds should be under a grazing management plan.

Governor Roberts stressed that this process won't take current leases away--they will be honored, but this is an interim process with rulemaking forthcoming. She said the Board has spent too little time on the issue of grazing and needs to become more informed. She thanked the grazing lessees for their contributions and comments, helping to revise the policy drafts.

Representative Denny Jones commended the Division for the grazing policy. He commented on the competitive bid process, saying it could prove to be a pitfall if, on some of the larger leasehold areas, someone outbids the current lessee, then only holds the lease for a year or two. He also questioned the practice of granting some twenty-year leases, when most are ten-year and mentioned a concern over ranchers losing blocks of land, when many have already given up their BLM land. Representative Jones said the competitive process and other changes will cause considerable extra staff time, taking away from revenues. He said after management plans are entered into, all that should be necessary would be a periodic review. He said the process overall is a good one and will bring benefit to the State of Oregon.

W.C. Laird, eastern Oregon rancher, commented next about his concern over the competitive bidding process and the threat he feels it poses to the stability of the area. He delivered a letter to the Board with his concerns. Governor Roberts shared with Mr. Laird that the policy is in no way meant to be a threat to the ranchers, but is necessary to help the Board and Division meet their fiduciary responsibilities under the constitutions and to ensure that the lands are being used and managed well. She agreed with Mr. Laird's comment regarding leaseholders being treated evenly with regard to the length of their leases, and said that issue needs to be clarified. Mr. Laird recommended the agency work with the experts at the Oregon State Extension Office in finalizing the policy.

Secretary of State Keisling asked Mr. Laird how he felt the policy draft would impact his own ranching operation. One concern, he explained, was after investing so much time and money into such things as seeding, spraying, and building fences, that at the end of his lease, someone else could outbid him and his work would be lost to him. He felt this could cause potential litigation, and tie up blocks of land during that process.

Secretary of State Keisling shared with Mr. Laird about the stewardship process, which would reward the lessee who uses good grazing practices and complies with the policy with the right to renew.

Kathy Myron from Rest the West and the Oregon Wildlife Federation commended the Division for their efforts on the policy. She said it begins to address the concerns of a great many on grazing lands practices in Oregon. She said some concerns she has will be expressed during the rulemaking process and she will be submitting them in written form at that time.

Liz Frenkel, Sierra Club, said the draft policy is a step in the right direction and stressed the need for the Board to maximize its fiduciary responsibility. She said the policy's emphasis on sustained forage needs to be reviewed. She said a whole series of standards are significant such as for water quality, water quantity and watershed issues--the goal being the ultimate health of that land to give the most value over the long term. She said the Sierra Club will be working with the agency toward the rulemaking process and are pleased with the first step.

State Treasurer Hill asked what the standards might be for "good stewardship" of the grazing land and how objective these standards might be, so they could be readily determined by all. Director Gustafson said that one of the assignments that will need to be done during the rulemaking process will be to set those clear and objective standards.

Secretary of State Keisling said another provision allows the current lessee, who has been outbid in a competitive bidding process, to be able to match the competitors bid and keep the lease. He asked how this could be prevented when that current lessee had abused the land. Jeff Kroft said that the Division could refuse an application based on poor performance compliance on a past lease.

Secretary of State Keisling moved the Board adopt the concept and authorize the Division to begin the rulemaking process. State Treasurer Hill seconded the motion and the decision was unanimous.

Governor Roberts asked what the timeframe for completing rulemaking would be. Director Gustafson said it is planned for completion by the end of 1993.

Minutes

Request for approval of December 8, 1992
State Land Board regular and executive
session minutes.

Secretary of State Keisling moved the regular and executive session minutes of the last meeting be approved. Governor Roberts seconded the motion and the decision was unanimous.

Oath of Office

Secretary of State Keisling performed the oath of office for official appointment of new Director Gary Gustafson. Governor Roberts said the Board looks forward to working with Director Gustafson and commented that he has done a marvelous job as Acting Director.

State Treasurer Jim Hill introduced his executive assistant, Rollie Wisbrock, who will be, among other things, helping him with Land Board matters.

Elliott State Forest

Mark Lear, conservation coordinator for the Forest Conservation Council, asked to speak before the meeting was adjourned. He shared his concerns over sales on the Elliott State Forest where, according to his records, marbled murrelet are present. Governor Roberts asked that Mr. Lear stay after the meeting to discuss the situation further with Director Gustafson.

State Treasurer Jim Hill moved the meeting be adjourned. Secretary of State Keisling seconded the motion and the meeting was adjourned.

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