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STATE LAND BOARD MEETING

Thursday, October 28, 1993

William Q. Wick Memorial Auditorium

South Slough, Charleston, Oregon

10:00 a.m.  
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1                    **SECRETARY OF STATE PHIL KIESLING:**    The meeting of the  
2 State Land Board.    Governor Roberts unfortunately was not able  
3 to join us today, which means that I get a chance to chair this  
4 meeting.    First of all I want to say to all of you here how  
5 much of a pleasure it is, I know I speak for Treasurer Hill on  
6 this as well, to have a chance to have a meeting of the Land  
7 Board here in Coos County, and at the Reserve in Coos County  
8 lies probably some of our most important assets that we manage  
9 on behalf of all the people of the State of Oregon, so it's  
10 very appropriate for us to be here, and also just a delight to  
11 have a chance to get out of Salem to do things.

12                    We have a number of items on our agenda today, some  
13 action items, some consent items, and then some informational  
14 items.    It's our hope that we can wrap this up around noon, but  
15 we'll go as long as we need to.    We do have some people who  
16 have signed up to testify.    If anybody else decides they'd like  
17 to testify, please let the staff know and we'll get you on.

18                    The first item we have on our agenda is a request to  
19 sell some common school land within the Hart Mountain National  
20 Antelope Refuge in Lake County, and some common school land  
21 adjacent to the Malheur National Wildlife Refuge in Harney  
22 County, sale to the U.S. Fish and Wildlife Service that's before  
23 us.    Gus, why don't you fill us in on that, and then we do  
24 have two people who've signed up to testify.

25                    - - - - -

AGENDA ITEM NO. 1

1  
2           DIRECTOR GARY GUSTAFSON:       Thank you, Mr. Chairman.  
3       Good morning, Treasurer Hill, and welcome to South Slough.   And  
4       it is, indeed, it seems to be more comfortable on this side  
5       rather than me chairing a meeting.   It's real odd.   Anyway, the  
6       first item we have this morning is, indeed, a proposed sale of  
7       state common school land in or adjacent to two national wildlife  
8       refuges in Lake and Harney County.

9           I know you're all familiar with this issue, but for  
10       the record, let me explain that what we're proposing to do is  
11       to sell approximately 11,997 acres of State land in the Hart  
12       Mountain National Antelope Refuge worth just under \$940,000  
13       appraised value.   And also another 788, almost 789 acres, of X  
14       common school land within the Malheur or adjacent to the Malheur  
15       National Wildlife Refuge to the U.S. Fish and Wildlife Service,  
16       and the appraised value for that is around \$60,000.

17           We early on, several years ago, recognized that these  
18       lands were not being capable of further revenue production, and  
19       the reason for that was that essentially these lands are the  
20       remnants of the old Section 16-36 common school land grant to  
21       the State to be used for production of revenue for the common  
22       school fund, and over a period of years the State had  
23       systematically sold or traded off quite a few of those lands,  
24       and we were left with remnants, as we still are today in many  
25       areas of Eastern Oregon at least.   And several of those remnants

1 are within the Hart Mountain Antelope Refuge which was created,  
2 of course, after our State land grant. We have actually in the  
3 Hart Mountain Refuge about 26 individual parcels ranging in  
4 acreage from a section, 640 acres, down to a couple of 80-acre  
5 tracts.

6 If you're familiar at all with the Hart Mountain  
7 National Antelope Refuge, we're talking about largely high desert  
8 country here, and very little in the way of significant  
9 vegetation. The majority of these parcels are very typical of  
10 the high desert, and we have leased them in the past, not all  
11 of them, but some of the parcels to grazing entities, ranchers,  
12 who were able to graze our lands simply because they were also  
13 able to get grazing leases from the federal government, U.S. Fish  
14 and Wildlife Service, on the surrounding federal land, and  
15 therefore, as you well know, in the sparse grass country of  
16 Eastern Oregon, you need a very large expanse in which to  
17 conduct a viable grazing operation. Our lands, in and of  
18 themselves, because they're isolated, because they're relatively  
19 small, do not constitute an economic ranching unit, and it was  
20 only possible, therefore, for these ranchers to graze ours if  
21 they were also able to graze the surrounding federal lands in  
22 the Hart Mountain Refuge.

23 A couple of years ago a lawsuit was filed against the  
24 U.S. Fish and Wildlife Service asking that grazing be halted in  
25 the refuge. Eventually that led to a cessation, a moratorium

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1 on grazing entirely in the Hart Mountain National Antelope  
2 Refuge. And when that occurred, the lessees, who previously had  
3 been leasing our land, no longer had an incentive to lease our  
4 land, and when their grazing leases expired at the end of 1991,  
5 they did not come back in for renewal, and as a result, the  
6 State lands that we have now are not generating any revenue  
7 whatsoever.

8 The situation in the Hart Mountain Refuge is even made  
9 more difficult in terms of revenue production simply by the fact  
10 that they are within, as I mentioned, the Refuge. The Refuge  
11 does, therefore, have some ability to influence activities that  
12 might occur there through access and so on. And secondly, the  
13 Lake County Comprehensive Plan and Zoning Ordinance has identified  
14 this area as exclusive farm use, and the only allowed uses  
15 within that designation are grazing and wildlife habitat. So the  
16 highest and best uses, therefore, are very limited. If you want  
17 to do anything else there are provisions through a conditional  
18 use process in Lake County to do a few other things, but you  
19 would have to go through a conditional use process.

20 At the Malheur Refuge we have two parcels of land,  
21 the 700 and some odd acres, and in that particular instance  
22 these are immediately adjacent to the Malheur Refuge. They,  
23 early on, were used for grazing, similar to those at Lake  
24 County, but about eight years ago there was significant flooding  
25 in that area, and as a result the lands were inundated for a

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1 period of time, and they've been slow to regrow, and they've  
2 periodically been inundated by water again and again. Even  
3 though there's been drought in Eastern Oregon there are areas  
4 where there is still some flooding occurring, and I guess we're  
5 lucky enough that it occurred here, but it's also been a  
6 detriment because it has influenced our ability to actually graze  
7 these lands.

8 We have not generated any revenue whatsoever from these  
9 lands, nor is it likely that we will in the future, for just  
10 that reason. These lands are still subject to periodic flooding.  
11 Again, in this case, the Harney County Comprehensive Plan has  
12 designated these areas for grazing, and so the highest and best  
13 use is grazing, and that is a use, as I've mentioned, that now  
14 is very unlikely to occur in the future.

15 Given these circumstances, a couple of years ago we  
16 began to look around for alternative lands, and we certainly  
17 looked at the possibility of a land exchange, and discussed that  
18 with the majority property owner in both areas, and that was the  
19 U.S. Fish and Wildlife Service. After looking at federal lands  
20 that might be available for exchange, at least that the U.S.  
21 Fish and Wildlife Service had control over, we came up empty  
22 because we were looking for lands that would have revenue-  
23 generating potential, certainly much greater than the lands that  
24 we would be willing to give up in exchange. And by their very  
25 nature, the lands that the U.S. Fish and Wildlife Service has

1 are within refuges, and they are wildlife habitat for the most  
2 part, and they just are not conducive to generating revenue.

3 There may have been some other federal lands that  
4 frankly we may, it's always possible to think you might be able  
5 to obtain, but based on my lengthy experience as a land manager,  
6 having been involved in many land exchanges, it is very, very  
7 difficult to convince one federal agency to exchange its lands  
8 to benefit another federal agency, and just be open about that,  
9 you know. There may have been lands that the Forest Service  
10 or even the BLM might have that certainly would be better than  
11 the U.S. Fish and Wildlife Service had, but they weren't willing  
12 to give those lands up without something directly for them in  
return.

14 As a result of all this we decided to seriously  
15 consider the possibility of selling these lands, and we had them  
16 appraised for that purpose. We found out what they were worth,  
17 and collectively they are worth just under a million dollars, and  
18 the appraisal is part of our record. We then proceeded to  
19 assemble a package for sale. We decided to put that package  
20 together as a sale of two units, the Hart Mountain in-holdings  
21 collectively as one unit, and the Malheur in-holdings collectively  
22 as one unit.

23 We combined them for a number of reasons. First of  
24 all the administrative cost reductions. If we're selling, in the  
25 case of Hart Mountain, one unit, the costs of advertising and

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1 sale are much less than they would be if we sold them as 26  
2 individual units. Also in the case of Hart Mountain we have  
3 another circumstance, and that is that while most of these lands,  
4 as I mentioned, are high desert, there is one parcel that does  
5 have a year-round creek known as Deer Creek flowing through it  
6 with a aspen growth, and it's quite a pretty and useful piece  
7 of property. It is also adjacent to a 80-acre piece of private  
8 land.

9 In this case, while it would certainly be possible to  
10 separate one or more of the parcels and sell them individually,  
11 what that might do is detract the viability of the remaining  
12 land in its attractiveness to future buyers because certainly,  
13 I think, any buyer of this land would probably be most  
14 interested in the Deer Creek parcel because of its water, and  
15 grass, and trees, and the remainder of it would be of much less  
16 interest. And so we decided to package the Hart Mountain  
17 parcels together as one viable unit, and sell them as a package  
18 to ensure that we weren't left with a number of residual parcels  
19 that would be difficult to unload in the future.

20 Lake County, for the record, did submit on two  
21 occasions bids to acquire the Deer Creek Parcel, the 80-acres  
22 that we own. They offered to acquire them through a land  
23 exchange at one point, and then later on, after we offered them  
24 for sale, they offered to acquire them by purchasing them  
25 directly, and their purchase offer did include -- I think their

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1 offer was slightly more than the appraised value that the lands  
2 had accrued for just that one 80-acre piece. However, Lake  
3 County was not interested, apparently, in bidding or acquiring  
4 all of the Hart Mountain parcels which were being sold as one  
5 unit.

6 In response to our bid, which we went through the  
7 normal surplus property bid process on, we are required to first  
8 give the opportunity to purchase to any other State or political  
9 subdivision, and we did do that. We gave notice to those  
10 entities. We gave notice to surrounding property owners. We  
11 gave notice in The Oregonian and the Lakeview and the Burns  
12 papers and so on, and in response we received one acceptable  
13 offer from the U.S. Fish and Wildlife Service. U.S. Fish and  
14 Wildlife Service submitted bids that slightly exceeded the  
15 appraised fair-market value of each of the two units that we had  
16 advertised for sale. Again, Lake County did submit a bid during  
17 the time available to bid, but it was only for the one Deer  
18 Creek parcel within our much larger unit at Hart Mountain.

19 STATE TREASURER JIM HILL: Mr. Chair?

20 SECRETARY OF STATE PHIL KIESLING: Yes.

21 STATE TREASURER JIM HILL: Thank you, Mr. Chair. How  
22 much was the offer by the County for the 80 acres?

23 GARY GUSTAFSON: I believe it was about \$39,000  
24 something. I'd have to ask Geri. Do you know? \$38,000?

25 GERI COHEN: \$38,800.

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1           SECRETARY OF STATE PHIL KIESLING:     \$38,800, which I  
2 think is, on a per-acre basis, is approximately more than \$400  
3 an acre, but closer to \$475 an acre.

4           GARY GUSTAFSON:     Yeah.

5           SECRETARY OF STATE PHIL KIESLING:     That compares with  
6 most of the other parcels which probably came in around \$80 to  
7 \$100 an acre.

8           GARY GUSTAFSON:     Yeah. They ranged for a low of \$50  
9 up to this Deer Creek parcel, which is, as you say, closer to  
10 \$400.

11           STATE TREASURER JIM HILL:     You said it was the most  
12 valuable piece of--

13           GARY GUSTAFSON:     Yes.

14           STATE TREASURER JIM HILL:     The 26?     Okay.

15           GARY GUSTAFSON:     That's correct. We rejected the Lake  
16 County offer, and we did so because it was not responsive to  
17 our advertised bid. They had bid only one piece of the entire  
18 package, and therefore it was rejected. At the time we rejected  
19 it too, we also made sure that we informed Lake County that  
20 there was still sufficient time to submit a bid on the entire  
21 parcel in accord with our legal offering.

22           As you recall at the last meeting, the Land Board did  
23 approve the transfer of the mineral estate as a part of a  
24 proposed sale, so I want you to know today that should you  
25 approve this sale, that the mineral estate part of it has

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1 already taken place, and that will ultimately transfer, as would  
2 the land estate to the land if this sale is approved.

3 We have included in your packet the findings that the  
4 Division of State Lands has made in our decisions on the sale  
5 up to this point, and those findings have been reviewed, of  
6 course, by our legal counsel during their preparation.

7 I need to update you as well on a couple of other  
8 things. First of all, there is one very minor correction to  
9 the staff report, and I want it noted so we can make that  
10 correction for the record though. It is found at Page 3, the  
11 large paragraph in the middle of the page, the second to the  
12 last sentence where it reads, "The Division received one  
13 responsive bid from the U.S. Fish and Wildlife Service of  
14 \$939,298." That dollar amount should read \$940,000, so please  
15 make that correction.

16 Secondly, I want to update you that again, in accord  
17 with State law, when we sell property, State land, we also have  
18 to notify and ask for the approval of the county that the lands  
19 are within, in this case both Lake and Harney County. We  
20 formally did that, and both Lake and Harney County have now  
21 responded. Both counties have decided to deny approval. And  
22 Harney County is here today, a representative of Harney County,  
23 and I'm sure that he will speak to the reasons for that denial.  
24 And we also have a representative, at least the attorney  
25 representing Lake County, here today, as least as an observer.

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1 I don't think she wants to speak.

2 An update though, on discussion with her just prior to  
3 the meeting, I am aware that a lawsuit is being filed, or is  
4 in progress of being filed, by Lake County against the Oregon  
5 State Land Board and the Division of State Lands, objecting to  
6 the sale of the Lake County parcels, the Hart Mountain  
7 properties, and I believe the basis of that is our failure in  
8 their opinion to comply with the right of county to preference  
9 to purchase of their preference right under State statute any  
10 State lands that may be sold. So I'll bring you up to date  
11 on that, and Bill, I don't know if Bill Cook has had any  
12 further news on that.

ASSISTANT ATTORNEY GENERAL BILL COOK: No further news.

14 GARY GUSTAFSON: Okay. Mr. Chairman, the findings are  
15 before you. We have carefully reviewed this. We have tried  
16 to ensure that we have complied with State law at every step  
17 through our notice, through our findings, through our coordination  
18 with these counties. We have maintained, I think, fairly  
19 constant communication with both counties, and while they disagree  
20 with us, I don't think it's due to lack of information or  
21 failure to communicate. I think it's a perspective of how they  
22 sit in the areas that they are, and what federal ownership might  
23 mean to those particular counties. So at this time the Division  
24 recommends that the State Land Board approve the sale of the  
25 11,997 acres of common school land within Hart Mountain Refuge,

1 and also the 788 acres approximately of common school land  
2 adjacent to the Malheur Refuge because the sale will be in the  
3 best interest to the common school fund, and enable this Land  
4 Board to meet its fiduciary responsibilities to generate revenue  
5 over the long term.

6 SECRETARY OF STATE PHIL KIESLING: Okay. Now, Gus,  
7 just a couple of procedural questions. When we get to the  
8 point of the action item itself, that will incorporate some  
9 findings?

10 GARY GUSTAFSON: Yes.

11 SECRETARY OF STATE PHIL KIESLING: The appendices are  
12 here. Is there anything else we need to--

13 GARY GUSTAFSON: Mr. Chairman, I would suggest, to make  
14 as complete a record as possible, that if this Board decides to  
15 approve this action, that you incorporate in your approval the  
16 staff report in appendices, specifically the findings.

17 SECRETARY OF STATE PHIL KIESLING: Okay. Any questions  
18 of Gus before we ask the people who have signed up to testify  
19 to come forward? Treasurer Hill?

20 STATE TREASURER JIM HILL: Yes, Phil. Gus, in seeking  
21 the approval of the counties, and they gave a negative response,  
22 what should be done legally; what follows from that?

23 GARY GUSTAFSON: Well, Treasurer Hill, they have  
24 indicated their preference. We have attached those letters in  
25 the report here to you. Depending on what happens today I will

1 then send each of the counties a letter explaining what happened  
2 and why. Of course they are here today so they already know  
3 that, but we'll do that for the record. And then it is up to  
4 them to decide what further action, if any, they decide to take.

5 STATE TREASURER JIM HILL: I guess, Gus, what I mean,  
6 in the statutory scheme we obviously seek their approval for a  
7 reason.

8 GARY GUSTAFSON: Yeah.

9 STATE TREASURER JIM HILL: And once it's denied, then  
10 what are the legal consequences of that?

11 GARY GUSTAFSON: Well, I'll ask Bill Cook perhaps to  
12 help clarify this responsibility, but the main thing that's going  
13 on here is that, of course, we have a State statute that  
14 provides for county approval.

15 STATE TREASURER JIM HILL: Yes.

16 GARY GUSTAFSON: The counties have said no.

17 STATE TREASURER JIM HILL: Yes.

18 GARY GUSTAFSON: Okay. If you decide to take action,  
19 then very clearly the only basis for that would be your  
20 constitutional authority to generate revenue over the long term,  
21 and that constitutional authority has been reiterated on several  
22 occasions by the Attorney General as sufficient to override a  
23 statute that conflicts with your constitutional directive, and  
24 with that, my expert here, I'm sure, can help clarify further.

25 BILL COOK: Mr. Chair, members of the Board, obviously

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1 the Land Board must comply with the law. There are rare  
2 circumstances where your constitutional trust responsibilities may  
3 conflict with what the legislature has lined out as a process  
4 for selling State lands. In that circumstance you, as the  
5 members of the Land Board, have to determine what your  
6 constitutional trust responsibility calls on you to do in the  
7 circumstance, and you make that decision as trustees, keeping in  
8 mind the overall constitutional mandate to maximize revenue from  
9 these lands over the long term, and you do what a trustee would  
10 do, a reasonable and prudent trustee, would do in the same-fact  
11 situation. And if you believe after that analysis that complying  
12 with a particular statute would force you to not live up to  
13 your constitutional duties, then it's a fairly simple legal  
14 matter, the constitution takes precedent over the statute.

15 STATE TREASURER JIM HILL: I guess given this, what  
16 is the purpose in the statutory scheme if we can just override  
17 the objections of the counties? What's the purpose of the  
18 statute? I mean is it just advisory, then, the opinion of the  
19 county?

20 BILL COOK: Treasurer Hill, I wouldn't call it  
21 advisory. Obviously the legislature has the authority to fill  
22 in the blanks basically. The constitution gives the Land Board  
23 the duty to manage and dispose of lands. From there the  
24 legislature may set up processes for making that come about, but  
25 it's not all that unusual for boards or constitutional officers

1 to have a constitutional duty that in extremely rare  
2 circumstances bumps up against what a statute may require. And  
3 I think really that's what's going on here. The Land Board  
4 must comply with the law, sometimes there is a conflict, and  
5 those conflicts are resolved in favor of constitutional duties.

6 STATE TREASURER JIM HILL: So in other words this  
7 statute is asking for, I don't know if you'd call it approval  
8 of the counties, so that statute itself is bumping up against  
9 the constitution, and they have taken an action that clashes with  
10 our responsibilities.

11 BILL COOK: That's right. The statute is  
12 constitutional. A good reminder at this point is that we're  
13 dealing with a particular type of land. We're dealing with  
14 lands that the Land Board got from the federal government under  
15 the Admissions Act.

16 STATE TREASURER JIM HILL: Okay.

17 BILL COOK: And they are subject to the constitutional  
18 trust obligation to maximum revenue. Many of the lands that the  
19 Land Board manages are not subject to that.

20 STATE TREASURER JIM HILL: All right.

21 BILL COOK: And if the Land Board were disposing of  
22 those lands, there would not be the constitutional issue, there  
23 would only be the statute.

24 STATE TREASURER JIM HILL: Okay. All right. But  
25 there are cases that are grounded in law that allow us to

1       override that statute under these circumstances?

2               **BILL COOK:**       That's correct.       The Attorney General's  
3 office gave an opinion, I believe, in 1982, if I'm right, to  
4 the then-director of State Lands concerning the statutes that set  
5 out the process for disposing of lands, and in that situation  
6 reminded DSL that there may be circumstances when we're dealing  
7 with trust lands, where the constitutional duty will bump up  
8 against what the statute says.       And if the constitutional  
9 trustees believe that they can't satisfy both duties, they must  
10 go with the constitutional duty.

11               **SECRETARY OF STATE PHIL KIESLING:**   To follow up just  
12 a second.   In other words, Bill, if the legislature had passed  
13 a statute that declared that the Elliott State Forest shall be  
14 a State park, and timber harvesting prohibited in the Elliott  
15 State Forest, we, as a land board, could reach the conclusion  
16 that -- we would have grounds to ignore/ override that statutory  
17 directive if we believed that the constitutional fiduciary  
18 obligation obligated us to do so.

19               **BILL COOK:**       That's correct, Mr. Secretary.   Again, the  
20 Elliott is composed almost entirely of these constitutional trust  
21 lands.

22               **SECRETARY OF STATE PHIL KIESLING:**   Constitutional trust  
23 lands.

24               **BILL COOK:**       And that's correct.

25               **SECRETARY OF STATE PHIL KIESLING:**   The second question

1 is if, in a sense, we fail to move forward with a sale, to  
2 what extent might this Land Board be vulnerable to a lawsuit.  
3 It sounds like we'll get a lawsuit probably in any circumstance,  
4 but to what extent might we be vulnerable to a lawsuit alleging  
5 that we have breached our fiduciary duty by, in effect, deciding  
6 to retain 12,000 acres of land for which there is no foreseeable  
7 income stream at all coming off of it; that we have breached  
8 our fiduciary duty by failing to realize a substantial gain that  
9 we would get from sale, and instead, continue to have the lands  
10 in the situation where there really is very little, if any,  
11 income? Could someone file suit against us alleging that?

12 BILL COOK: I think it's, at least, theoretically  
13 possible. The trustees need to do what a reasonable and prudent  
14 trustee would do in the same-fact situation, and I think there  
15 is a risk that if you don't do the prudent thing in this  
16 circumstance you could be dragged into court. It does happen  
17 in other states.

18 SECRETARY OF STATE PHIL KIESLING: Okay.

19 GARY GUSTAFSON: Mr. Chairman?

20 SECRETARY OF STATE PHIL KIESLING: Yes.

21 GARY GUSTAFSON: One thing that we were able to  
22 discover, and I'd like input from Bill on this to see if it's  
23 been confirmed yet, is the possibility that the Land Board has  
24 done this once before in approving a land exchange in 1982.  
25 That was the recollection of a Land Board assistant, Greg

1       McMurdo, a former assistant to Normal Paulus, that I spoke to,  
2       and I was able to find the approval of that action in the  
3       transcripts from 1982.       There was no specific mention of the  
4       override of the county's disapproval, but Greg's recollection was  
5       that that's what occurred in 1982.

6               **SECRETARY OF STATE PHIL KIESLING:**   This is, obviously,  
7       a very important decision for us to take, and we have some  
8       people wanting to talk about it.       I'll just preface it by  
9       saying I think this Land Board is very keenly aware that it is  
10      a very extraordinary thing for us to, if we do, to take an  
11      action that would run counter to a specific statutory directive.  
12      It would not be at all done lightly, if it were done, and as  
13      a general rule of thumb you do everything to avoid those kinds  
14      of conflict.       Are there other questions of Bill or Gus?

15              **STATE TREASURER JIM HILL:**       Just very quickly.

16              **SECRETARY OF STATE PHIL KIESLING:**   Yes, Treasurer Hill.

17              **STATE TREASURER JIM HILL:**       Now, in the appraisal of  
18      this property, does it document that minus the 80 acres that the  
19      value of the property as a whole is greatly diminished?

20              **GARY GUSTAFSON:**       Mr. Treasurer, the way in which we  
21      instructed the appraiser to attack the appraisal assignment was  
22      just to individually address the value of each one of the 26  
23      parcels in the Hart Mountain Refuge, so he did not address it  
24      in the way in which you described.       We have a value for each  
25      one of the 26 parcels individually.

1           STATE TREASURER JIM HILL:    I see, but now, Gus, in  
2    your testimony you said that the reason, at least I think you  
3    said, maybe I put it in my own mind, the reason that you would  
4    not sell the 80 acres alone is because that is really the piece  
5    of the overall piece of property that is the most attractive and  
6    adds the most value, is that--

7           GARY GUSTAFSON:    Correct.    It is the, if you will,  
8    the creme de creme of the 26 parcels, no question about that.

9           STATE TREASURER JIM HILL:    And so you're saying, for  
10   the record, if that 80 acres is separated out, that you would  
11   have difficulty in selling the rest of the parcels.

12          GARY GUSTAFSON:    Yes.    In our opinion we would have  
13   a much more difficult time selling all of the individual other  
14   25 parcels which do not have near the attributes of that one  
15   80-acre parcel.

16          STATE TREASURER JIM HILL:    And Phil, one final  
17   question--

18          SECRETARY OF STATE PHIL KIESLING:    Yes.

19          STATE TREASURER JIM HILL:    To our legal counsel.    In  
20   the Agee opinion that you cited, it cites case law for that?

21          BILL COOK:    Treasurer Hill, I'd have to dig it out  
22   of my briefcase, but as I recall it basically rests on just  
23   this basic legal principle that if you have a conflict between  
24   a statute and a constitution, the constitution governs.

25          STATE TREASURER JIM HILL:    Okay.

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1 GARY GUSTAFSON: Mr. Chairman?

2 STATE TREASURER JIM HILL: Thank you.

3 GARY GUSTAFSON: I might add to that that this issue  
4 is also addressed to some degree in the July 24, 1992, Attorney  
5 General's opinion that we called the Elliott opinion.

6 SECRETARY OF STATE PHIL KIESLING: Okay. All right.  
7 We have signed up to testify, Tim Collahan, then I'll take  
8 Richard Moore, and I understand that Gordon Ross would like to,  
9 is that correct? Okay. Did I pronounce the name correctly,  
10 Mr. Collahan?

11 TIM COLLAHAN: You did -- you did. That's a rarity  
12 too, I might add.

13 SECRETARY OF STATE PHIL KIESLING: I can relate to  
14 that. With a name that's spelled as if it ought to be  
15 pronounced Kysling (phonetic), so--

16 TIM COLLAHAN: So many people get scared and we make  
17 so many blunders.

18 SECRETARY OF STATE PHIL KIESLING: Welcome, and we  
19 appreciate your traveling a great distance, even longer that you  
20 otherwise would have to if we held our meeting in Salem, but  
21 I think you can understand our desire to get out of Salem  
22 some--

23 TIM COLLAHAN: Yes.

24 SECRETARY OF STATE PHIL KIESLING: And one of these  
25 days we'll have a chance to have a meeting in Burns.

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1           TIM COLLAHAN: Well, I would like to thank the Board  
2 and the Division for giving us the opportunity to come down  
3 here, although last night when I was driving over about midnight  
4 I don't think I felt that way. I have provided--

5           UNIDENTIFIED FEMALE VOICE: Excuse me. Can I ask you  
6 to state your name, please?

7           TIM COLLAHAN: Okay. My name is Tim Collahan, I'm  
8 County Counsel and District Attorney for Harney County. Judge  
9 Dale White had planned to be here. He had talked to  
10 Mr. Gustafson. Unfortunately Dale learned of a death in the  
11 family yesterday morning, so was unable to be here, so he handed  
12 it over to me.

13           I provided written testimony. I think I will go  
14 through that. I've tried to separate that into two different  
15 parts, one is a policy position that Harney County has that is  
16 behind this denial, and then I think the second part is a legal  
17 argument that I think is well based, and I think based on some  
18 of the comments that were just gone over with Mr. Gustafson, I  
19 think the first thing we need to keep in mind is that as to  
20 the Harney County lands, none of these lands are Section 16,  
21 Section 36 lands. These are not constitutional lands. And it's  
22 important to keep that in mind because of the legal argument  
23 that Harney County is making. These are lands that are under  
24 State Division/State Land Board jurisdiction by statute, and that  
25 makes a big difference to you folks, I feel, as to what you can

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1 do and what the legislature can do as opposed to your  
2 requirements under the constitution.

3 On October 8, 1993, Harney County formally denied  
4 approval of the proposal to sell the 788 acres of State land  
5 to the U.S. Fish and Wildlife Service for inclusion in the  
6 Malheur National Wildlife Refuge. As the Director of the  
7 Division of State Lands, Gary Gustafson, stated in findings of  
8 fact dated September 8 of 1993, under ORS 273.413(6) the Division  
9 must obtain the approval of the sale from the governing body of  
10 the county in which the land is located. Since 1990 Harney  
11 County has had an official position against any further net  
12 increase in federal land ownership, and I have attached a copy  
13 of the resolution. Prior to 1990 there had been a longstanding  
14 unofficial position to that effect.

15 Harney County understands the desire to dispose of  
16 isolated parcels of State lands, such as the land in the Malheur  
17 unit. However, the Division of State Lands owns two large  
18 blocks of land and numerous parcels of various sizes in Harney  
19 County that we feel could be added to, or could be exchanged  
20 with the federal government. Since the federal government  
21 currently owns more than 4.8 million acres in Harney County,  
22 which constitutes approximately 74 percent of the total land mass  
23 of our county, we believe that there are many opportunities to  
24 exchange the Malheur unit for federal lands that would complement  
25 existing State holdings. Harney County would support efforts by

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1 the Division to exchange or trade lands with the federal  
2 government, however, we remain adamantly opposed to the purchase  
3 of any additional non-federal lands to add to the more than  
4 4.8 million existing acres.

5 Presently Harney County is entitled to a payment in  
6 lieu of taxes, a payment of approximately \$456,000 based on  
7 existing land holdings now by the federal government. That  
8 amount is reduced based on a ceiling, a federal ceiling, because  
9 of our population, so that's reduced down to \$308,000. Since  
10 we do not receive the amount based on acreage, any additional  
11 land will not result in an increase in payments. In addition  
12 to those federal funds, Harney County is also entitled to refuge-  
13 sharing payments of approximately \$108,000. Since 1980 the  
14 amount of fees and appropriated funds have not enabled full  
15 payments to counties. The payments have been from a low of  
16 approximately \$63,000 to a high of approximately \$97,000 in 1992.  
17 The 1993 payment was approximately \$88,000. We have not received  
18 our full payment of the present acreage, and any addition to the  
19 refuge land base will also not result in increased payments to  
20 our county.

21 We feel it's important to note that the majority of the  
22 lands proposed for sale lie outside and adjacent to the Refuge.  
23 There are, from my quick research yesterday, there are two very  
24 small parcels that appear to enter into the Refuge, but they're  
25 very small, just a matter of maybe 10 to 20 acres, I believe.

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1                   SECRETARY OF STATE PHIL KIESLING:     In-holdings, you  
2     mean?

3                   TIM COLLAHAN:     Yes.

4                   SECRETARY OF STATE PHIL KIESLING:     Completely surrounded  
5     by the Refuge?

6                   TIM COLLAHAN:     They're part of an adjacent parcel that  
7     juts into the Refuge on the border.     Further, and we feel  
8     contrary to the Division of State Lands' findings of facts that  
9     were dated June 28, these lands are and will be productive.  
10    In fact, we feel that the area that the lands are located in  
11    is capable of producing grain crops and constitutes good pasture  
12    lands.     We feel that there is a great capacity for these  
   parcels to generate income in the future.

14                   One thing I think that needs to be stated here is  
15    that based on some conversations that Judge White has had with  
16    some adjacent owners, they would be interested, in fact, one  
17    person has come forward and would be interested in purchasing at  
18    least a portion of these lands, but because of the way they  
19    were advertised, they weren't given that opportunity.

20                   It is our understanding, and also based on Mr. Cook's  
21    statements earlier this morning, that the Division's position is  
22    that the State Land Board may disregard Harney County's denial  
23    of approval and proceed with the sale under the authority of  
24    Article VIII, Section 5 of the constitution.     We disagree with  
25    this interpretation, and we believe that Attorney General opinions

1 and an Oregon Supreme Court case support our position that the  
2 Division must, and is mandated to get a county approval of any  
3 sale.

4 Once again I think paramount to this issue is the  
5 legislature's authority relating to lands placed under the State  
6 Land Board's jurisdiction. As to lands placed under the Board's  
7 jurisdiction by the Oregon Constitution, in other words lands  
8 that were placed, the 16-36 lands that came in with the  
9 Admission Act, both the legislature and the Board are subject to  
10 the limitation of Article VIII, and there are Attorney Generals'  
11 opinions to that effect. As to the lands placed under the  
12 Board's jurisdiction by statute, the Attorney General has  
13 determined that the legislature retains the power to prescribe  
14 the Board's duties and responsibilities. The Oregon Supreme  
15 Court has also held that Article VIII, Section 5, requires the  
16 State Land Board, with the legislature as supervisor, to use  
17 lands dedicated to the common school fund in such a way as to  
18 derive the greatest net profit for the people of the State.  
19 That's the Johnson case.

20 The Malheur unit parcels are not lands placed under  
21 the Board's jurisdiction by constitution. Approximately 620 acres  
22 were obtained through foreclosure proceedings in 1929. The  
23 remaining lands were obtained as a result of a United States  
24 Supreme Court decision that I was not able to track down  
25 yesterday. The lands are under the Board's jurisdiction by

1 statute. The legislature can remove such lands from the Board's  
2 jurisdiction, or even limit the extent of its jurisdiction over  
3 them, and I cite an Attorney General's opinion to that extent.

4 We feel that ORS 273.413(6), which mandates county  
5 approval, is such a limit to the State Land Board's jurisdiction.  
6 The Board is mandated to obtain approval of the governing body  
7 of a county prior to selling State lands located in the county.  
8 Harney County has denied that approval. We ask that the State  
9 Land Board reassess its position in light of the relevant  
10 Attorney General's opinions and case law, and honor Harney  
11 County's right to deny approval of this sale.

12 SECRETARY OF STATE PHIL KIESLING: Thank you.  
13 Questions? I've got a couple too. Okay. Yeah, you, of  
14 course, raised the issue of statutory versus constitution--

15 TIM COLLAHAN: Yes.

16 SECRETARY OF STATE PHIL KIESLING: And it's obviously  
17 a very, very important issue in terms of the status of the  
18 land. Let me clarify though, what your belief is about  
19 constitutional lands. Is it your position that -- let's assume  
20 for a moment that these lands were constitutional lands -- it's  
21 your position that in all circumstances this Board is obliged to  
22 follow in any legislative directive with response to those lands?

23 TIM COLLAHAN: No. No, that's not my--

24 SECRETARY OF STATE PHIL KIESLING: Okay. Can you  
25 clarify that? If they were constitutional lands, what would,

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1 in your opinion, this Board's position be?

2 TIM COLLAHAN: Well, I think if they were  
3 constitutional lands, as Mr. Cook indicated, it may be a tougher  
4 argument to make when you look at the mandatory language  
5 contained in the statute and compare that to what Article VIII--

6 SECRETARY OF STATE PHIL KIESLING: Right.

7 TIM COLLAHAN: Says. The point that we are making,  
8 as far as Harney County, is that these are not constitutional  
9 lands.

10 SECRETARY OF STATE PHIL KIESLING: Okay. And I  
11 understand that point, and it's a very key point, but your sense  
12 is that you appreciate the dilemma we would be in--

13 TIM COLLAHAN: Absolutely.

14 SECRETARY OF STATE PHIL KIESLING: If they're  
15 constitutional lands. Another question, these parcels, aggregated,  
16 were put out to bid--

17 TIM COLLAHAN: Correct.

18 SECRETARY OF STATE PHIL KIESLING: And attracted no  
19 bidders other than the Fish and Wildlife Service.

20 TIM COLLAHAN: As a unit of sale--

21 SECRETARY OF STATE PHIL KIESLING: Right.

22 TIM COLLAHAN: Correct.

23 SECRETARY OF STATE PHIL KIESLING: Right. Did any of  
24 the people that might have been interested in a portion of the  
25 sale, did they ever get to the point of formally offering that?

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1 In the case of Lake County that did happen. Someone came  
2 forward and says we're not interested in the whole thing, but  
3 we're interested in an 80-acre parcel, here's our bid.

4 TIM COLLAHAN: Okay.

5 SECRETARY OF STATE PHIL KIESLING: Did that happen in  
6 the case of you mentioned some interested landowners, did they  
7 kind of put it in writing and say look, here's an expression  
8 of interest for the following amount of money for something less  
9 than the 700 and some acres?

10 TIM COLLAHAN: I don't believe there was ever anything  
11 in writing. I do know that Judge White did speak to a  
12 landowner down in the Narrows area--

13 SECRETARY OF STATE PHIL KIESLING: Right.

14 TIM COLLAHAN: Around Mud Lake, and he had expressed  
15 verbally an interest in purchasing a portion of that, but he  
16 certainly was not interested in the whole unit.

17 SECRETARY OF STATE PHIL KIESLING: Okay. But you  
18 don't know if that got communicated then to--

19 TIM COLLAHAN: I do not, no.

20 SECRETARY OF STATE PHIL KIESLING: To us?

21 TIM COLLAHAN: In fact, I don't think it did because  
22 Judge White just mentioned that to me yesterday.

23 SECRETARY OF STATE PHIL KIESLING: Okay. You made  
24 one reference to something that I don't have in my file that  
25 I was curious about. You mention a June 28 finding of fact.

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1 Maybe this is something that Gus can help me on this. It spoke  
2 to the issue about the productivity of the land, a June 28,  
3 1993, finding of fact.

4 TIM COLLAHAN: That might be a typo, Mr. Kiesling,  
5 let me--

6 SECRETARY OF STATE PHIL KIESLING: Okay. We have a  
7 September 8 finding of fact, but I'm not sure we spoke to the  
8 agricultural productivity. Gus, could you clarify that?

9 GARY GUSTAFSON: There is an earlier finding of fact  
10 that Steve Purchase signed--

11 SECRETARY OF STATE PHIL KIESLING: Okay.

12 GARY GUSTAFSON: And--

13 TIM COLLAHAN: That may be the one that I was--

14 GARY GUSTAFSON: Yeah, Steve just stepped out for a  
15 minute, I'm trying to get him to fax information of the  
16 ownership down here so we can get that clarified--

17 SECRETARY OF STATE PHIL KIESLING: Okay.

18 TIM COLLAHAN: The ownership, I didn't attach this as  
19 a copy, but according to a State of Oregon Agency Surplus Real  
20 Property Notification form, it had a map of the Hart Mountain  
21 and Harney County properties, and on the back it had a breakdown  
22 of the Hart Mountain Refuge and holdings as well as the Malheur,  
23 and we could make a copy of that for--

24 SECRETARY OF STATE PHIL KIESLING: Yeah, I think we do  
25 have that record. There's approximately -- I don't think there's

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1 quite two dozen, but there's a number of separate discrete  
2 parcels with that. Okay. Good. Treasurer Hill?

3 STATE TREASURER JIM HILL: Yes. Thanks, Phil. In  
4 terms of how the County looks at whether this land is owned by  
5 the federal government or the State, why does it make a  
6 difference? I understand you have a resolution about not wanting  
7 more federal land in the county, but I guess I just need to  
8 know what's the--

9 TIM COLLAHAN: From my understanding, talking to the  
10 county court, because of the vast amount of property the federal  
11 governments owns currently in Harney County, there just is a  
12 policy, a written policy, that the County does not believe that  
13 there should be any further ownership on the federal side.  
14 There has also been, and I was not able to track it down, I  
15 know there's been some discussions between the Malheur Refuge and  
16 the County regarding future acquisitions, and I believe it was  
17 our understanding that there would be no future acquisitions of  
18 other lands outside of the in-holdings.

19 STATE TREASURER JIM HILL: Maybe we can have a dialogue  
20 between yourself and our counsel. The cases that you mentioned,  
21 the Attorney General opinions and the cases that you mentioned,  
22 do you cite those anywhere in here, or do--

23 TIM COLLAHAN: I do cite them--

24 STATE TREASURER JIM HILL: Or do you know what they  
25 are?

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1           TIM COLLAHAN: In the written testimony I've provided.

2           STATE TREASURER JIM HILL: Okay. The one that  
3 addressed the issue of the constitutionality, whether the land  
4 is under the Board's jurisdiction by constitution or statute,  
5 can those cases address this issue directly?

6           TIM COLLAHAN: Yes. And that, in particular, there  
7 is a footnote, it's Footnote Number 6 in 42 opinions of the  
8 Attorney General 260, it's a 1982 opinion, that breaks down, at  
9 least at that point, the Attorney General's feelings regarding  
10 the difference between statutory and constitutional properties, and  
11 what the ability of the legislature is to prescribe the State  
12 Land Board's duties.

          SECRETARY OF STATE PHIL KIESLING: Yes?

14          STATE TREASURER JIM HILL: Could I ask Mr. Cook to  
15 respond to this whole statutory jurisdiction versus constitutional?

16          BILL COOK: I think we're on the same wave length.  
17 That's an understood distinction, and something we've reminded  
18 the Land Board of over the years. So the legal issue,  
19 obviously, is going to turn on just what these lands are, where  
20 they came from. And I had always understood that these were  
21 constitutional lands. Now, I think it's worth remembering that  
22 we tend to think of constitutional lands in terms of the Section  
23 16 and 36 grants from the feds, and it certainly includes that.  
24 It also includes lands that we got in lieu of such lands,  
25 indemnity lands -- I'd have to check our opinions again -- it

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1 could also include lands purchased with constitutional common  
2 school fund money. It may also include lands we got through  
3 foreclosure if we were loaning out constitutional common school  
4 fund money. So I think it's a good issue. I need to know  
5 a little bit more about the facts.

6 STATE TREASURER JIM HILL: Okay. So your understanding  
7 then is that these were all constitutional, and now are you  
8 saying that there's some doubt about that, or--

9 BILL COOK: No, not necessarily.

10 STATE TREASURER JIM HILL: Okay.

11 BILL COOK: But the legal issue, Harney County is  
12 absolutely right, if these are statutory lands we're on a very  
different legal footing.

14 TIM COLLAHAN: Could I interject there just for a  
15 moment? From talking or listening to Mr. Gustafson this morning,  
16 it appeared to me that it was being just assumed that these  
17 were all 16-36 lands. That's the impression I got. And I  
18 think clearly they are not.

19 SECRETARY OF STATE PHIL KIESLING: Okay. But to  
20 clarify, I think, if I heard our counsel correctly, it doesn't  
21 have to be 16 or 36 to be land that has constitutional  
22 obligations--

23 BILL COOK: That's right.

24 SECRETARY OF STATE PHIL KIESLING: Attached as opposed  
25 to statutory. There's more than one way to get into that

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1 category. The question is, and I think you've raised it, do  
2 any or all of these lands, for whatever reason, fall under the  
3 constitution side of the ledger versus the statutory, and I think  
4 staff is trying right now to make sure we have a very, very  
5 nailed-down answer to that, because you've raised a very good  
6 point.

7 TIM COLLAHAN: And our position is, and once again,  
8 this was something that we put together fairly quickly.

9 SECRETARY OF STATE PHIL KIESLING: I understand.

10 TIM COLLAHAN: But our position, at least based on  
11 the information we have now, is that we do not feel they are  
12 under your jurisdiction by constitution.

13 SECRETARY OF STATE PHIL KIESLING: By constitution.

14 TIM COLLAHAN: They are under your jurisdiction by  
15 statute.

16 STATE TREASURER JIM HILL: And there are no cases that  
17 you cite that address this land issue, State Land Board land,  
18 directly.

19 TIM COLLAHAN: The only case that I could find was  
20 the Johnson case, the Supreme Court case, which seems to indicate  
21 that as to statutory lands that the legislature provides a  
22 supervisory role as far as the Land Board's jurisdiction. And  
23 we are saying that the legislature has done that, and you have  
24 to get our approval.

25 SECRETARY OF STATE PHIL KIESLING: Okay. Understood.

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1 The final thing I'll mention is you have some sympathy from me  
2 about the frustration about dealing with the federal government  
3 about trying to do land exchanges rather than sales. I would  
4 have very much preferred in dealing with any of this land if  
5 we could have exchanged in a way, but there are these turf wars  
6 between federal agencies that make that difficult. In this case  
7 we weren't able to. I don't think we'd even have an issue of  
8 a sale if we were able to exchange, and needless to say, this  
9 experience increases my interest in working even harder with the  
10 federal government to get into a mode of doing that, which I  
11 think would along the lines that Harney County would favor--

12 TIM COLLAHAN: Absolutely.

13 SECRETARY OF STATE PHIL KIESLING: Over any sales.

14 Okay. Thank you very much.

15 TIM COLLAHAN: Thank you.

16 SECRETARY OF STATE PHIL KIESLING: Richard Moore, U.S.

17 Fish and Wildlife Service. Welcome.

18 RICHARD MOORE: I'd like to start out by also thanking  
19 the Land Board for the opportunity to make a statement in regard  
20 to the issue here this morning, and I'd also like to acknowledge  
21 all the work that Gary and his crew have done to put this sale  
22 together. Of course Fish and Wildlife Service was delighted that  
23 the decision was made to put these acres up for sale. Since  
24 1979 we have been making a concerted effort, especially at the  
25 Hart Mountain Refuge, to acquire as many of the in-holdings as

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1 we could. At that time out of a 277,000-acre refuge boundary,  
2 approximately 35,000 acres were considered in-holdings; little  
3 parcels, 80-, 40-acre parcels, up to several-hundred acre parcels.  
4 In fact at one time we called it our Swiss cheese refuge  
5 because it had more holes in it than that cheese in some  
6 places. Since that time, 1979, we've been able to acquire  
7 10,000 acres of these small parcels at quite an effort because  
8 the majority of these little parcels are owned by out-of-state  
9 owners, they're low value, and it sometimes costs more to buy  
10 them than they're worth. So therefore we were very delighted  
11 that the State was interested in putting the whole package up  
12 in one package, one parcel, so to speak, so that we could save  
some of the administrative costs in buying separate parcels.

14 There's still about 26,000 acres left of in-holdings,  
15 and the State's property amounts to about 45 percent of that,  
16 so if the Land Board does decide to go through with the sale,  
17 that'll make a big difference in the amount of in-holdings in  
18 our Refuge, and that's becoming more and more important as the  
19 issues of grazing and refuge compatibility uses comes to the  
20 forefront. And as was mentioned earlier, we are subject to  
21 lawsuits, and we have been involved in some lawsuits in regard  
22 to those things.

23 In addition to the State land, we are in the process  
24 of acquiring about another 5,000 acres with private land holdings  
25 within the Refuge for some of the same reasons. Some of these

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1 landowners are realizing now that they really are going to have  
2 a hard time using some of their small parcels out there, and  
3 they're more willing to look at sales.

4 We intend to approach our Washington office to proceed  
5 towards, in the '95 budget year, getting money in our  
6 appropriation language to finish out hopefully buying some of the  
7 remaining Refuge in-holdings, so if everything goes well over the  
8 next several years we should be able to hopefully wind out this  
9 Refuge purchase program. And as mentioned in the past, of the  
10 sale at Hart Mountain, of course the Deer Creek parcel was  
11 considered one of the prime areas, basically because the water,  
12 the riparian habitat that's involved there, and we could  
13 understand the reasoning that the State had in putting that up  
14 for sale with all the rest of it. We are interested in buying  
15 all the in-holdings we can; however, the inclusion of the Deer  
16 Creek parcel certainly increases our interest in buying the State  
17 in-holdings, and its location is key, and there's a number of  
18 other reasons that it's a very key parcel.

19 Kind of on the side, and it was mentioned a little  
20 bit earlier, with the purchase of these lands, I'm not familiar  
21 with what the State Land Board does as far as paying in lieu  
22 of taxes, if they pay any at all, but the Fish and Wildlife  
23 Service, under the Refuge Revenue Sharing Act, is required to pay  
24 in lieu of tax monies to the counties based on the fair market  
25 value of the land that we own. And in the case of the

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1 approximately 12,000 acres that we're talking about here, the  
2 addition to our current revenue-sharing payment that we're making  
3 in Lake County would approach \$70,000 at full entitlement that  
4 would be additional monies that we would be paying to the county  
5 in the future if the land sale does go through, so we feel it's  
6 a win for the county. They're not getting much revenue from  
7 this property right now. It's not generating any income for  
8 grazing, that sort of thing, to the county, so we feel that  
9 it's certainly an advantage to the county to have this in the  
10 Refuge ownership and management scheme down there.

11 STATE TREASURER JIM HILL: Phil?

12 SECRETARY OF STATE PHIL KIESLING: Yeah, Treasurer Hill.

13 STATE TREASURER JIM HILL: Ask you a question?

14 RICHARD MOORE: Sure.

15 STATE TREASURER JIM HILL: So you disagree then with  
16 the statement of the district attorney concerning whether there  
17 will be additional monies coming to the county?

18 RICHARD MOORE: One of the problems there is there's  
19 a confusion between PILT, which is payment in lieu of taxes, is  
20 legislation that covers other federal agencies, like the Bureau  
21 of Land Management lands, and it's a very minimal amount of  
22 money that's generated from those lands. Refuge Revenue Sharing  
23 Act is entirely separate, and we annually pay to the counties,  
24 and we readjust our appraisal every five years to reflect any  
25 change in market value. In the form that is three-fourths of

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1 one percent of the value of the land, or 75 cents per acre, or  
2 25 percent of any net receipts generated from that land, whatever  
3 payment is the highest of those three, generally three-fourths  
4 of one percent of the land value comes out to be the highest  
5 of the payments.

6 So one thing that he did mention is that in the past  
7 we haven't been paying 100 percent, and that's true. The  
8 revenue-sharing account is generated from income received  
9 nationwide off of national wildlife refuges, some off-shore oil  
10 leasing money, and things like that, and in the current situation  
11 there isn't enough money in the fund to pay 100 percent of the  
12 entitled payments to the counties. Congress is authorized to add  
13 additional appropriations to that fund to bring it up to  
14 100 percent, and over the past few years it's varied from --  
15 well, over the last five years it's been in the 80 to  
16 90 percent figure, so when I say an additional \$70,000 that  
17 would be at 100 percent, so somewhere between \$60,000 and  
18 \$70,000.

19 SECRETARY OF STATE PHIL KIESLING: Is that per year?

20 RICHARD MOORE: Per year, yes.

21 SECRETARY OF STATE PHIL KIESLING: Per year.

22 RICHARD MOORE: Yes.

23 STATE TREASURER JIM HILL: So there will definitely be  
24 extra funds coming--

25 RICHARD MOORE: To the county.

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1 STATE TREASURER JIM HILL: To the county.

2 RICHARD MOORE: Yes. Even if it stays 80-90 percent  
3 there will definitely be extra funds, rights.

4 STATE TREASURER JIM HILL: Thank you, Phil. Thank  
5 you, sir.

6 RICHARD MOORE: So we certainly do urge the Land Board  
7 to approve this sale, and I certainly understand the  
8 controversies and the situation that you're involved in here.

9 Switching quickly to the Harney County parcel, this  
10 particular land is, as Gus said, is very wet, and over the past  
11 few years with the flooding down there, it's been extremely wet,  
12 and we feel that as an addition to the Refuge it would supply  
13 a great deal of important wildlife habitat in the wet years, and  
14 in the dryer years it certainly would be used by various  
15 wildlife for nesting and other kind of cover, and we're very  
16 interested in purchasing that as an addition to that Refuge.

17 In the case of Harney County, it looks like  
18 approximately our current revenue sharing payment would be  
19 increased by about \$4500, or up to \$4500, based on the formula,  
20 and I failed to bring the numbers for the current payment, but  
21 I know he mentioned around \$80,000, so that would be the  
22 addition to that payment. Other than that I have nothing else.  
23 If there's questions I'll be glad to take questions.

24 SECRETARY OF STATE PHIL KIESLING: Okay. Good. We  
25 might need to ask you some more questions. We appreciate your

1 being here. Okay. Gordon Ross?

2 GORDON ROSS: My name is -Gordon Ross, I am the chair  
3 of the Coos County Commission.

4 SECRETARY OF STATE PHIL KIESLING: Welcome.

5 GORDON ROSS: Secretary Kiesling, Treasurer Hill, staff,  
6 and Bill, appreciate you coming to Coos County. I know this  
7 is just more than a gesture of cooperation with the counties,  
8 and I do see you wrestling with the topic at hand here, meeting  
9 your constitutional requirements as custodians of State lands to  
10 common school fund, and the wishes of these two counties. I  
11 was contacted yesterday by a member of the Lake County Court,  
12 Jeremiah O'Leary, who asked me to come before you and express  
13 their continued desire to acquire that 80 acres. Because of the  
14 size of the sale that you put up, and because of the limited  
15 resources of Lake County, who say they can't both travel and  
16 buy land at the same time, and asked me to be here, they were  
17 unable to bid on the total amount. He expressed to me that  
18 this 80 acres is very important to the people of Lake County  
19 who are instrumental in helping to set up the Antelope Refuge  
20 in they own said (phonetic), and wanted me to express that to  
21 you.

22 It appears to me, as a person who deals with disbursing  
23 surplus property at times, most of it tax foreclosed property,  
24 that maybe you have an opportunity to take care of both your  
25 obligations in this case. We have -experienced the fact, in our

1 county at least, that if we combine parcels we usually lose  
2 money. We do sometimes combine parcels in order to avoid land  
3 use problems that might come up by leaving them separate as we  
4 acquired them, but usually the more parcels, and the smaller the  
5 parcels, actually the more revenue you get for the districts when  
6 they are sold, providing that you haven't taken an integral part  
7 away.

8 Where you're not dealing with grazing land here, but  
9 something that will be used for a wildlife habitat, and you  
10 don't normally fence wildlife out even if you could, it seems  
11 like the advantages of the various parcels, the wildlife will  
12 cross those boundaries anyway, so I've heard Director Gustafson's  
13 discussion on maximizing the revenues through these sales. It  
14 appears to me there may still be an opportunity to maximize  
15 those revenues, listening to the other testimony that we've heard  
16 today, by backing up and splitting out, often accommodating Lake  
17 County and their needs, and that's all I have to say.

18 SECRETARY OF STATE PHIL KIESLING: Okay.

19 GORDON ROSS: Thank you very much.

20 SECRETARY OF STATE PHIL KIESLING: Thank you, Gordon.  
21 Okay. Is there anyone else who wants to testify on this  
22 proposed action item? Gus, I think there were some questions  
23 that were raised that I'd like to go over with you on this.  
24 First of all, and the main one is address the issue of the  
25 situation in Harney County with what exactly is the status of

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1 these lands, because to the extent that there might be any of  
2 these parcels that might be in the statutory category versus the  
3 constitutional category, it's an important point to clear up.

4           GARY GUSTAFSON:       It is, Mr. Chairman, extremely  
5 important.   First of all I've got Steve Purchase on the phone  
6 right now attempting to get our title report faxed here so I  
7 can distribute it to you.   He tells me, assures me, while we're  
8 hoping he can get that here shortly, that the title report shows  
9 that the Harney County lands are, in fact, in lieu of common  
10 school fund selections.   And when I mentioned earlier that what  
11 we're talking about are remnant tracts of 16 and 36, I  
12 colloquially often don't differentiate in-lieu lands because they  
13 are common school grant lands.   And to make a long story short,  
14 what are in-lieu selections, for at least the audience here who  
15 may not be familiar with that, the State did get every Section  
16 16 and 36 within surveyed townships, however not every township  
17 in the state of Oregon was surveyed.   And where they were not  
18 surveyed, or where there was a federal withdrawal, or other  
19 impediment that existed prior to statehood, then we were not able  
20 to get the Section 16 or 36 in those areas.   Therefore we were  
21 given an equal acreage amount of land selections known as in-  
22 lieu land selections, still common school lands, that we were  
23 able to select elsewhere.   And our title reports showed that  
24 that's what these are in Harney County.   Now, I obviously hope  
25 that we'll have that information here so I can distribute that

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1 to you, and hopefully we can verify that.

2 If this Board does take action before we have that  
3 information, it would be my professional advice, however, that  
4 we cover the base, and make the approval only subject to these  
5 being common school grant lands.

6 SECRETARY OF STATE PHIL KIESLING: Would it be your  
7 recommendation to move ahead conditionally as opposed to just  
8 simply waiting for that information to come? I know we want  
9 to deal with this today. I can get to some other items on  
10 the agenda until that comes. Treasurer, do you have any  
11 thoughts about how we might want to proceed on this?

12 STATE TREASURER JIM HILL: So the determination that  
13 will be made that you called in for will decide definitely  
14 whether these are under Board's jurisdiction by statute or  
15 constitution?

16 GARY GUSTAFSON: Well, Treasurer Hill, we maintain the  
17 State's land title records, and we have a vault with this  
18 information. Before we advertise land, or even make a decision  
19 to sell or exchange land, or even to lease land, there is the  
20 requirement now that we do a title report, which verifies, first  
21 of all, obviously, that we own it, and secondly, what the land  
22 grant or other authorization is in which we received the land.  
23 And that was done for these lands, and in fact, I recall  
24 specifically discussing this issue well over a year ago with  
25 staff to make sure that these were common school lands. And

1 again, with all respect to the Harney County representative, I  
2 can't say right here that he's absolutely wrong without that  
3 title report, and that title report, he would probably like to  
4 examine himself, to review it against his records, and that's why  
5 I say that if you do approve, I would make it contingent upon,  
6 that way if we can prove that fact, that they are constitutional  
7 common school lands, we can proceed. If they are not, then we  
8 can either go to another alternative and bring it back to you  
9 at the next meeting, or drop the sale entirely if, for some  
10 reason, we were absolutely wrong.

11 Our records, I believe, are accurate, and we should  
12 have the best available information, but land title records, you  
13 know, are sometimes a series of tracking deed transfers and so  
14 on, and every once in awhile mistakes are made, so I'm not  
15 going to sit here and say absolutely that they all are common  
16 school lands.

17 **SECRETARY OF STATE PHIL KIESLING:** What would be the  
18 procedure if we were to find that 90 percent of this acreage  
19 in Harney County were constitutional lands but 10 percent were  
20 statutory lands? We have a bid of \$60,000 for 788 acres. I  
21 think the bid was on the assumption that we could sell them  
22 all. How would the process work in a scenario like this?  
23 Would we have to reopen a bid and say now we have less land  
24 than we thought, it's something that could be negotiated? Bill,  
25 this might be a question for you, that's a possibility, and

1 before I take action I just want to make sure I understand  
2 where we would be with that, because we know that whatever  
3 action we take, quite honestly I anticipate some kind of  
4 litigation no matter what we do.

5 BILL COOK: I'll start with that.

6 SECRETARY OF STATE PHIL KIESLING: Okay.

7 BILL COOK: As to the statutory lands, if some of  
8 them turn out to be statutory lands the statute governs, and  
9 as long as Harney County chooses not to approve, you cannot  
10 sell them, as proposed, to the U.S. Fish and Wildlife Service.

11 SECRETARY OF STATE PHIL KIESLING: Okay.

12 BILL COOK: As to the other lands, I think the  
13 analysis we were talking about holds. Can you go ahead with  
14 that portion of the sale? Off the top of my head I think so.  
15 Well, it's just off the top of my head, but I think you can.

16 SECRETARY OF STATE PHIL KIESLING: What price would we  
17 charge?

18 BILL COOK: What I'm thinking, Mr. Secretary, is that  
19 you have put these out for bid. You got one responsive bid.  
20 If we're really talking about a 90 percent type of a thing, you  
21 might characterize it as just a negotiation with the responsive  
22 bidder, with the only responsive bidder. That's all real  
23 tentative legal advice, but--

24 SECRETARY OF STATE PHIL KIESLING: Okay.

25 BILL COOK: But that's why I'm saying--

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1           SECRETARY OF STATE PHIL KIESLING: But you also might,  
2 and if you had a chance to review that at length, there might  
3 be another choice that might be made on that. Okay. Gus, you  
4 want to add to that?

5           GARY GUSTAFSON: I'll add one brief comment, and then  
6 there's one other issue I just want to make sure that you're  
7 aware of for the record. And again, because this has just come  
8 up unexpectedly frankly, I haven't had a long time to consider  
9 it, but my initial reaction is that we best, if it turned out  
10 that a portion, or all of this, for some reason, was not  
11 constitutional land, then we'd best withdraw from where we are  
12 right now and I think there is ample reason to still sell the  
13 lands, repackage the offering, and send it out again. We have  
14 a valid appraisal. But the approach that we would take might  
15 be a little bit different, and we'd certainly want to discuss  
16 that further with any additional private landowners. The first  
17 I've heard of additional private landowners having an interest  
18 was today as well. But I think we'd need to repackage that  
19 deal.

20           SECRETARY OF STATE PHIL KIESLING: So are you saying  
21 that to the extent that there might be some cloud on the Harney  
22 County portion of it, that we might want to just simply defer  
23 action on the Harney County portion of land until a future  
24 meeting, or approve it conditionally?

25           GARY GUSTAFSON: Mr. Chairman, I would suggest this

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1 for your consideration today, and that would be to bifurcate  
2 the two to vote on the Lake County parcels, to hold, at least  
3 until the end of this meeting, or until we get information from  
4 my staff, on the land title records relative to Harney County.  
5 If that is in any way inconclusive, then I would recommend that  
6 we not take action on Harney County today. If we have  
7 conclusive information, then I think we ought to proceed.

8 SECRETARY OF STATE PHIL KIESLING: Is there any harm  
9 in deferring the Harney County thing that you see?

10 GARY GUSTAFSON: No, there isn't. The only thing I  
11 could possibly think of is that the U.S. Fish and Wildlife  
12 Service has the funds available to purchase the Harney County  
13 piece outright, they are holding those funds, and maybe we should  
14 turn to Dick and see if it would make any difference if they  
15 were held another month and a half.

16 SECRETARY OF STATE PHIL KIESLING: Dick, I think you  
17 might want to come up, you understand the issue here, speaking  
18 for the Fish and Wildlife Service--

19 RICHARD MOORE: Certainly. If we're talking a month  
20 and a half I don't think there's a problem. Our treasury  
21 department does have a concern of having money sitting aside for  
22 a long period of time, but I think we can justify that.

23 SECRETARY OF STATE PHIL KIESLING: Okay. All right.  
24 Jim?

25 STATE TREASURER JIM HILL: Thank you, Phil. Will this

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1 title search establish definitely whether this is under  
2 constitutional or statutory jurisdiction?

3 GARY GUSTAFSON: It can. The thing, I think, that  
4 Harney County is going to want to know, they're going to want  
5 to see this information. They're going to want to go back,  
6 research the record, and as far as I know, they may even want  
7 a title company to verify the records if this is important  
8 enough to them. I would want to do that if I was in their  
9 shoes. So I hope we can get enough information today that will  
10 convince everyone that these are constitutional lands, but that  
11 may not be possible today. We're not in the office, all the  
12 records are in the office, and so on, and so if there is any  
13 doubt, again, I'd just recommend that this Board, as you  
14 suggested, perhaps defer the Harney County action.

15 SECRETARY OF STATE PHIL KIESLING: Okay. I think we  
16 understand what the issues are, and at a point that in order  
17 to proceed in any way we would need a motion on what to do,  
18 I think we're -- I apologize for other people who are here for  
19 other things, but this is, as I think I explained, the first  
20 time in I think anyone's recent memory when we have been faced  
21 with this question as starkly as here with to what extent does  
22 our constitutional obligation as trust oblige us to do something  
23 even if it might be contrary to a specific statutory directive,  
24 and the relevance to anyone who lives in Coos County is that  
25 any money that we have, for example a million dollars that would

1 go into, let's say it went into the common school fund, would  
2 generate income, that income in turn goes directly to the  
3 counties to defray the costs of schools. So the difference  
4 between earning nothing on a parcel of land, and earning a  
5 million dollars on a parcel of land reflects an interest  
6 earnings, whatever those may happen to be, that then in turn  
7 gets distributed to every county in the state, including Coos  
8 County. So obviously this issue, in order to proceed, we would  
9 need a motion.

10 STATE TREASURER JIM HILL: Phil, could I ask one--

11 SECRETARY OF STATE PHIL KIESLING: Yes.

12 STATE TREASURER JIM HILL: One more question now?  
13 Gus, if we just move ahead with Lake County, would then the  
14 federal government then have to go back and redo their proposal?  
15 I guess what I'm saying is is that if we waited to get a  
16 definite determination about Harney County I don't know how long  
17 that would take, but if we change this proposal with the federal  
18 government, would that cause a delay anyway with the federal  
19 government taking action? In other words, I would like to know  
20 what's going on, if we can get something today with Harney  
21 County I would like to do that, but rather than just act on  
22 Lake County if there's going to be a delay anyway, why don't  
23 we just go ahead and see exactly what the picture is for Harney  
24 County, if there's going to be a delay anyway, and then come  
25 back and act on the whole matter again.

1           GARY GUSTAFSON:    Yes, Mr. Treasurer, that's certainly  
2 your call.    In retrospect though, it seems to me that our  
3 approach in using the approach of two different units though, is  
4 a valuable one because here we are today faced with something  
5 that does allow us, if we so choose, to bifurcate.    I don't see  
6 there is a problem with bifurcating them and proceeding with Lake  
7 County if you want to do that.    The only thing you have to do,  
8 of course, is just eliminate the references to Harney County in  
9 the staff report, and again, in the findings, we've actually got  
10 findings on each one, so I think that could be easily done.  
11 So it's really up to you.    I think that legally, procedurally,  
12 there is no problem here with proceeding with a decision on Lake  
13 County, and holding Harney County, but if you want to hold Lake  
14 County as well, that's perfectly acceptable.

15           STATE TREASURER JIM HILL:    Well, I guess what I was  
16 going to ask you, in the federal government's offer to purchase  
17 these properties, are they two separate offers on two separate--

18           GARY GUSTAFSON:    Yes.

19           STATE TREASURER JIM HILL:    Okay.

20           GARY GUSTAFSON:    Yes, we packaged them as two separate  
21 units.

22           STATE TREASURER JIM HILL:    All right.    Okay.    Well,  
23 I saw you kind of getting together, are there any determination  
24 or--

25           GARY GUSTAFSON:    Nothing inclusive.    Steve has come up

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1 with some preliminary information that needs to be checked  
2 further, and so all I can tell you at this point is that I'm  
3 not going to be able likely to give you anything definitive  
4 today on Harney County.

5 STATE TREASURER JIM HILL: Mr. Chair, I would accept  
6 Gus's advice, and then what I would do, Mr. Chair, is make a  
7 motion that we accept Gus's recommendation, and only act on the  
8 sale of the Lake County property until we have determine the  
9 status of the Harney County property, and then incorporate by  
10 reference whatever other materials in this motion that are  
11 needed.

12 SECRETARY OF STATE PHIL KIESLING: Okay. Other  
13 materials that are needed, I think, Gus, that what your  
14 understanding of that motion, because we have a number of things  
15 in front of us, we have appendices and the like.

16 GARY GUSTAFSON: Right. I think the best way to  
17 handle it, Mr. Chairman, would just be to specify in the motion,  
18 which I think the Treasurer has done, that the Land Board bases  
19 its decision on the staff report as applicable to Lake County--

20 SECRETARY OF STATE PHIL KIESLING: Okay.

21 GARY GUSTAFSON: And Lake County alone.

22 SECRETARY OF STATE PHIL KIESLING: Okay. Includes the  
23 references in the appropriate appendices that reference the Lake  
24 County.

25 GARY GUSTAFSON: . And Phil, that seems to me to be

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1 entirely reasonable here. I don't think we need to go through  
2 and page by page say this is Lake County versus Harney County,  
3 but just generically say those parts of the staff report and  
4 recommendation that apply to Lake County.

5 SECRETARY OF STATE PHIL KIESLING: Okay.

6 STATE TREASURER JIM HILL: I'd amend my motion to that  
7 effect just to be sure.

8 SECRETARY OF STATE PHIL KIESLING: Okay. Great. I  
9 will second the motion. Now we're in the mode of discussing  
10 the motion. Is there any further discussion on that motion?  
11 Okay. I would just like to make clear for the purposes of the  
12 record, I think during this discussion phase the information that  
13 I believe came out earlier, that we did make the decision to  
14 aggregate those parcels in Lake County. In effects that's what  
15 we're doing. We're deciding that we believe that's the most  
16 prudent way to proceed. That we did get a bid for one of the  
17 parcels in Lake County. We, in effect, are deciding not to  
18 disaggregate it, to sell it parcel by parcel. I appreciate the  
19 concerns of those who might have preferred that we disaggregate  
20 it into 26 different parcels and sell that, but it's my belief  
21 that our ability to sell and dispose of this land and in a  
22 sense be done with it because we cannot manage this land  
23 effectively for the duties that we have was best realized by  
24 the decision to aggregate the land, and I know that's a decision  
25 that will be challenged, and I think it's appropriate that it

1 can be challenged, that's what our court systems are for, but  
2 it's not an easy decision to make but I think that I think in  
3 the end is going to be in the best interest of our fiduciary  
4 duties as a member of the Land Board. And the bid we got was  
5 Lake County did have the opportunity to bid on the entire parcel  
6 of land, or to put together a bid that might have involved them  
7 and others for all of the parcels of lands, and that did not  
8 occur within the period of time, and I think there was ample  
9 notice given about that bid.

10 GARY GUSTAFSON: Mr. Chairman, perhaps for the record  
11 it would also just be useful to carry that a little bit  
12 further, that ORS 270.100(1)(b) certainly does accord political  
13 subdivisions the first opportunity after State agencies to  
14 purchase real property, and Lake County was, in accord with that  
15 statute, given that preference, however their bid was not  
16 responsive to our advertised bid therefore it was rejected.

17 SECRETARY OF STATE PHIL KIESLING: Right. Okay. Is  
18 there further discussion on this issue? Okay. If there's no  
19 further discussion on the motion, Gus, repeat the motion one more  
20 time, and we'll have it done with, it was--

21 GARY GUSTAFSON: I believe the motion was to approve  
22 the sale of the Lake County unit, which is approximately 11,997,  
23 actually exactly 11,997.88 acres, of common school land within  
24 the Hart Mountain National Wildlife Refuge to the U.S. Fish and  
25 Wildlife Service because the sale will best meet the Land Board's

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1 fiduciary obligation to maximize revenue for the common school  
 2 fund over the long term, and as part of that motion, to  
 3 incorporate the staff report and appendices included in the Land  
 4 Board agenda items for items which pertain to Lake County.

5 SECRETARY OF STATE PHIL KIESLING: All right. All  
 6 those in favor of the motion say aye. Opposed? Motion's  
 7 passed. Thank you all very much. Okay. We're now on to  
 8 Item 2, and I think Mike Grayhill, if you could come up and  
 9 deal with Items 2 and 3, and obviously our interest of time are  
 10 keen, as you can appreciate, because we have a number of other  
 11 things on the agenda as well. I thank all of you who came  
 12 here for the other agenda item. We appreciate your input. The  
 13 Harney County issue will be deferred, of course, till later.  
 14 Mike?

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AGENDA ITEM NOS. 2 AND 3

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2           MIKE GRAYHILL:    Items 2 and 3, let me make sure I  
3 have that agenda, is the request of the Land Board for approval  
4 of the Division's appearance before the Emergency Board to  
5 receive increased other-fund expenditures.    The issue here is  
6 that the staff of the South Slough Reserve has made application  
7 for two grants, and we have received notification of award of  
8 those grants.    I described those grants to you.    One is to the  
9 Governor's Watershed Enhancement Board to do trail improvements,  
10 to create a fully accessible trail, and publish some brochures  
11 that describe the Hidden Creek Watershed, and to provide some  
12 signs along the trail.    And the other project is a grant from  
13 the Small Business Administration, which is a tree-planting grant,  
14 that's for \$15,000, and those funds would allow us to hire a  
15 contractor to come out and do some watershed rehabilitation in  
16 the Hidden Creek Watershed.    The intent was to coordinate these  
17 two projects so that we could start to highlight an example of  
18 a small watershed where you could walk from the headwaters the  
19 divide between where this small creek drainage flows to the ocean  
20 versus another one that flows it through a different path to the  
21 ocean in a span of about a half of a mile or three-quarters of  
22 a mile.    So we can go from a watershed divide to tidal ocean  
23 influence in about three-quarters of a mile and highlight all the  
24 salient features of any watershed, say the Columbia River for  
25 example, but we can do that by foot, and without a great deal

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1 of inconvenience.

2 This watershed, like many others, have been influenced  
3 by previous human activities. Our objectives here are to try  
4 and reinstate forest conditions of -- we've identified 1850 as  
5 a target forest community, and this will be our first go out  
6 of the chute to try forest restoration. We picked a small one  
7 because the people who were undertaking forest restoration here  
8 at the Reserve are primarily marine biologists, and it's going  
9 to be helpful to have the assistance of the Department of  
10 Forestry and others to guide us in that effort. So at the  
11 moment we're making requests to approach the Legislative Emergency  
12 Board with an increase in other-fund expenditure authority of  
\$30,686.

14 SECRETARY OF STATE PHIL KIESLING: Okay. Any questions  
15 about Item 2? If not, do I have a motion?

16 STATE TREASURER JIM HILL: Yes, Mr. Chair, I move that  
17 the Land Board, that we approve the Division's request to appear  
18 before the next Legislative Emergency Board to request in other-  
19 funds expenditure authority increase of \$30,686 to support  
20 projects at South Slough.

21 SECRETARY OF STATE PHIL KIESLING: Okay. I'll second  
22 the motion. Any further discussion? All those in favor say  
23 aye. Opposed? Motion carries. Thank you.

24 MIKE GRAYHILL: Thank you very much.

25 SECRETARY OF STATE PHIL KIESLING: Okay. Item 3.

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1 Gus?

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AGENDA ITEM NO. 4

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2           GARY GUSTAFSON:     Mr. Chairman, Item 4 is a request  
3 for Land Board approval for another Emergency Board appearance,  
4 this time to request an increase of \$30,000 in federal fund  
5 expenditure limitation.     This allows us to contract with the  
6 Nature Conservancy through the Natural Heritage Advisory Council  
7 to implement a study grant pending with the U.S. Department of  
8 Navy for biological studies at the Boardman Naval Weapon Systems  
9 Training Facility.     They're actually looking at squirrels.     I'm  
10 trying to say this with a straight face, but it is an important  
11 study.     And we're doing this as a vehicle for the Natural  
12 Heritage Advisory Council to act as the vehicle for this funding,  
13 and complete the study with the assistance of the Nature  
14 Conservancy.

15           SECRETARY OF STATE PHIL KIESLING:     Okay.     Any  
16 questions?     Do I have a motion?

17           STATE TREASURER JIM HILL:     Yes, Mr. Chair.     I move  
18 that the Board approve the Division's request to appear before  
19 the Legislative Emergency Board to seek a federal funds  
20 expenditure authority increase of \$30,000 to receive and implement  
21 of a grant just mentioned by Gus.

22           SECRETARY OF STATE PHIL KIESLING:     Okay.     I will second  
23 the motion.     I also need to just simply declare for purposes  
24 of the record that my spouse works for the Nature Conservancy,  
25 though she doesn't have anything to do with ground squirrels, but

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1 I just need to let the record reflect that. Is there any  
2 discussion of the motion? Hearing none, all those in favor say  
3 aye. Opposed? Motion passes. Okay. We now move to the  
4 consent agenda. Gus?

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AGENDA ITEM NO. 5

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2           GARY GUSTAFSON: Mr. Chairman, the items on the consent  
3 agenda today are two. The first one is to allow us to initiate  
4 rule making to revise our existing administrative rules related  
5 to the unclaimed property program. And the reason we need to  
6 do this is that there were some rather substantial changes made  
7 in statutes to the State's unclaimed property program. I won't  
8 go into all of them, but they were quite extensive. The bill  
9 that was passed which was advanced by the Division this session  
10 was House Bill 2033, and these changes are going to enable us,  
11 we believe, to operate more efficiently as a one-stop  
12 clearinghouse to a very large degree, and also better access  
13 records with other states. And so in order to implement House  
14 Bill 2033, we need to move ahead with rule making. Like all  
15 rules we will, of course, once we have gone through that  
16 process, return with a final rules to you for adoption.

17           SECRETARY OF STATE PHIL KIESLING: Okay.

18           GARY GUSTAFSON: The second item is the minutes of  
19 the last Land Board meeting, September 21, 1993.

20           SECRETARY OF STATE PHIL KIESLING: Any questions? Is  
21 there a motion?

22           STATE TREASURER JIM HILL: Sure. I move the consent  
23 agenda described by Mr. Gustafson.

24           SECRETARY OF STATE PHIL KIESLING: Second the motion.  
25 All those in favor say aye. Opposed? Consent agenda passes.

Page

1 Okay. We now have the informational item part of the agenda.  
2 Gus, I would proceed with moving directly to the Elliott State  
3 Forest Management Plan unless there's a reason to adjust this  
4 any, but I think there isn't. Welcome to Jim Brown.

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AGENDA ITEM NO. 6

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2           JIM BROWN: Thank you. For the record I'm Jim Brown,  
3 the State Forester. I'm here to give you a brief update on the  
4 Elliott State Forest planning. There are several components that  
5 I would mention. Under the technical work, that's moving along  
6 quite well using an interagency group to help us put that  
7 together, but the key piece of the work that's going on right  
8 now is what alternatives will we recommend to you to consider  
9 for the Elliott State Plan. Currently we have seven on the  
10 table that use some form of a reserve system to protect T&E  
11 species and other non-commodity values, and that is a broad range  
12 from a very heavy emphasis on timber to early rod pollster  
(phonetic) conservation biology alternative. But we are looking  
14 at some other alternatives that instead of using a reserve system  
15 approach would achieve the same type of objectives, but more  
16 through a managed landscape approach. And we think that then  
17 we will have a complement, once we have that alternative or  
18 alternatives on the table, we'll have a set of alternatives  
19 around which you'll have some fairly broad decision space to  
20 consider as you go forward in meeting your responsibilities.  
21 We're putting together or have put together a peer review group  
22 to help us with the analysis of those alternatives.

23           There's some other field work that's gone on in terms  
24 of a recreational use potential analysis. We've surveyed  
25 42 miles of the streams system in the Elliott State Forest,

1 that's about a third of the anadromous fish-bearing streams in  
2 the forest, to help us get a better fix on what's the condition  
3 of those streams and what types of management practices are  
4 needed.

5 We have ongoing economic analysis, and then we're  
6 completing survey data on the spotted owl and murrelets, and  
7 I'd like to come back to that point in a minute. We've had  
8 a number of public involvement efforts on the forest. That's  
9 been an important element of our planning process, and the key  
10 part has been a public workshop that was held in North Bend on  
11 September 13. We're continuing discussions with U.S. Fish and  
12 Wildlife Service as we proceed towards developing a habitat  
13 conservation plan in conjunction with the Elliott State Forest  
14 Management Plan. Our plan product is to provide you a  
15 recommended Elliott State Forest Management Plan that dovetails  
16 with the State's conservation plan for the owl, and a habitat  
17 conservation plan for both the owls and the murrelets.

18 With respect to more specifically the Marbled Murrelet,  
19 I think you're aware that U.S. Fish and Wildlife listed the  
20 Marbled Murrelet as a threatened species last year. We had  
21 anticipated that, and had done some Marbled Murrelet surveys last  
22 summer, and then we continued with a second round of surveys  
23 this summer. And if you look at Page 3 of Appendix A, you'll  
24 see that on State lands as a whole we picked up 36 new Marbled  
25 Murrelet sites in addition to the 27 that we found last year,

1 so we have roughly 63 Marbled Murrelet sites on State lands  
2 statewide.

3 The difficulty we're finding is that there is virtually  
4 no guidance out of U.S. Fish and Wildlife on the protection  
5 measures that are required for that. That has, in turn, caused  
6 some delay and hardship on us meeting our intent to put up  
7 30 million board feet of timber sale each year. We have done  
8 two things to address that issue. One is, as you're well  
9 aware, we filed for a declaratory judgment in U.S. District Court  
10 on murrelet on a specific timber sale in order to try to get  
11 clarity from U.S. Fish and Wildlife on what our requirements are.  
12 And then secondly, we have, as your staff drafted what we call  
13 incidental take guidelines for Marbled Murrelet. They're kind  
14 of prudent person actions that we opt to take in order to avoid  
15 a take of the Marbled Murrelet.

16 We are working cooperatively with the State Department  
17 of Fish and Wildlife in that effort, and we have consulted with  
18 U.S. Fish and Wildlife in that effort. It's our plan to have  
19 that completed within the next couple of weeks, and we'll be  
20 consulting again with the Land Board assistants on that effort.

21 If we're able to successfully put together our own  
22 incidental take guidelines, we think that we would be able to  
23 immediately go forward with at least one sale, and probably an  
24 additional three. That would put, if we're able to go forward  
25 with the full four, that would put somewhere between seven and

1 a half to ten million feet on the market in fairly short order.  
2 Unless there's questions I'd move (unintelligible).

3 SECRETARY OF STATE PHIL KIESLING: (unintelligible)?

4 JIM BROWN: Okay. Would you like me to go to the  
5 next item then?

6 SECRETARY OF STATE PHIL KIESLING: Yes.

7 JIM BROWN: Okay. Item 6 is the marketing of forest  
8 products from a common school forest lands. At the June 8,  
9 1993, meeting you'd asked the Department to evaluate our existing  
10 marketing systems, and to look at what alternatives might be  
11 available to enhance revenues into the common school fund. We  
12 provided you a report at your September 21 meeting, and we had  
13 provided seven alternatives or strategies in that, and in that  
14 report we had used some terms of high cost, a potential for  
15 significant revenue, and you kind of stared at us and said well,  
16 what does that really mean, and asked us to try to flesh that  
17 out, so we could get a better feel for which of these options  
18 might better serve your responsibilities, so we are going to use  
19 a personal service contract to pick up some expertise to help  
20 us to find some of those costs and revenues in areas where we  
21 don't have that expertise and then we'll come back to you in  
22 a future meeting with some additional information, and possibly  
23 some additional recommendations.

24 SECRETARY OF STATE PHIL KIESLING: Okay. And Jim,  
25 those were on the items that we did not instruct you to move

1 ahead on.

2 JIM BROWN: That's correct.

3 SECRETARY OF STATE PHIL KIESLING: There were some that  
4 obviously we did instruct you just to go ahead.

5 JIM BROWN: That's correct.

6 SECRETARY OF STATE PHIL KIESLING: Okay. Any questions  
7 about that? Jim?

8 STATE TREASURER JIM HILL: Yes. Jim, is there a  
9 definite time line for these?

10 JIM BROWN: Well, given the work load that we have,  
11 we believe that we can come back to you in February with that  
12 additional information.

STATE TREASURER JIM HILL: Okay.

14 SECRETARY OF STATE PHIL KIESLING: And Jim, just  
15 actually tracking the previous item because it also relates to  
16 sales, if you were able to move ahead on the sales that you  
17 mentioned would you expect that before the end of the year, or  
18 probably sometime after the first--

19 JIM BROWN: I would guess early after.

20 SECRETARY OF STATE PHIL KIESLING: Early afterwards.  
21 So it would dovetail about the same time as--

22 JIM BROWN: That would be my guess.

23 SECRETARY OF STATE PHIL KIESLING: Okay. Any other  
24 discussion on that item? Okay. Item 7.

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AGENDA ITEM NO. 7

1  
2           JIM BROWN:   Okay.   Item 7 deals with the revision of  
3 the Common School Land Forest Management Agreement between the  
4 Land Board, the Department of Forestry, and as suggested in this  
5 item, the Division of State Lands would be a co-signer.   The  
6 agreement was signed last in 1982, it's fairly old.   We've had  
7 a number of changes in the way we have come to agreement on how  
8 we operate.   I think the agreement offers greater clarity as to  
9 what our responsibilities are, it adds greater clarity as to the  
10 role of the Division of State Lands is to play, and really how  
11 we're to better work together, and it lays out, I think, quite  
12 clearly your expectations of both the Division and us.

          We offer this to you only as an information item.  
14 It really provides an opportunity for the public to review it  
15 and comment on it, and then based on whatever comment we get  
16 back, either formally from you today, or informally through your  
17 Land Board assistants, plus what we get from the public, then  
18 we would revise this document and bring it back.

19           I think there is one key difference to this agreement  
20 that I would call your note to, and that is that on the  
21 previous document there were only two signatories to the  
22 document, that was the Land Board members and the State Forester.  
23 This document recommends that the Director of the Division of  
24 State Lands be a signer as well, and I think that's appropriate  
25 because there are some specific responsibilities assigned under

1 this document to the Division Director--

2 STATE TREASURER JIM HILL: As opposed to the one?

3 JIM BROWN: As opposed to the last one, which did  
4 not.

5 SECRETARY OF STATE PHIL KIESLING: Okay. Questions  
6 about this? Just to clarify, this then will, over the next  
7 30 days, there will be a time for public discussion?

8 JIM BROWN: That's our informal time line with Gus  
9 and (unintelligible).

10 SECRETARY OF STATE PHIL KIESLING: Okay. And you'll  
11 have some kind of public hearing process--

12 JIM BROWN: I don't think we intended to have--

13 SECRETARY OF STATE PHIL KIESLING: Where people can  
14 come forward, or--

15 JIM BROWN: A (unintelligible) process, I think it was  
16 a matter of this is a public record, and it's on the--

17 SECRETARY OF STATE PHIL KIESLING: You'd circulate it,  
18 and--

19 JIM BROWN: It's circulated, and those interest groups  
20 that are tracking this issue will provide us--

21 SECRETARY OF STATE PHIL KIESLING: And those comments,  
22 of course, are from everyone, including members of the Board--

23 JIM BROWN: Yes.

24 SECRETARY OF STATE PHIL KIESLING: And--

25 JIM BROWN: Yeah, so we would ask--

1                   SECRETARY OF STATE PHIL KIESLING:   And the like, so--

2                   JIM BROWN:       That the Land Board members have, after  
3 you've had a more detailed opportunity to review this, provide  
4 us your comments back through your representatives.

5                   SECRETARY OF STATE PHIL KIESLING:   Right.   Okay.   So  
6 we'd want to do that in the next 30 days so we can hopefully  
7 move ahead and have something before us then for our December  
8 meeting.

9                   JIM BROWN:       Yes.

10                   SECRETARY OF STATE PHIL KIESLING:   Okay.   Any other  
11 questions on this?       Okay.   Jim, thank you very much.  
12 Appreciate it.

                  JIM BROWN:   Thank you very much.

14                   SECRETARY OF STATE PHIL KIESLING:   Item Agenda Number 8  
15 is an update on the project Marine Environmental Research and  
16 Training Station at South Tongue Point in Clatsop County.   You  
17 may want to bring some folks up with you.   It looks like we  
18 have some visual aids here, which is always nice.

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AGENDA ITEM NO. 8

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2           GARY GUSTAFSON:     Mr. Chairman, I'm going to briefly  
3 set the stage and turn it over to individuals who have journeyed  
4 down from the Astoria area.     What we're here to talk to you  
5 about is to give you a very brief update because of our time  
6 constraints, but at least to get on your radar screens the  
7 status of where the proposed MERTS project, the Marine Education  
8 Research and Training center at our South Tongue Point property,  
9 what's going on with that, what plans are in the works here,  
10 and it's a very exciting project and we want you to do know  
11 where we are, and also more importantly, what's left to be done,  
12 and also briefly talk about the funding arrangements for it.

          A real quick update though on the land exchange.     We  
14 have finally come to agreement on value with the General Services  
15 Administration.     We're in the process now of finalizing that  
16 exchange agreement.     The last big step really is the final EIS,  
17 which the federal government has finally gotten out.     It will  
18 go through the review stage, and it will be finalized and  
19 adopted, we hope, by February is the latest update that I have.  
20 And so that fits with our overall schedule here, and assuming  
21 that the EIS report, and so on, is favorable, there's no major  
22 legal challenges that tie it up, and we have no indication at  
23 this point there would be, then we expect to receive title to  
24 these lands then this spring, March, or at the latest, April,  
25 and that fits with our development schedule at South Tongue

1 Point.

2 Okay. Let me turn this over to David Blum of my  
3 staff, and David, perhaps you could go through, introduce the  
4 players here, and also explain the visuals.

5 DAVID BLUM: Yes, thank you very much. David Blum,  
6 Division of State Lands. I'm handing out photo reductions of  
7 what you're going to see very briefly so you can take notes and  
8 scribble. We have an exciting project, which I think you've  
9 been following to some extent, and what you're going to see very  
10 briefly is a quick explanation of what is in front of you.  
11 This is obviously all very conceptual design, but a lot of  
12 effort has gone into this. Then you're going to hear from four  
13 institutional representatives from the Art and Graduate Institute,  
14 Portland State University, Clatsop Community College, and the  
15 North Coast Environmental Education Center. They've come down  
16 today at their own time and expense to talk to you. We're  
17 putting together the pieces of this, so I'll quickly turn it  
18 over to Richard Leonard who will walk you through these drawings.

19 RICHARD LEONARD: Good morning, or rather good  
20 afternoon. Very briefly set the stage for the descriptions in  
21 the program here. We're underway with the conceptual design for  
22 the facility for the Marine Environmental Research and Training  
23 Station located at South Tongue Point. It's at the east end  
24 of Astoria. This is the whole Astoria area. It's part of the  
25 DSL South Tongue Point Industrial Development.

1 UNIDENTIFIED FEMALE VOICE: Mr. Leonard, excuse me.  
2 Could I get you to sit by the table perhaps, or something.  
3 I'm not picking this up. The other one we'll have to use for  
4 the court reporter.

5 RICHARD LEONARD: Is this recording?

6 UNIDENTIFIED MALE VOICE: Yes.

7 RICHARD LEONARD: Okay. Richard Leonard, David Evans  
8 and Associates, Architect and Planner. The site for the Marine  
9 Environmental Research Training Station is South Tongue Point.  
10 It's at the north end of the site. It's adjacent to an  
11 environmentally sensitive area, eagle habitat. The conceptual  
12 design for the development includes a natural study area, trails  
13 through the forested wetlands, a dock for home←porting the  
14 training vessel for Clatsop Community College in-water training,  
15 a multi-function shared research education and training center  
16 <sup>which</sup> would include shops, labs, workshops, classrooms, <sup>and</sup> parking area.  
17 This is an aerial perspective of the facility located at the  
18 north end, the natural area to the left main entry with a focal  
19 point of the public education area." This is a view from above  
20 the natural area looking at the central environmental education  
21 area. A view of the shops from the water area. This would  
22 be for marine training, marine technology. And this is a view  
23 of the entry. The project is conceived to be developed in  
24 phases. The initial phase would be this central area, the main  
25 entry, and the core facility designed to expand as additional

1 programs evolve. The plan view, Phase 1, is in the shaded  
2 area. It would include all of the functional parts of the  
3 facility, the public environmental education classrooms, workshops,  
4 and meeting space to allow all of the programs to begin and  
5 then grow from that core. Now, Dave Phillips from Clatsop  
6 Community College will explain more of the program detail.

7 DAVE PHILLIPS: Thank you. Secretary of State  
8 Kiesling, and State Treasurer Hill, and ladies of gentlemen, on  
9 behalf of Clatsop Community College's board, staff, and patrons  
10 of the service area, we thank you for having the opportunity to  
11 locate some of our programs at South Tongue Point. Clatsop  
12 Community College will be the primary lessee and operator of this  
13 facility, and we see that this facility is going to afford us  
14 some of the following opportunities.

15 The first opportunity is to fulfill a long-term need  
16 for maritime sciences program. We are currently located on  
17 Young's Bay, which is where the old Bumble Bee boat yard is  
18 located, and Young's Bay is rapidly silting in. We can only  
19 move our training vessel "Forerunner" out during high tides.  
20 That channel is no longer maintained by the Corps of Engineers.  
21 It's no longer dredged, and I think the long-term goal is to  
22 be able to close the bridges that are on Young's Bay.

23 Secondly, we need expanded spaces for our U.S. Coast  
24 Guard approved programs, and we have several U.S. Coast Guard  
25 approved programs at our college. The first one is radar

1 observer training. We offer three different courses, a five-day  
2 course, a three-day course, and a one-day recert course.  
3 Secondly, we offer a marine technology program that trains people  
4 in a variety of areas and prepares folks for work primarily as  
5 deck hands on commercial vessels. We offer commercial fishing  
6 workshops, and our most recent addition, and one that's been  
7 transported up and down the coast, is our marine safety program.  
8 Part of this facility, you'll notice with the dock out there,  
9 is that square. That square will be in-water safety training  
10 where people will put on survival suits and get into the  
11 environment.

12 We also see a potential for new spaces, or for new  
13 programs, and currently we have an HUD grant, \$300,000. Part  
14 of that money is being spent to do feasibility studies for  
15 programs, and to actually develop curriculum and get them up and  
16 running. In one area it's in the marine-related industries.  
17 We're looking at ship repair, pleasure boat industry, also marine  
18 oil spill response, fire fighter training. The closest fire  
19 fighter training right now is in Hoquiam, Washington, for marine  
20 fires, and like I say, the in-water facility.

21 Secondly, we're looking at developing new programs,  
22 again using the HUD money, and the area that we're focusing  
23 most strongly on is environmental technician training. Not only  
24 are we going to develop that curriculum, but we're going to use  
25 this person that we're about to hire to help us find additional

1 funds to continue the development of Phase 2 and Phase 3 of  
2 this project. We also see some opportunities for an interpreter  
3 training program because this area lends itself nicely to that,  
4 and thirdly, an environmental mediation center where folks can  
5 come together and discuss issues and develop resolutions.

6 The third opportunity, and it's a very significant one,  
7 is that through co-location at South Tongue Point there's an  
8 opportunity for several of us to forge new partnerships and  
9 expand existing ones with the potential result that all partners  
10 further Oregon's education reform movement. We currently have  
11 an operational and functioning North Coast Educational Consortium  
12 which consists of the community college and seven school  
13 districts. We've recently expanded that to include Portland  
14 State University in the application of an Eisenhower grant, which  
15 is going to be looking at the development of the natural  
16 resources certificate of advanced mastery. We see some of these  
17 programs then spilling in to this center.

18 Thirdly, Portland State University is working very  
19 closely with the Coastal Studies and Technology Center at  
20 Seaside. We see an annex of that program, and Neil Maine will  
21 be talking about that, at South Tongue Point. And lastly,  
22 Oregon Graduate Institute of Science and Technology will be a  
23 tenant there, co-housed with us, that will be doing research.  
24 We think that research is going to result in new technology, and  
25 we hope to be a partner in that new technology by transferring

1 it to the work force through the educational program. And at  
2 this time I'd like to introduce Dr. Antonio Baptista from OGI.

3 ANTONIO BAPTISTA: Thank you.

4 SECRETARY OF STATE PHIL KIESLING: Welcome.

5 ANTONIO BAPTISTA: My name is Antonio Baptista, I'm  
6 the director of the Center for Coastal and Land Margin (phonetic)  
7 Research of the Oregon Graduate Institute, and I'm representing  
8 the Institute here. I would like to tell you a little bit  
9 about what our interest is in South Tongue Point, and to do  
10 that I need to tell you a little bit about the Center for  
11 Coastal and Land Margin Research. It is the (unintelligible) and  
12 center was created about two years ago, two and a half years  
13 ago, as a core faculty that represent the Oregon Graduate  
14 Institute, but has also representatives from schools across the  
15 United States, and a number of people from Canada, and we are  
16 now expanding to the Far East. The objective of the center is  
17 to essentially be able to integrate valuable research that is  
18 being done in specific disciplines, and make that research  
19 actually useful to deal with management issues of coastal  
20 resources.

21 We don't deal with management problems by ourselves.  
22 That's not our goal. Our goal is to provide managers with  
23 information that they need to make scientifically-based decisions.  
24 We don't take partisanship positions in any issue of this type.  
25 A lot of our studies visualize (phonetic) on the use of computer

1 technology and scientific visualization technology to bring  
2 together these different disciplines that represent chemistry,  
3 biology, and so forth. Our strength is in cooperation, and in  
4 bringing together the best that we can from different schools  
5 that can help us understand problems.

6 Our interest in South Tongue Point comes from a number  
7 of facts. The first fact is the access of the Columbia River.  
8 We don't have an easy access point to the Columbia River, and  
9 this will provide us with an excellent access point to the  
10 Columbia River which, as you know, is the big coastal feature  
11 in this region. Because we have extensive cooperation with  
12 University of Washington, and we are expanding it and will be  
13 participating in the next land margin (unintelligible) and  
14 research cycle of proposals and grants with them, having a site  
15 that is graphically located between us now, and UW, which at the  
16 same time has access to the Columbia, is a very, very important  
17 (unintelligible).

18 Other aspects of the site that are extremely attractive  
19 are cooperation that we are having now with Portland State  
20 University with geologists there, Curt Peterson, in the study of  
21 tsunamis in the coast. Both Curt and ourselves have projects  
22 now that are sponsored by RSC grant on trying to understand the  
23 characteristics of tsunamis in these coasts, whether tsunamis are  
24 indeed a problem, and if they are a problem, what do they do  
25 to the coast. The Columbia River is an excellent access point

Page

1 as well in these areas.

2 Finally, a lot of what we tried to do is eventually  
3 to end up at the educational level with communities or with the  
4 managers, and the partnerships that will come forth with Clatsop  
5 Community College and Portland State University, those issues are,  
6 for us, extremely important. Again, we do essentially process-  
7 oriented consortium. We do education at the graduate levels.  
8 The ability to forge partnerships with these institutions, to  
9 expand what we do scientifically, to make it available to  
10 communities is extremely attractive in this project. And now  
11 I would like to introduce Roy Koch from Portland State  
12 University.

SECRETARY OF STATE PHIL KIESLING: Welcome, Mr. Koch.

14 RAY KOCH: Thank you. I'm Roy Koch, vice provost  
15 from Portland State University. PSU is also happy to be a  
16 partner in this project, and it is our philosophy at the  
17 University to develop these kinds of activities in a partnership  
18 mode using the resources of the institution to help in the  
19 solution of whatever problems might be identified. Our primary  
20 missions of education and community research and research are all  
21 parts of our objectives here, and in particular the education and  
22 community service seem to be coming together more and more  
23 through our service learning activities at the University.

24 The MERTS project is really an opportunity for us to  
25 both expand some existing PSU programs which we think are very

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1 valuable, of course, and then to participate in some other  
2 activities where we don't now have an outlet. Our existing  
3 programs have been mentioned, I think, by the other participants.  
4 Our Center for Science Education is involved both in teacher  
5 training and undergraduate science curriculum revision activities.  
6 We currently have some projects underway, as well as a joint  
7 proposal with Clatsop Community College and others. We are  
8 involved in current research activities on the coast. Antonio  
9 indicated a joint project between himself and a faculty member  
10 in our geology department who has also done considerable research  
11 on earthquake histories and has been responsible for some of the  
12 heightened awareness of earthquake potential in the state of  
13 Oregon. So we do have a number of these kinds of activities,  
14 and they would certainly be facilitated by a facility such as  
15 this.

16 We have a number of other interests in activities that  
17 could serve as models for the kinds of things that could go on,  
18 including additional teacher training activities, expansion of our  
19 science literacy, and science education curriculums. We have  
20 some proposals to NSF related to a cooperative center for science  
21 and math education. We have conducted research complementary to  
22 Dr. Baptista's in areas including South Slough. So we have a  
23 strong interest in participating in this facility, and would very  
24 much like to see it go forward. And now I think Neil Maine.

25 NEIL MAINE: Thank you.

1           RAY KOCH:     You're welcome.

2           NEIL MAINE:    My name is Neil Maine, I'm the special  
3 projects coordinator for the Coastal Studies and Technology  
4 Center, which is a nonprofit corporation located at Seaside High  
5 School. Kind of tried to get rid of students and get rid of  
6 teachers, and we now have a director that has 100 staff  
7 positions in the center, and those 100 staff positions are filled  
8 by students through application, and then they go to work in the  
9 real world on projects in our region and our community to  
10 provide resources for that, and certainly the concepts being  
11 developed at the South Tongue Point are consistent with that  
12 philosophy to expand that. I'm really here to try to represent  
13 the fact that we do have foot soldiers who've been on the  
14 ground and done these things. We've had a program for the last  
15 ten years in the Cannon Beach area called the Haystack Rock  
16 Awareness, and last summer worked directly with about 10,000  
17 people at Haystack Rock. We just completed a design for a  
18 program to be consistent with the legislative mandate to rework  
19 some of our school programs. One of those areas of natural  
20 resource systems of certification of initial mastery or  
21 certificate of advanced mastery, and we just completed the design  
22 for a program we're calling School Yards to Ecosystems. It's  
23 absolutely clear to us that we can no longer just have the  
24 researchers and have the managers and have the user groups.  
25 Our future citizens need to have spent time and become intimately

Page

1 aware of all of those areas so they can not only talk to each  
2 other, but also understand well those other areas. So the fact  
3 that we have fishermen in the Columbia River, and that we have  
4 management of the Columbia River, and that we have research going  
5 on there is a perfect setting for us to track our students  
6 through all of those environments so that they can understand the  
7 dynamics of natural resource management, and uses in the future.  
8 So it's certainly an opportunity for our North Coast Educational  
9 Consortium, which is currently being funded by a development site  
10 grant from the State Department of Education, to explore new ways  
11 of designing programs and to facilitate access of young citizens  
12 to be active participants in our own society, and we think this  
13 cooperative effort at South Tongue Point represents a good model  
14 for us to start practicing in. Thank you.

15 SECRETARY OF STATE PHIL KIESLING: Neil, can--

16 STATE TREASURER JIM HILL: Excuse me, can we ask you  
17 a question? Not so fast.

18 NEIL MAINE: He's leaving, I'm coming.

19 SECRETARY OF STATE PHIL KIESLING: Before Treasurer  
20 Hill asks his question I want to do something real briefly that  
21 I apologize for not doing at the very earliest, because some of  
22 our folks here from this part of the coast may need just a  
23 little bit of background about what this is about. South Tongue  
24 Point is an area in Clatsop County that the Navy had originally  
25 promised and committed to put two mine sweepers and have a home

1 port there for two mine sweepers. And the reason the State  
2 Land Board is involved is while we don't own the land right  
3 now, it's owned by the federal government, we have some property  
4 nearby that the federal government was talking to us about  
5 exchanging, in which case we could be a player in facilitating  
6 a development there that would really help the citizens of  
7 Clatsop County. About three-four months ago the Navy announced  
8 in its downsizing it was not going to put the mine sweepers in  
9 there after all, but with the work of Senator Hatfield, with  
10 Congresswoman Furst, there is a very good possibility that the  
11 Congress will appropriate two million dollars towards a marine  
12 environment -- let's see, I think the official title is Marine  
13 Environmental Research and Training Station. So the people that  
14 you've heard talk about this, and the exciting possibilities  
15 involved here, which obviously has implications for the entire  
16 coast of Oregon, and education and research, and economic  
17 development, we're proceeding ahead with some planning, hoping  
18 that that appropriation will come through and that something can  
19 be built there in the end that will have the kind of very  
20 exciting possibilities and benefits that the people have been  
21 talking about. So welcome, people, after the meeting's over then  
22 come up and look at the drawings of this, but it may seem a  
23 little odd that the Land Board is even involved in something  
24 like this, but we are because of that land connection and the  
25 fact that the tract this is on, that we would own the

1 underlying land at this particular facility. And with that,  
2 Treasurer Hill would like to ask a question.

3 STATE TREASURER JIM HILL: Thank you, Phil. I just  
4 wanted to know about the idea of the nonprofit corporation. I  
5 mean it sounds -- I'm really intrigued with the idea. I just  
6 wanted to know where the idea came from.

7 NEIL MAINE: It originated out of, one, a concept to  
8 try to move away from business as usual, school as usual.  
9 Teachers know what they're supposed to do, students know what  
10 they're supposed to do, they learn that by going to school, and  
11 then they keep kind of playing that game for a long time. We  
12 were wanting to change the setting, and we felt like that  
13 certainly high schools need to be in a transition mode to that  
14 world that includes a lot of nonprofit corporations, and for-  
15 profit ones, and that we wanted to have a model in place to do  
16 that. And so that was really the origin of that, and we  
17 applied for nonprofit status, and so now students really become  
18 staff members. It seems to change their attitude, certainly  
19 changes the attitude of people who support us when we come to  
20 them to say how can you help, and as depressing as it might be,  
21 and we don't say school, we say Coastal Studies and Technology  
22 Center that involves students in their own community actions.  
23 They want to help, so you know, it's really just a concept.  
24 We tested it with 50 students in the first year. We now have  
25 100 students in that program. The concept for the consortium

1 is to expand that to a six-school district, seven-high school  
2 cooperative program so that these centers would be linked  
3 together and work on broader-ranged programs. This design  
4 includes the Columbia River as our really central focus because  
5 of the size of that system.

6 STATE TREASURER JIM HILL: I see. And so the idea  
7 originated where? Was it from the school system, or?

8 NEIL MAINE: Yes, it was from the school.

9 STATE TREASURER JIM HILL: I see. Thanks a lot.

10 NEIL MAINE: Mike Brown, who's the educational director,  
11 runs the program on the school. We have a community outreach  
12 element. That's the part I do. And then we have a University  
13 connection with Portland State University and the Center for the  
14 Science Education.

15 STATE TREASURER JIM HILL: That's really something.  
16 Thank you very much.

17 SECRETARY OF STATE PHIL KIESLING: All right. Thank  
18 you. Appreciate it. Is there any other questions about the  
19 MERTS project, or thoughts? Ah, Senator Bradbury, welcome.

20 SENATOR BRADBURY: Welcome to you.

21 SECRETARY OF STATE PHIL KIESLING: Thank you. I want  
22 to applaud all the effort that has been going into this. There  
23 are some very exciting possibilities. We obviously have some  
24 major issues down the line on the assumption -- nothing is sure  
25 until we get it, we learned that with the Navy mine sweepers --

1 some decision along the way on the assumption that we will get  
2 funding. The funding that is being identified will not fully  
3 fund this center, my understanding, and of course there's then  
4 the issue of operations and who is responsible for programs.  
5 I think as the Land Board we're going to have to deal with that  
6 when the time comes, but I just want to make sure we understand  
7 that there's a number of things that we want to have fall into  
8 place, but things look pretty good right now. David?

9 DAVID BLUM: Yes, I just want to make it clear that  
10 we are not planning to design something, either in theory or in  
11 practice, that would exceed the first part of that funding, which  
12 is 1.5 million dollars of hard construction costs, and a half  
13 million dollars of operational costs, so that the Phase 1 would  
14 be a stand-alone, fully-functional project irrespective of whatever  
15 came along after that.

16 SECRETARY OF STATE PHIL KIESLING: Right.

17 DAVID BLUM: That's always been the basic premise.

18 SECRETARY OF STATE PHIL KIESLING: Appreciate that  
19 clarification. Okay. We have kelp harvest now, and then a  
20 chance for other. Mr. Wolf has signed up for that, but Gus,  
21 do you want to give an update on the kelp harvesting issue?  
22 Had an action and information packed agenda here today.

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AGENDA ITEM NO. 9

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2 GARY GUSTAFSON: Mr. Chairman, I don't think we need  
3 to spend a whole lot of time on this.

4 SECRETARY OF STATE PHIL KIESLING: Thank you.

5 GARY GUSTAFSON: Just want to make sure that you know  
6 that at this point we have completed most of the prerequisite  
7 things that have to be done before we can offer kelp leases on  
8 the southwest Oregon coast. And the remaining steps which still  
9 have to be done involve close cooperation with the Oregon  
10 Department of Fish and Wildlife, and so we're going to be  
11 working with ODFW, and I am still, at this point, very, very  
12 hopeful that we will have leases offered early in 1994. And  
13 I spent yesterday touring the southwest coast, meeting with city  
14 folks, and port commissioners, and the Curry County commissioners  
15 and others, and bringing them up to speed on where we are, and  
16 making sure they know what our pace is, and that their local  
17 needs and desires are also being incorporated as best we can.

18 Certainly there are those who would like to go faster,  
19 but I think they understand the backdrop here, and that is if  
20 we don't do it right, we're never going to be able to do it.  
21 And so it has to be done right, and the fact that Senator  
22 Bradbury is here today, I know that he would join in me saying  
23 that if we're going to err, we've got to err on the side of  
24 the environment, and the ocean resources, and essentially that's  
25 what we're doing in this pilot project.

1                   SECRETARY OF STATE PHIL KIESLING:     Okay.     Questions  
2     about this?     I guess I want to encourage you to continue to  
3     work with Fish and Wildlife to get the work done that needs to  
4     be done so we can move as quickly as we can with this, and I  
5     know you're doing that, but I want to just underscore that.  
6     Okay.     Thank you very much.     Mr. Wolf, you're under "Other."  
7     Welcome.

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AGENDA ITEM NO. 10

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2           JOE WOLF:    I've been referred to in worse lights than  
3 that.

4           SECRETARY OF STATE PHIL KIESLING:    As have we.    As  
5 have we.

6           JOE WOLF:    In the interest of time I won't go on to  
7 a great elaboration about welcoming you to Coos County, and like  
8 to thank you and express our appreciation, and kind of blows one  
9 of my statements that the people in Salem don't even know that  
10 Coos County and Coquille exists because we did get you down  
11 here.

12           What I would like to address briefly with you is more  
13 of an information and a seek of help and guidance from the  
14 city's standpoint.    What I've passed out to each one of you is  
15 a aerial photo of the former Georgia-Pacific mill site there in  
16 Coquille.    As you're all well aware, Coos County and Coquille  
17 are highly dependent on the timber industry.    Up until 1990 the  
18 two prime employers in Coquille were Roseburg Lumber and Georgia-  
19 Pacific.    When Georgia-Pacific closed in 1990 we lost 340 family  
20 jobs in one fell swoop in a community of 4,000, and that  
21 definitely takes a serious toll on the community.

22           The city immediately contacted Georgia-Pacific to try  
23 and keep this site available for industrial purposes, and to  
24 get the site cleared, and do some environmental clean up, and  
25 things that had to be done on it.    That aerial photo that you

1 have before you is very similar to a photo of the site that we  
2 have dated 1935, and as you can see by that photo, the majority  
3 of that property is covered either with asphalt, buildings,  
4 concrete, whatever, that the site is fully covered.

5 About a year ago Georgia-Pacific tore down almost all  
6 of the structures in cooperation with the city. I have to  
7 apologize, only Treasurer Hill and Secretary Kiesling have the  
8 photo showing the remaining structures. Those structures are on  
9 full concrete slabs and good buildings, and could be reused for  
10 industrial or economic development purposes. The other buildings  
11 were all on pilings, built over voids. Subsequently when those  
12 buildings were knocked down you wind up with holes in the ground  
13 of anywhere from 10 to 15 to 20 feet throughout that portion  
14 of the property. Also unfortunately in south southern Oregon  
15 when you have holes of that size and it rains, you wind up with  
16 water sitting in some of the holes, and even though we have  
17 contaminated soil it has amazed me how much grass and brush and  
18 shrub are now growing on those sites.

19 Our dilemma comes in that we are trying to market this  
20 property for industrial development. I've got four potential  
21 developers looking at the site right now. But we also have to  
22 deal with permits to fill the site, and we're working very  
23 closely with DEQ on the environmental cleanup. I think we're  
24 in good shape on there. We're doing the groundwater monitoring,  
25 which at this point is showing good. Some of the bio-

1 remediation has been done, so I think we're well on the way of  
2 satisfying DEQ problems.

3 Our dilemma comes with wetland programs. Unfortunately  
4 there are number of agencies that regulate wetlands, DSL being  
5 one of those agencies. This site has been an industrial site  
6 for well over 50 years, and I think, as your esteemed legal  
7 counsel says, what we're looking for, or hoping that DSL will  
8 grant with us, is a reasonable and prudent decision. Under some  
9 of the wetland regulations if the use has not been abandoned for  
10 a period of five years, you can still go back and work and do  
11 the things that you need to work on. In this particular case  
12 the site has been closed by G-P for about two years, we are in  
13 the permit process now, we've submitted our fill permit requests  
14 to the county, their planning department has approved it, we now  
15 have the application in with the Corps of Engineers and DSL to  
16 get a fill permit to be able to fill this site so it can be  
17 redeveloped.

18 It would appear that we may have some stumbling blocks  
19 from one of those regulatory agencies as far as the wetland  
20 issue is concerned, and what, I guess, we're asking and hoping,  
21 and I recognize that it's not a decision that you need to make,  
22 or have great leverage on at this point, but we would ask that  
23 you look at this site, we would certainly invite you to come  
24 over to Coquille, look at the property. I would be happy to  
25 spend time with any of you. We're trying to get it developed

1 and marketed. I can't make a commitment to the interested  
2 parties until we clear up the fill permit issues, and so any  
3 help that you can give us in keeping this from being tied up  
4 in the wetland issue, and being stopped from future development  
5 would certainly be appreciated.

6 SECRETARY OF STATE PHIL KIESLING: Appreciate that.  
7 It's very helpful to have pictures in your mind when these  
8 issues come up, as they may well, and I appreciate your bringing  
9 this to our attention. Thank you very much.

10 JOE WOLF: Thank you.

11 SECRETARY OF STATE PHIL KIESLING: Okay. Are there  
12 any other people who want to testify on anything relating to  
13 Land Board business, or anything else that Gus wants to add to  
14 our work today? I think we're on the verge of being able to  
15 adjourn for lunch.

16 GARY GUSTAFSON: Mr. Chairman, I think that's indeed  
17 appropriate, and just before you do, we've got food outside  
18 here. I think you'll find it very shortly. A lot of people  
19 are waiting to greet you. The schedule is that at 1:30,  
20 Forestry will have vehicles ready to take us out on the Elliott  
21 State Forest tour.

22 SECRETARY OF STATE PHIL KIESLING: Okay. And I want  
23 to thank the citizens of Coos County for a very warm welcome,  
24 and we look forward to being back. Thank you all very much.

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