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**STATE LAND BOARD MEETING**

**Friday, July 29, 1994**

**State Lands Building**

**775 Summer Street NE, Salem, Oregon**

**9:00 a.m.**  
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**GOVERNOR BARBARA ROBERTS:** Apologize for being five minutes late here, but we want to make sure once we start this it goes officially and well for everyone. I would like to inform you as to how we're going to handle item number one. As most of you know, there have been more than a dozen public hearings on this issue over the period of the last year, plus including some workshops and written testimony and other opportunities. As those opportunities went out for testimony, we clarified that there would be limited public testimony when we arrived at this meeting today, and I'm trying to -- I tried to work out what I thought would be a fair way to deal with what limited public testimony means when people have views they'd like to express. So what I'm going to do is begin with item two, set number one aside until we're finished with the first two items which will take a little while, and I am going to ask those who are here representing either current leasing interests or those who are here representing other perspectives different from that to each side. I hate to use the term "side," but each group, select three people who can testify for their group representing the views that they bring to the table, and each of those three people will be given seven minutes, so that's a little over 20 minutes for each side, for each perspective, and then we won't take any of your time for the things that when the Board asks questions or comments. That will be our time, not yours, so there will be a full 20 minutes or 12 minutes for each perspective to bring their views to the table.

What I would ask you to do, and I know that you're all comfortable and you just got there, is to -- if you would go outside and get your groups involved in some kind of way to see if you can select the people who can bring your testimony to the table. We have over 25 people signed up. We would be here till late this afternoon probably by the time we got through that, and that's not probably considering how much public input we've already had, that's probably not realistic, and I would ask you as you do this if you could not be too noisy out in the hall so that we can hear the other two major items that we have before us on timber and the Wilsonville Tract, so if you can do that, I apologize for not announcing this earlier, but I didn't have a way to do that, so if you will do that, that would help us, and we will do the first two items, then, and by the time we do that, which will give you some time to, you know -- I don't know -- I guess probably 15 or 20 minutes, maybe 15 at least to make that decision so you won't have to make it in two minutes, so if you wouldn't mind doing that, that will aid us in getting through that. And then if we've missed any perspective that's completely different from the two I've just described, we'll try to handle that separately. Thank you very much. I appreciate you doing that.

#### ITEM 2

We're going to begin with item number two, which is a request for approval of the Wilsonville Tract Management Plan. And here again, in the spirit of both input and efficiency today, as most of you know, we are going to move forward for request of

proposal for the Tract, and so I think the easiest thing for me to do is to suggest to you that we will first have Gus make some comments about where we're going with this, and then I would tell you that unless there is someone who believes we should not go to request for proposal who disagrees with that, then we will probably not take any other testimony different from that. Everyone who signed up, I believe, has testified before on this issue. It is going out for request for proposal, and so the staff recommendation will come from Gus, and then if there is anyone who believes that that staff recommendation can go out for proposal should not happen, we will hear from them, and I think we won't take testimony from others who are here to talk about what they think we should do with the property, because that, in fact, is what the request for proposal is all about, so, Gus, why don't we begin and see if we can make this work, and if there are others, we will call on them. Gus?

**DIRECTOR GARY GUSTAFSON:** Thank you, Governor, members of the Board.

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AGENDA ITEM NO. 2 (cont)

**DIRECTOR GARY GUSTAFSON:** The Wilsonville Tract proposal has also been, as you mentioned before the Board, on several different occasions, and at this point we're moving with the instructions that we received the last time we came before the Land Board. And to introduce that in our progress in accomplishing those instructions, I'd like to have John Lilly, Assistant Director for Policy and Planning, bring you up to speed on exactly where we are and give the recommendation.

**ASSISTANT DIRECTOR JOHN LILLY:** Good morning, Governor, members of the Board. I'm John Lilly, Assistant Director for Policy and Planning. At your May 10 meeting you conceptually approved the management plan for the Wilsonville Tract which included a proposal to move forward with an request for proposal, that is, in order to select a lessee or a number of lessees to utilize that area. You also asked us to do some further analysis on the plan and to refine some points that we included in the document at that time. We have since done that work. There were three pieces that you asked us to look into. One, you asked us to get into greater detail about how the RFP process would work and what types of criteria we would use in weighing each of the RFP's.

The second is you asked us to look more conclusively at the land use issues that surrounded the particular options, and we have done that, and that's itemized in your report, and has gone into greater detail in the refined plan itself, which is

Attachment B, or Appendix B of the agenda item.

And then finally, we beefed up our economic analysis of our view of whether it made sense at this point to put the tract up for sale right away or whether it made sense to hold onto it for awhile, and move forward with kind of testing the water to see what kind of interest there is in utilizing the tract for income-producing purposes. We've done all three of those things. As a result, there is some fine-tuning that we've done -- did to the plan that you reviewed and conceptually approved in May.

We included this economic analysis into the plan that you have today, and as a result of some further conversation with Bill Cook, it was clear that if we were to proceed with using a portion of the site for a public school that it was not appropriate to require the public school, kindergarten through 12th grade school, to present us a proposal that included a lease fee or economic return analysis. That is because obviously the lands are Common School lands, and one of their purposes for which they're set aside is to benefit the schools, and which includes siting of schools.

In our analysis of land use, we found that the golf course option becomes very problematic on this piece of property, and as a result we removed that option from what we call our provisional uses category in the management plan that you conceptually approved in May. So that kind of brings you up to date. There was one final thing that we looked at. We realized that there is some need for better management for the discharge

of firearms, for the use of the property for public camping, and for open wildfires or open fires that might be done on the side as a result of the public using it. We included those concerns in this revised management plan and are recommending that we go to rulemaking to deal with those issues this fall. And another part of your agenda deals with a consent calendar item where you were giving us authority to go to rulemaking to deal with those.

**GOVERNOR BARBARA ROBERTS:** Questions or comments by the Board?

**SECRETARY OF STATE PHIL KIESLING:** Just one. John what's the current status, the sense of time line that you have about the adjoining property or actually the hospital? And that obviously might have an affect on what gets bid and proposed--

**ASSISTANT DIRECTOR JOHN LILLY:** Right.

**SECRETARY OF STATE PHIL KIESLING:** Or ultimate development of the general area.

**ASSISTANT DIRECTOR JOHN LILLY:** Mr. Secretary, we have had some discussions with the people from the Department of Administrative Services and with Michael Insocome (phonetic). The time line looks like it's out there for a couple of years as this issue gets dealt with maybe as a part of the budget process in the upcoming biennium. At this point, everything is speculative as to what will happen there. We're continuing to monitor it because we agree that the possibilities -- or what happens on that side influences what happens to your tract to the south.

**GOVERNOR BARBARA ROBERTS:** So I might just say to you that it's one of the issues we've looked at as we've been putting together the budget.

**ASSISTANT DIRECTOR JOHN LILLY:** Right.

**GOVERNOR BARBARA ROBERTS:** It's an issue that we've discussed. It's very clear no matter what my recommendation might be in the budget process that it will stand the test of a new governor and a--

**ASSISTANT DIRECTOR JOHN LILLY:** 1631.

**GOVERNOR BARBARA ROBERTS:** Legislative action and so my guess is that the decision may well be made in the next legislative session. And even if it is, I would ex -- I would suggest that would take awhile for the implementation of whatever that suggestion is to come to fruition, so I think the time line of saying we're a year or more off is not an unrealistic one in terms of looking at it in relationship to this tract. Do you have anything? I just want a clarification. If a request for proposal goes out and a proposal comes back that looks at the tract in a multiple way that says we would use a part of this tract for one of the allowable uses, then we would use a part of this tract for one of the provisional uses, could a proposal meet that -- the proposal be correct if it had multiple use in it in that way?

**ASSISTANT DIRECTOR JOHN LILLY:** Absolutely, yes.

**GOVERNOR BARBARA ROBERTS:** So that might -- I don't know what it might be. I mean, someone might be building a

science school on part of it, which would be in the provisional use and the other half might be open use of it in some science demonstration kind of thing that would fall into the -- closer to the public part or open space, so that kind of a proposal, then?

**ASSISTANT DIRECTOR JOHN LILLY:** Absolutely.

**GOVERNOR BARBARA ROBERTS:** Okay.

**ASSISTANT DIRECTOR JOHN LILLY:** That's entirely possible and what we've done in further elaborating what we expect in the RFP is making sure that we put the burden on the proposer to fully explain how they would go about getting all those land use requirements met, and laying out for us what their rationale to receive them would be so that we have an opportunity to carefully evaluate what their potential for success would be.

**GOVERNOR BARBARA ROBERTS:** And can you describe for me again the time line if this Board should make a decision today to accept the staff recommendation and put this out for proposal, can you give me the time frame for that?

**ASSISTANT DIRECTOR JOHN LILLY:** We want to do that by this fall.

**GOVERNOR BARBARA ROBERTS:** The--

**ASSISTANT DIRECTOR JOHN LILLY:** We want to put the RFP out by this fall.

**GOVERNOR BARBARA ROBERTS:** Right. And the expectation of return time?

**ASSISTANT DIRECTOR JOHN LILLY:** Probably January of next year, that gives time for proposers to do a lot of research and I think this is a major undertaking for them, and they're going to need some time to put their proposals together.

**DIRECTOR GARY GUSTAFSON:** Governor, I want to emphasize that those are generalized time frames only.

**GOVERNOR BARBARA ROBERTS:** Could be the end of the year so they couldn't have a three-month--

**DIRECTOR GARY GUSTAFSON:** Right.

**GOVERNOR BARBARA ROBERTS:** Time period? Some of them have been -- I know there are people who have been working on it. There may be others who have not, and--

**DIRECTOR GARY GUSTAFSON:** Yeah.

**GOVERNOR BARBARA ROBERTS:** And so I wanted a sense of that. All right. Is there further comment or action on the part of the Board? Oh, wait. Oh, wait. I'd better wait. Just a minute. I'm sorry about that. I need to clarify again. Is there anyone -- I've got six people signed up. Is there anyone who is signed up whose purpose is to disagree with the staff recommendation that this should go out to proposal? Okay. Would you like to come to the microphone and identify yourself, please?

**JACK BROOME:** Governor Roberts, Secretary Kiesling, Treasurer Hill, my name is Jack Broome. For the record I live at 18815 Southwest Boones Ferry Road in Tualatin. I'm a retired architect and land planner. I've been involved with the Wetlands Conservancy, the Oregon Shores Conservation Coalition, just about

every environmental group that you can think of in the state of Oregon going back from Tom McCall's period.

**GOVERNOR BARBARA ROBERTS:** Probably means you don't qualify to be appointed to a natural resources board in Oregon now, is that right?

**JACK BROOME:** I'm trying to retire again.

**GOVERNOR BARBARA ROBERTS:** It was too easy. I'm sorry, Jack.

**JACK BROOME:** Yeah. I don't want to say that I'm objecting to the RFP proposal, but I have real concerns about it. I really do. And it's difficult in a forum like this, I suppose, to answer my concerns, but as an architect, we responded to a lot of RFP's. They take a lot of time and effort. I wonder who it is that is going to respond to this RFP and, you know, how they will be compensated for the time they would spend, and, you know, what's in it for them, because obviously -- you know, you can't donate all your time to public purposes. And normally RFP's in the past -- my experience has been used to select consultants, other architects, engineers, whatever, planning consultants for hospitals or to do master planning, or long-range campus planning, things like that. And I don't think that the competitive process necessarily brings the best results to the general public. I really don't.

As Ian McHart said, some of our commonly-known household names are not housebroken and, you know, that really applies to this process that I think that private development and private

interests may serve the public benefit, but they may not as well. And I don't know frankly why the Division of State Lands with a select committee of individuals we exempted couldn't come up with a management plan for this property and avoid the process or going out for RFP's. This is an expensive process. Whoever responds will spend thousands of dollars and hundreds if not thousands of hours in responding to the RFP's.

To me for a questionable benefit, you know, I -- maybe I'm stupid, but I don't understand how the long-range public benefit for this land if it is going to be a public park or an arboretum or mixed-land uses, and if the forestry practices are hopefully to be prescribed so that certain practices that are common in public forests or in private forests would not be allowed on this tract. How that would be handled by the RFP process, I truly don't understand how that would work.

**GOVERNOR BARBARA ROBERTS:** Jack, why don't you stay right there. You've asked a question that I think is a good one, and a valid one. Gus, or would one of you like to comment on this process versus some others?

**ASSISTANT DIRECTOR JOHN LILLY:** Well, I think, Governor, what we're trying to do is provide a marketplace atmosphere so that all-comers who meet the requirements of your management plan can come forward with their best ideas about how this ought to be done, how the land ought to be used in the context of this plan.

What's in it for them, of course, is they get the opportunity to conduct their activity which is, in all likelihood, be some kind of a business activity. There will be a return to them monetarily, otherwise, I suppose they would not put the effort into it in the first place. The return, of course, to us, to the Common School Fund is that we're utilizing those properties for the purposes in which they've been set aside, that is, revenue generation for the Common School Fund. What we want to do, of course, is try to balance off the -- many of the amenity values on the site, the forest, the wetlands. Those things are of interest to all of us to see that their protected and properly conserved and managed, balance those off against what is reasonable development, and I think that's what we've tried to present to you in your plan is a number of options that the people in the private sector or public sector even can come forward with us or to us rather.

**GOVERNOR BARBARA ROBERTS:** I don't know whether that answered your question or not, Jack.

**ASSISTANT DIRECTOR JOHN LILLY:** I'd be glad to spend some time with Jack and walk him through it. We may have a fundamental difference in view, but staff would be pleased to spend some time with him.

**JACK BROOME:** Well, I hope I'm not the only individual in the state of Oregon that has concerns over this process for this specific site, and I would like everyone to know that I'm not talking about personalities here. I'm talking about issues

and a process, and that I still fail to see how spending more, you know, public funds for proposers will actually, if necessarily, produce a better land use plan for that piece of property than would selection of a committee to work with the Division of State Lands for a long-range plan. I like the conclusions of the revised report. It comes up with the things that I've supported all along, public use, parks, et cetera, perhaps an arboretum. Again, I fail to see how a presenter or a responder to the process could really reflect the interests of the general public. The general public, those of us from Wilsonville area, and I'm from Tualatin, how can we hire a consultant? We can't hire a consultant to present -- to respond to this RFP to put our views forward. We are really excluded from the process, I think, other than to review the end results.

**GOVERNOR BARBARA ROBERTS:** Phil, you had a comment?

**SECRETARY OF STATE PHIL KIESLING:** Well, I think, Jack, you raise an important and a very profound question, and I actually want to encourage you to stick around for the rest of the meeting, because in a way the two main issues that we have today are very connected. We're going to be looking a little later at the issue of having a competitive process on the State's grazing lands, 600,000 acres. And the importance of taking a principle -- people will disagree about the principles in which lands ought to be managed. But once you pick the principle, you need to consistently apply it. And if we're going to, in effect, from my perspective, and I feel this -- that that consistency

principle pretty strongly, the RFP in effect gives you a chance to let the marketplace come forward within a framework of what is within the law and what might be outside so you know when the process is done that you've at least given everyone out there, including people you don't even know, a chance to compete on an equal footing for that. You know nobody has an inside track on that. And to me, that's personally why I think the RFP, yeah, may be more expensive, but you've got to, I think, apply some principles consistently about how you, you know, solicit proposals, bids for what is an asset of the State, public asset that we have to manage for trust, and I think you know the dilemma we're in. This isn't just any ordinary asset that might be on this as a particular kind of an asset with a particular kind of obligation that goes with it.

So just in response to what I think is a very good point, an important point, I actually would encourage you, if you have the time, because this really in some ways is at the heart of both the questions we face today.

**JACK BROOME:** I have two other riders, Mr. Secretary, unfortunately that may not--

**SECRETARY OF STATE PHIL KIESLING:** We record it and we can send you the tape.

**JACK BROOME:** Want to spend the rest of the day here.

**SECRETARY OF STATE PHIL KIESLING:** I understand that.

**GOVERNOR BARBARA ROBERTS:** Well, and I -- and I just -- a slight clarification. What we're really -- we're not asking

people for a plan. We have a management plan. What we're asking them for is a proposal on that land consistent with our plan that brings the financial return to the State and under our requirements of generating that income. And so I think, Jack, though I certainly don't disagree with a portion of what you said today, I think that it's very difficult to do that with fairness if everybody isn't given an equal opportunity to participate with a proposal that's consistent with our plan, and I think we did the part that was our obligation, which we did, which was to say, "This is the management plan we devised for this tract. Now, who can meet that plan with proposals and so I don't know any other way to treat people with fairness in the process. I would hope -- I mean, I don't think this Board or the staff of the Division of State Lands believes that citizens have to hire someone to submit their proposal for how the land should be used. I don't think it has to look like a formal document with a fancy cover and nice binder, but rather to say if the community and some of its citizens have ideas to bring forward, proposals, not necessarily even the monetary proposal, but some other way to look at it, I don't think that's inconsistent with our views at looking at options for the land. That's--

**DIRECTOR GARY GUSTAFSON:** Governor, I wanted to reinforce that. You hit on the very point I was going to make that nothing in this process requires any proposer to go out and hire a contractor or contractors and submit a massive product. In fact, I consider it very analogous to situations that already

occur among public bodies and nonprofits where they submit grant applications, and they do that, put the work into it because they get something for it, if they're lucky. And here the successful proposal -- proposer obviously would get something for that effort.

**GOVERNOR BARBARA ROBERTS:** Well, Jack, I don't -- we've probably not satisfied your concerns.

**JACK BROOME:** No, you haven't. And we don't -- this is not a good use of public time, I'm sure, to keep extending this discussion. I do have concerns about it. I don't see how park districts, for instance, or private citizens can really submit a qualified proposal that would have any credence with Division of State Lands when they would not own the land themselves. I mean, I've got a lot of problems with it. I don't want to, you know, keep belaboring this this morning.

**GOVERNOR BARBARA ROBERTS:** Well, I appreciate your taking the time to come forward. I think you over the years have certainly helped all of us pay attention to decisionmaking we've done, and I think management plans, like the we have here, reflect your willingness and the willingness of others to help us look at these with raw perspective, and we appreciate that, Jack.

**JACK BROOME:** It's just an exquisite piece of land.

**GOVERNOR BARBARA ROBERTS:** It is.

**JACK BROOME:** Such rare opportunity for the residents of Oregon now and in the future that I just want to be sure that

we don't sell our souls to the wrong party because of a few bucks and a quick fix to the public school fund when the long-range 100-year, 200-year time frame should really be the issue.

**GOVERNOR BARBARA ROBERTS:** I appreciate that very much.

**JACK BROOME:** Thank you very much for your time.

**GOVERNOR BARBARA ROBERTS:** Thank you, Jack. I'm going to before we get ready to act on this -- I'm going to note that there's someone here for the City of Wilsonville. I'm assuming that you're not in opposition to the proposal going forward?

**UNIDENTIFIED FEMALE VOICE:** No. I have some of the same concerns on the request for proposal, but I guess I can talk with John Lilly about those. It kind of seems confusing for public parks things. Mixed messages are in there.

**GOVERNOR BARBARA ROBERTS:** Okay.

**UNIDENTIFIED FEMALE VOICE:** And I'll get--

**GOVERNOR BARBARA ROBERTS:** Your -- that will satisfy your need for today?

**UNIDENTIFIED FEMALE VOICE:** Sure.

**GOVERNOR BARBARA ROBERTS:** I see -- I'm not ignoring you. I'm just looking down the list. There's two people here from the Oregon Association of Nurserymen. You're not going to talk about your proposal? You -- okay.

**MILES MCCOY:** No, I just want to clarify a couple points.

**GOVERNOR BARBARA ROBERTS:** Okay.

**MILES MCCOY:** Miles McCoy. I'm the project coordinator for the Oregon Garden Project. I'm sure you're all aware of that. We spoke of it last time. Just wanted to clarify a couple points. We do agree with the staff recommendations for this proposal, fully in agreement with the entire document. We fully understand the land use issues that are addressed in the document. I just wanted to make a couple points that, one, our research indicates that there are ways to solve those land use problems.

And secondly, we see some very positive opportunities to work with other entities on this site, and just wanted to make sure that that was in the record and clearly understood, and that was all we had today. Any questions? Thank you.

**GOVERNOR BARBARA ROBERTS:** Thank you very much. Debra Igushi, I notice your -- yeah, are the concerns that have been raised, do those--

**DEBRA IGUCHI:** There's one I'd like--

**GOVERNOR BARBARA ROBERTS:** Okay. Go ahead. We don't want -- we're not trying to cut off comment. We just don't want to hear--

**DEBRA IGUCHI:** Right.

**GOVERNOR BARBARA ROBERTS:** We don't want to have people's proposals submitted to us today, so we're just--

**DEBRA IGUCHI:** Right. And I'm Debra Iguchi--

**GOVERNOR BARBARA ROBERTS:** That's all we're working on.

**DEBRA IGUCHI:** And I'm here also in addition to representing myself also friends of Goal 5. I just want to point out that I think this is heavily weighted. Number A in the criterion is proposer's experience, qualifications, and capability. We go on to, say, number C, financial preparedness and condition. In that kind of an atmosphere and John referred to it as a market atmosphere, I agree with John. I mean, I am an inexperienced public citizen. How would I be viewed in this kind of an RFP process? That concerns me greatly. And, you know, I look at all of the -- what our forbearers have done before us to preserve the beaches of Oregon, to make Oregon a liveable state. Is this going to be continued with this kind of a process? I'm just very concerned about that.

**GOVERNOR BARBARA ROBERTS:** Thank you very much, Debra. I appreciate that. Are there other questions or comments by members of the Board? If not is there a motion on item two?

**STATE TREASURER JIM HILL:** Yes, Governor. I move that we accept the revision of recommendations that Board approve the final Wilsonville Tract Management Plan, and direct the provision to initiate the RFP process as outlined in the plan, to (unintelligible), especially in light of the comments that we've heard. The revision will keep the Land Board informed as the RFP process unfolds.

**SECRETARY OF STATE PHIL KIESLING:** Second the motion.

**GOVERNOR BARBARA ROBERTS:** Heard the motion and second. Is there further discussion or comment? Hearing none, those in

favor will signify by saying aye; those opposed, nay. The motion is passed unanimously. Thank you for your work, and we look forward to the proposals and I'd like Debra's comments or someone talk -- the Nurserymen's. There may be a way to find a multiple ways that people could work together in this -- in the professional and the citizen, and there may be some ways that that will happen. We look forward to the proposal. We are now on item number three. This deals with the Department of Forestry's Common School Fund budget.

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AGENDA ITEM NO. 3

**DIRECTOR GARY GUSTAFSON:** Governor, members of the Board, at the last Land Board meeting, the Department of Forestry came forth with a preliminary set of numbers dealing with expenditures to the Common School Fund on behalf of the Department of Forestry. And at that time, Jim Brown, who is here today, pledged to come back and provide the Board with a more detailed analysis of the Department of Forestry's Common School Fund proposed expenditures for the next biennium. As a reminder, the process that we're going through today is part of the management agreement that the Land Board, the Division, and Forestry have entered into. And the course represents a healthy portion of the Common School Fund expenditures for the next biennium. So with that, I'd like to turn to State Forester Jim Brown to make the presentation.

**STATE FORESTER JIM BROWN:** Thank you, Gus. Governor, members of the Board, I'm Jim Brown, the State Forester. As Gus outlined, we manage under an agreement between the Division, the Land Board and myself approximately 130,000 acres of Common School forest land, and we do that on your behalf under forest management plans that you have approved. The Department is proposing to spend during the biennium -- the 95-97 biennium \$11,153,466. That's a net increase of about \$300,000 over the biennium that we're currently in. And I say a net increase because there are series of reductions and some increases that make up that change. The work that we're going to do for you is

contained in attachments. The budget is based on the actual physical work we're going to do on the land, both in the terms of the sale of timber as well as reforestation and other intents of management activities. Some of the types of costs that we're having to face with this biennium, which are somewhat different than previous bienniums, are doing surveys for threatened and endangered species, stream surveys in addition to the more traditional forest management activities. And the basis for doing that work is that we want to help you meet your fiduciary responsibility in the management of these lands, but we want to do that in an environmentally sound manner that over the long term will help you meet that fiduciary responsibility, so that's the basis of the surveys.

Now, we're based on both sold sales and unsold timber sales. It's our projection that during the biennium will bring about \$30.4 million, so we're proposing to spend slightly more than about 30 percent of the gross receipts that we bring in. In the proposal of the budget, the Division of State Lands has reviewed that on your behalf, and they find that they believe the expenditures are both appropriate and justified; however, they do have a concern that one of the traditional methods of taking care of capital construction and capital improvement is that we as an agency have prorated that against all the funding, if you will, at the local level where the capital construction or capital improvement is carried on, and their concern is it does that really create some sort of a more formal vested interest in

the property, or should it be more appropriate that, if you will, that we charge you rent for that.

Now, given that concern, the recommendation by both the Department and Division are that we recommend that you approve the budget for submittal to the Division -- or the Department of Administrative Services, and that we then, as we move along, work with the Attorney General to review the legality of committing Common School Funds for the purpose of capital improvement and capital construction, unrelated land acquisition and exchanges, and then we could make the appropriate administrative changes in that process if they determine that it's not appropriate to directly fund capital construction, capital improvement. In other words, we could turn that around and do it through a rent process.

**GOVERNOR BARBARA ROBERTS:** I want to comment on this, because I -- the amount we're talking about is \$151,000?

**STATE FORESTER JIM BROWN:** Yes.

**GOVERNOR BARBARA ROBERTS:** That's the capital improvements portion that's in the budget for the Common School Fund lands. And we're talking about the question about whether we just do it this way or whether we go through a situation where we're being charged for overhead costs and housing and other things of the portion that's directly related. Obviously we don't go to the Attorney General and ask questions without a cost factor involved. I think we all understand that. We've looked at our Attorney General's fees. We know that. So we're talking

about \$151,000 of how we allocate it. What the method is we use to get to our portion of that share, I don't know what it costs -- would cost us to find out that question, and to examine it, but my guess is we might get pretty close to that before we finish. I mean, I don't know that, but, you know, talking about asking a question that whatever you get the answer to -- whatever the answer is, we're going to pay. We're going to have to pay our shares through some kind of allocation process. And so I think I'd just like to ask that -- I mean, I don't want turn down business over at the AG's Office, but I'd just like Bill maybe to comment on this issue from both the legal standpoint and -- and probably even in terms of what kind of legal examination it would take to get to the legal question about how we come to that allocation.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Governor, members of the Board, frankly I don't know much about the issue yet. From what I've heard, I don't think it's going to be an enormous research project.

**GOVERNOR BARBARA ROBERTS:** So that's encouraging. You want to con -- and from a legal standpoint, which -- let me see if I can do it this way. Would you agree that we are going to have to pay something?

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Yes.

**GOVERNOR BARBARA ROBERTS:** Okay. I don't mean for the legal--

**ASSISTANT ATTORNEY GENERAL BILL COOK:** No, no, no.

**GOVERNOR BARBARA ROBERTS:** But I propose -- I mean, I knew that.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** You knew that.

**GOVERNOR BARBARA ROBERTS:** No, I meant for the allocation of our share of whatever that either ruse face, capital allocation, overhead charges, we will pay something?

**ASSISTANT ATTORNEY GENERAL BILL COOK:** That's correct, Governor, and I think the question is how you characterize that and what implications flow from that characterization. A number of issues that go through my mind when I hear that issue, and one is is it an investment of the Common School Fund? If so, there are things that kick in if that's true. Is it the capital improvement of the Common School Fund that's something other than an investment. We have to think that through. Or is it just an overhead cost? There are other implications for that as well.

**GOVERNOR BARBARA ROBERTS:** But it's an overhead cost--

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Yeah.

**GOVERNOR BARBARA ROBERTS:** Obviously it falls much more into the expensive--

**ASSISTANT ATTORNEY GENERAL BILL COOK:** That's right. That's right.

**GOVERNOR BARBARA ROBERTS:** Requirement of managing our--

**ASSISTANT ATTORNEY GENERAL BILL COOK:** That's right.

**GOVERNOR BARBARA ROBERTS:** Forest resources, so -- okay, are there questions or, Gus, did you have anything before

we -- in addition to Jim's comments?

**DIRECTOR GARY GUSTAFSON:** That's it.

**GOVERNOR BARBARA ROBERTS:** Questions or comments from the Board?

**STATE TREASURER JIM HILL:** Yes. Thank you, Governor. Jim, you mentioned that this was a -- did you say this was a traditional or nontraditional method?

**STATE FORESTER JIM BROWN:** It has been a traditional method, Mr. Treasurer.

**STATE TREASURER JIM HILL:** Okay, because it does not seem like something that hasn't come up in the budget process before, are there other examples where this has been done and generally are you talking about just the Department of Forestry?

**STATE FORESTER JIM BROWN:** For the other agencies, I can't answer that. We, in the Department of Fish & Wildlife, are somewhat unique in that we own our own properties, both land and buildings where most agencies either rent space from commercial interests or through the Department of Administrative Services, so I -- there may be some other agencies, but generally speaking those are the two that I'm fully aware of, and so my guess is that Fish & Wildlife would do it similar to us in that we have traditionally capitalized our construction and improvements across all funds in -- that are being used in the local area to administer the agency's programs. But traditionally that's the way we have done it forever, as far as I know.

**STATE TREASURER JIM HILL:** Thank you. Governor, maybe we're concerned about the AG costs, maybe we could maybe get a preliminary -- we have sort of a preliminary estimate here, but maybe we could go and ask as to how much it would cost, and whether it's cost effective, but it seems as though that this is -- this process has been used in the past. It should not be very difficult to make a determination.

**GOVERNOR BARBARA ROBERTS:** Gus, you have a question?

**DIRECTOR GARY GUSTAFSON:** I just wanted to clarify that there are really two reasons the Division even raised this issue. First one is Bill Cook mentioned has to do with whether or not this constitutes an investment of the Common School Fund. Given what we all went through to invest the Common School Fund and the capital construction costs of this building, if we're committing Common School Funds to other buildings, even as a proportional share, we just want to take a look at that and see if this is an investment decision. And then that triggers -- if it should be, that triggers a second consideration and that is should the Common School Fund have an ownership interest if it is used to pay for part of a building so if that building is sold, the Common School Fund would get something back.

**GOVERNOR BARBARA ROBERTS:** Other questions or comments from the Board? Well, either way, we will end up paying something for the space and the overhead, no matter how it comes back. Obviously, it -- I mean, the question has not been raised before, and it is always legitimate to raise--

**STATE TREASURER JIM HILL:** That's right.

**GOVERNOR BARBARA ROBERTS:** The question, as long as we understand that we're not going to -- that the whole \$150,000 is not going to go away. So we're clear is we ask the question that we may end up with more expenditure by asking the question, but it is a legitimate question, and one that obviously we're, I think, about to examine in some form or another, so anything else, Jim, that--

**STATE FORESTER JIM BROWN:** No, that's it. Thank you, Governor.

**GOVERNOR BARBARA ROBERTS:** Okay. Well, we appreciate, I appreciate the extra effort you've gone through to begin to clarify the budget in terms of these lands. I think it's been useful for us to see it allocated and clarified in some of the ways that it has been in this process. I think we know more than we did as we looked at these budgets in the past, so I thank you for the extra work that went in at the Department.

**STATE FORESTER JIM BROWN:** Thank you, Governor. I apologize, like I did last time, that we misunderstood the time sequence that the Division was on, that they're an early submitter of a budget, and we -- Jill Bowling has committed that next time we'll be in the same phase as the Division so that we won't come late on you.

**GOVERNOR BARBARA ROBERTS:** Is there a motion?

**SECRETARY OF STATE PHIL KIESLING:** Yeah, I'll move that State Land Board approve the Department of Forestry's submission

of it's proposed 95-97 budget, and that while the Attorney General also requests a review the legality of committing Common School Fund monies to the proposed capital improvements, capital construction projects unrelated to land acquisitions and exchanges, and show some restraint. That's not in the motion.

**GOVERNOR BARBARA ROBERTS:** It's not? Why did you say that?

**SECRETARY OF STATE PHIL KIESLING:** Chair will acquit it.

**STATE TREASURER JIM HILL:** Second.

**GOVERNOR BARBARA ROBERTS:** (unintelligible) second, like the restraints so this is very good. You've heard the motion in its entirety and the second. Is there further discussion or comments? If not, those in favor will signify by saying aye; those opposed, nay. The motion is passed unanimously. Thank you, Jim, for your work and I'm pleased to know that you're going to be back on the right time frame when we get through with this.

**STATE FORESTER JIM BROWN:** Thank you very much.

**GOVERNOR BARBARA ROBERTS:** It's nice to have a forestry issue for a change that's not really controversial. Thank you.

**STATE FORESTER JIM BROWN:** I feel that way too.

**GOVERNOR BARBARA ROBERTS:** Let me just take very quickly the Consent Agenda so that we will have that off the calendar and to move on. Is there a motion?

**SECRETARY OF STATE PHIL KIESLING:** I'll move the Consent Agenda.

**STATE TREASURER JIM HILL:** I'll second.

**GOVERNOR BARBARA ROBERTS:** So moved and seconded that we adopt the Consent Agenda. Those in favor will signify by saying aye; those opposed, nay. The motion was passed. Item 4A through C has been approved.

Now, we are at the point of item one, the rangeland management issue. I'm trying to think of while we are beginning to lay out the discussion, is the three names who were going to speak for each side could arrive here at the desk, it would be very useful.

**UNIDENTIFIED MALE VOICE:** We're here.

**GOVERNOR BARBARA ROBERTS:** Okay. It would just be useful for us to know who they are, and Anne Squires (unintelligible) here so we can at least -- I can call on the correct people and change the correct order, and that would be useful for me. Thank you. Okay. Gus, you were going to set the--

**DAN O'LEARY:** Could I interject just on the last point, Governor? Dan O'Leary for the record. I'm representing one of the people and I intend to be offering testimony. We had two questions really relating to the rule you've established here.

**GOVERNOR BARBARA ROBERTS:** Okay.

**DAN O'LEARY:** One is if, for example, the three of us speak and cover our testimony in 15 minutes, would there be five

minutes for someone else who came here to give testimony to use up at the end of ours? The second and related question is the groups that I'm representing, and Denny Jones is representing, and the Farm Bureau are representing clearly fall within a group or on one side. There is some people here that want to speak on behalf of some of the counties, and there's an individual who wants to speak on behalf of a school board, and I don't know how you would characterize their testimony or their status, but perhaps it would help if we had thoughts on that.

**GOVERNOR BARBARA ROBERTS:** I appreciate that, Dan. I'll see while we're listening to the staff report, which is going to take some time if I could find a way to define the distinction between the local government and school district concerns and the lessee interests in some kind of way. We'll see if we can define it, and my sense was that three people on each side, and they have a maximum of seven minutes. We weren't talking so much about -- we just want to get perspective from both sides, and I hadn't thought -- we don't want to get into rebuttal is what I guess I'm trying to say to you. This is not a court of law, and so I guess this -- and as we move on this, we probably would ask each side to present three people who were going to speak, and then we will see if we can examine the question about the local government and the school districts while we are -- we don't want them to take time from either side if their discussion is different from that. We'll try to have them back, so -- okay.

Gus, do you want to lay the groundwork for this discussion and the staff recommendation?

**DIRECTOR GARY GUSTAFSON:** Governor, members of the Board. If there's ever a way to set the stage on a subject like this, I'll try to do my best and also make it concise. I have to run you through a little bit of the history, and I'll do that very quickly, and then go into the tenants of what is in the final rules. As I believe everyone knows at this point, the Division of State Lands owns and manages approximately 600,000 acres of range land. Most of that, of course, is in Eastern Oregon, and the vast majority of that is in Southeastern Oregon, primarily in three counties: in Malheur, Harney, and Lake. On that acreage we currently manage 151 grazing leases. That covers most of the acreage. We have some of our acreage that is not currently the subject of grazing leases, but the vast majority of it is within grazing lease. Included within the 151 grazing leases are 44 large parcel grazing leases, and those cover about 545,000 acres. That's about 88 percent of the total, and then we have another 107 grazing leases that are of smaller size obviously that cover the remaining 71,500 acres, about 12 percent of the total acreage.

I wish I could tell you that all of our grazing leases had the same terms; unfortunately, they do not. We have several different grazing leases and, therefore, we have different grazing lease terms. And that's very important to understand as we go into the explanation of what our new rules are all about,

because one thing that we have to do as a matter of contract law that Bill Cook has continually advised us of, of course, is that we need to recognize valid existing rights. Now, we just have to recognize what are valid existing rights. And to do that we go back and we look at the terms of the existing grazing leases.

Now, among other things I want to summarize the existing grazing leases. Hundred and seven of our existing grazing leases have no renewal provisions. Thirty-four of the existing grazing leases are for a ten-year term that include a "nonexclusive right to negotiate." And I will talk about that more in detail in just a minute. One of these 34 leases also has a valuation compensation clause which provides if the current lessee loses the lease, the new lessee must reimburse the current lessee for the "remaining value of the prior BLM grazing permits that he wants help." And this is obviously a remnant of a tract that was acquired by the State from the Bureau of Land Management.

We have nine existing lessees that have what's called 20/20 lease terms, and what that means is that they had originally a 20-year grazing permit from the Bureau of Land Management with a 20-year right of renewal, and so during land exchange that occurred in the early 1980's or in some cases a little bit earlier than that, the 20/20 provision was included in the new lease term that they acquired when the land was transferred to the State. And I need to break that down a little bit further. The specifics of that are that there is a rent determination clause in these nine leases that permits the Division, increase

the rent on the lease at any time, but we have to give certain notice -- prior notice to the lessee and we could only do this when we determined the current rental does not provide "appropriate return for the property in terms of its use and character as compared with other properties similarly situated." There is also a termination clause in these nine leases that authorizes the Division to terminate the lease at any time upon 60 days prior written notice to the lessee if the Division determines in good faith that it is in the best interests of the State to use the leasehold for use other than grazing.

And then finally in these nine leases we have what is known as a term and renewal clause, and these provide, of course, the initial 20-year lease term and a right to renew the lease for one additional term of 20 years if the lessee is in good standing at the time of renewal and if the Division does not determine that a nongrazing use would be in the public interest. Incidentally, the initial 20-year term of these particular leases expires in February of the year 2005. So the Division needs the Land Board's direction as to whether, and/or when to invoke these particular clauses on the 20/20 lease terms. In addition, we have one odd lease that has a 10/10 lease term, and that is -- the initial term is 10 years, and the renewal right is for an additional ten years. And then most of our existing leases also contain clauses that make the lessee the owner of certain developments placed thereon, and require that the lessee be compensated for the value of any nonremovable improvements on the

lease should the lease expire or be terminated. Okay. That's just it in a nutshell what is contained in our existing lease terms.

Now, as I believe everyone knows at this point, in May of 1992 the Division initiated a comprehensive range land management policy. And this was our initial attempts to bring our range land management up to speed to where we believe it needs to be both from our fiduciary standpoint as well as our public interests standpoint to insure that we were also maintaining or enhancing range land help on our lands. We culminated that process after a great deal of public input in January of 1993 when the Board concurred in the Division's grazing policy as it was called and authorized the Division to initiate range land management rolemaking, the very process, of course, that we're now engaged in.

During the spring of 1993, I appointed a grazing fee advisory committee to help flesh out the most appropriate means for us to establish a fair market value base rental rate for the use of State range land. As you may recall, the current grazing fee was adopted by the State Land Board back in 1979 and has not changed since 1979. Most of our grazing leases are on a \$2.50 per AUM base fee, and then some of our more productive wetland tracts are on a \$3.50 base per AUM base fee. We developed an initial draft range land management rule that was circulated for public review and comment in November of 1993. The major provisions of that draft included a provision that all leaseholds

would be subject to competitive bidding, but also exempted certain leaseholds from competitive bidding for a variety of reasons. A crop share approach was used, and that was essentially the same approach that was recommended by the grazing fee advisory committee that I had appointed, and we also included in that initial draft the requirement for a range land management plan for all block leaseholds as well as certain selective individual or isolated leaseholds.

Following public input on the first draft, we then launched a second draft, which factored in what we heard from the public as well as others in response to the first draft, and we briefed the Land Board, by the way, back in February of this year, and then proposed a second draft, which included three competitive bid options. Those ran the gauntlet, if you will, of what you might be able to do through competitive bidding, included a minimal change option, a limited competitive bidding option, and a more comprehensive competitive bid option that allowed also nonuse. We held two informal public workshops prior to sending the second draft out. Those were in Salem and Burns, and we then formally circulated the second rule draft for comment and held public hearings in May in Burns and Salem. Following that, we again regrouped, thoroughly digested and analyzed all the public comment received, consulted with our legal advisors, and then finally developed what is now before you today and that is the final draft of the proposed range land management rules. Among other things, the final draft provides that we will manage trust

land in accord with the need to maximize revenue, the Common School Fund over the long term, manage nontrust land to obtain the greatest benefit for Oregonians consistent with the conservation of the resource under sound land management techniques. We're managing all range land to produce human-induced loss of range land health and to maintain or improve range land habitat and related ecosystems. We're allowing lessees to use State range land for either conservation use or livestock grazing and uses other than grazing or conservation use will be handled through other existing authorization processes. We may also allow different uses in conjunction with range land uses provided the uses do not conflict. An example of that might be mineral leasing.

We also are proposing that all leaseholds be subject to competitive bidding unless exempted, of course, because an existing lease has a valid renewal provision because valid existing rights will be recognized, must be recognized or only one qualified application is received in response to our publication of a notice of leasehold availability, or we determine that the fiduciary responsibilities would not be served by offering a leasehold through competitive bidding. And the best example of that might be that the cost associated with conducting the competitive bid process would likely exceed the anticipated revenue. And that again is a fiduciary perspective.

We also would continue what has been proposed throughout this process to use our crop share formula for determining the

base annual rent to be paid, and the base annual rent under this formula would begin at \$3.01 an AUM this year 1994, and graduate incrementally over the next four years to \$4.56 an AUM by 1998, except for isolated tracts, which remain at \$3.01 an AUM through 1998. And the reason for that very simply is that isolated tracts are not conducive to an increase to the extent that our larger tracts are. They're very difficult to manage to begin with, in some cases have access problems. We also require that a range land management plan be developed for all blocked parcels and for selected isolated parcels as necessary, and because of the intermingled ownership between ourselves and particularly the Bureau of Land Management, we're also recognizing that if we have small State tracts that are islands in the midst of the large sea of federal land that we can use federal allotment management plans in lieu of our own State plans, and we're going to be encouraging, by the way, that the federal government do the reciprocal where they have small federal tracts within our larger State land holdings.

We believe that the adoption of range land management rules for State lands, of course, is long overdue. We've never had them. There's been some risk, therefore, as we proceeded in managing this program without these rules. During rule development, we carefully reviewed the existing range land management programs of all western states as well as the Bureau of Land Management, the Forest Service, and other federal agencies. We've even looked at the larger private landholders

that did grazing programs to see how they did things. We devised these rules, essentially to take the best of what's out there, and make them the state-of-the-art program for management of State trust lands in the west.

As I've mentioned, we've not comprehensively reviewed our grazing fees in over 15 years, and it's high time to do that to make sure that we're getting at least market value for the use of our trust lands. We estimate that the proposed rules would generate approximately 7 to 12.5 percent in additional annual revenue from 1994 to 1998, culminating in 1998 in about \$100,000 of additional revenue from this program estimated.

The most controversial aspect bar none of these rules very simply, of course, is competitive bidding. Now, competitive bidding is not the only means to determine fair market value, but particularly in an area where we've not had any rental increases in 15 years, we think that it is probably the best method to determine what fair market value is for these lands. And hence, we're recommending that competitive bidding be enacted and as part of these rules to determine the fair market value. I want to again recognize, however, that that subject vowed existing rights, and if someone has a valid right of renewal, that would be recognized. And if competitive bidding is not economically viable through our trust analysis, that would also provide for an exemption.

The Attorney General's Office has advised us that in construing the terms of these valid existing leases that I've

just talked about that we need to focus in and make some choices. And Bill Cook, of course, is here today. I'm sure he would be ready, willing, and able to speak to any of these, but I'm just going to lay them out for you. The first one is the nonexclusive right to negotiate. We believe that even though that's an undefined legal term to some extent, we believe that it closely approximates the competitive bid process that these rules contemplate, and for that reason, we believe that the competitive bid process outlined in the proposed rules would accommodate the existing lessee's nonexclusive right to negotiate for a new lease for those that have that in their lease.

Secondly, the 20/20 and 10/10 leases that I've described on lands acquired in prior land exchanges with the BLM have certain existing lease terms. Those need to be recognized. They need to be interpreted. They include the State's right to increase the rent at any time upon certain findings, to terminate upon certain findings, and also at the end of the initial term to renew upon a certain determination. Although there are only ten such leases, they are the largest leaseholds in our entire inventory, and it encompasses almost one-half of all of our acreage. Accordingly, they also generate the greatest amount of revenue. We, therefore, recommend that the Land Board at a minimum invoke immediately upon adoption of the rules the rental redetermination clause which would increase the rent on these nine leases from \$2.50 an AUM to \$3.01 an AUM. And then it would go up in accord with the rules provision for gradual increases

up to 1998. We believe that with respect to the termination clause and the 20/20 and 10/10 leases that the Division should consider such action, termination action, only on a case-by-case basis where a viable proposal was received to use a leasehold for another nongrazing use at a higher-based rental amount.

Therefore, Governor, members of the Board, our recommendation is that the Land Board first adopt the final rules governing range land management as included in the appendix. Second, because the rules are obviously much more precise than our existing Division policy that you have agreed to in concept, that we repeal the existing grazing policy, just to make sure that we don't leave any ambiguity on the table. And third, that we interpret certain valid clauses and existing leases by (a) directing the Division to subject the leases granting this "nonexclusive right to negotiate for a new lease to the competitive bid process required in the new rules," secondly, immediately increase the rentals on the 20/20 and 10/10 lease to the \$3.01 base rental fee for 1994. Also, consider invoking the termination clause for these 20/20 and 10/10 leases only, and I stress the word "only," on a case-by-case basis. For example, if a future viable proposal is received to use a leasehold for a nongrazing use at a higher-based rental amount, that may not be the only example, but that's offered for perspective, and also we have two clarification changes to the actual rules that are in your appendix. And the first one of those is to revise the wording in subsection 141.013(4) on page 20, and that would

clarify that a lessee's financial obligation -- what that financial obligation would be if he or she subleases a parcel. By the way, I think that in addition to sublease we want to include assignments here as well. And that's something that that word change I'll just explain. This pertains to subleasing, assignment of leases and pasture agreements, and would propose the change in the .013(4) on page 20 to read as follows -- (4) would now read, "If the Division authorizes a sublease" -- and I think we should include in that assignment or pasture agreement -- "the lessee shall in addition to the lease rental pay the Division the difference between what he or she pays the Division for the lease and what he or she collects from the sublease assignment or pasture agreement. That's just to clarify that no one would benefit beyond that which we would take in from subleasing. We will allow it, but we will also take in as well what additional revenue is generated.

The second change is on page 23 and that's in .015(1). Again, it's a clarification dealing with compensation for developments. If a lessee misdeals with provision for compensation and we would amend that on the third line of (1) so it would read as follows, "If a lease is awarded to a person other than the prior lessee, the new lessee must compensate the prior lessee for the insert remaining undepreciated value of any Division-approved developments within the leasehold owned by the prior lessee" and then add, "not subject to OAR 141-016(1) so we have a cross-reference.

Okay. Governor, members of the Board, I'll conclude with the Division's recommendation there, and I also want to recognize at the table with me, of course, is Jeff Kroft. Jeff has been the person who has been leading this rulemaking effort, has spent more hours than you could ever imagine on this effort, and I want to recognize Jeff for those efforts and his contributions and also have him here with me. If there are any questions that I can't answer, Jeff, I'm sure, will be able to.

**GOVERNOR BARBARA ROBERTS:** Thank you very much, Gus. That's a useful beginning to lay the groundwork. Now, let me see if I can clarify before we begin in effort -- in intent to be sure that we handle this fairly. The question was raised about government representatives who might be in the audience. I have found three of those according to the sign-up sheet, one related to a school district, and two county commissioners. In order to be fair about this process, I'm going to ask a question and I hope -- I'm not intending to put you on the spot. I just want to know that when we finish, we have treated all of the parties equally in this process. Lou Davies, I believe is the correct name, from Crane High School who is, I believe, the chair of Crane High School has signed up. He is also a leaseholder and I need Mr. Davies to indicate to me whether he is signing up to talk about his role as -- oh, there you are. I'm sorry, I couldn't recognize -- as the chair of the Board and its effect on your school district or would your comments, if they were added to the other two groups, be only about your role as a

leaseholder on your current policy?

**LOU DAVIES:** Strictly school.

**GOVERNOR BARBARA ROBERTS:** Okay. Okay. That is useful for me. Dale White is signed up from Harney County from the county commission. Judge, can you tell me whether your comments are going to be about the impact on the county? Okay.

**JUDGE DALE WHITE:** They will be, but they will also some overlap because the impacts on our citizens, also on Harney County.

**GOVERNOR BARBARA ROBERTS:** But it's fairly important is I try to be fair about this, and give both perspectives equal weight in this process, that if I'm taking people from government bodies who are doing more than talking about the impact on their local governments, that I'd really not treated both sides equally, so what I'd like to do, and I'm going to see if we can make this work, I would like to be able to give, in addition to the 21 minutes each perspective has on this now, I would like to give three minutes or -- three to five minutes to Crane High School chairman to talk about impact as related to your school district, not to release (phonetic) option, and also to do the same to Dale White.

Gordon Ross from Coos County has submitted a letter. Obviously, the county in itself does not have a lot of these leaseholders, Gordon, to add to it (phonetic). Yeah, just one, and I would hope that you would let us use your letter as a submission to the Board, which is very well stated, and maybe we

could just use that in terms of getting the local government perspective from east of the mountains.

**GORDON ROSS:** That would be fine.

**GOVERNOR BARBARA ROBERTS:** Okay.

**GORDON ROSS:** I would only add that we're concerned about fire danger where a harvest doesn't take place the same there as in timberland, as I spoke before.

**GOVERNOR BARBARA ROBERTS:** Right.

**GORDON ROSS:** And having said that, if you'll accept that letter it'd be appreciated.

**GOVERNOR BARBARA ROBERTS:** Thank you. I appreciate that. I would also like to make a note that in the last few minutes a written statement has arrived that the three Land Board members have and that we'll put it in the record. It is from State Senator Wes Cooley, and we will submit that statement, rather than reading it, and taking the time of people who have come from such a long ways to participate today.

So what I would like to do, and then we'll see if we can make this happen is to give the 21 minutes, three people seven minutes each, to the lessee's interests the same amount of time to the conservation uses. I have the three names from each perspective that I will call on, then allow three to five minutes for Mr. Davies, I hope closer to three, if you can do that, to speak to the Crane High School perspective of that school, and then to Judge White from Harney County. And that will get through the formal process of citizen input if that meets with

the Board's approval. Are we okay on that? Okay. I think it's better to clarify this first, then to try to do it in the middle, so I think it keeps us all the straight and narrow. So let me begin, first of all, with Dan O'Leary, who's here representing the lessee interests, and, Dan, we will put our seven-minute clock on and appreciate your being here.

**DAN O'LEARY:** I'll put on my seven-minute speaking speed.

**GOVERNOR BARBARA ROBERTS:** Hard to do for attorneys, I know.

**DAN O'LEARY:** I know. Thank you, Governor and members of the Board. I'm pleased to be here this morning and feel privileged to participate in this process and also to bring to you as well as I'm able the stories and concerns of the people that I represent who have these State land leases.

Before I get into that I would ask the chair to consider one further addition to the county's list and that's Ray Sims, who is here and was signed up from Lake County.

**GOVERNOR BARBARA ROBERTS:** Oh, I'm sorry. I missed that. I apologize for that. We'll go back and correct that as we go along.

**DAN O'LEARY:** On the issue itself, I have submitted to you my written testimony and I'm not going to repeat that with very few exceptions, and I hope that you will take a look at that. One of the things that I want to spend some time about here this morning is the question of the state of the record, and

what is it that we're actually trying to do in these proceedings. I was called to think about that a little more directly by a newspaper article that appeared in the Oregonian this week that leads with this headlines, "State Leaders Ignore Poor Range Conditions." You have just outlined for us that this is the 12th in a series of hearings on this very subject. It seems to me an overstatement to say that you're ignoring anything about this process whatsoever. Secondly, it says poor range conditions, and the first are -- the first paragraph in that article adverts to a 1970 Oregon State University study of the State range lands. The problem with that kind of an approach, and what makes me question just what is the issue we're trying to decide here is that is history and it's not relevant history at this point, because the lands that were surveyed in the Oregon State University survey in 1970 are not the lands that you're managing today by and large. Since that time, depending upon your source of information, the State has exchanged someplace between 350,000 and 575,000 acres with the federal government. So whatever the state of whatever lands the Oregon State University spoke to in 1970, that is not the lands and I believe that it is not the State of the State lands today that we are trying to deal with. I do not believe that in these hearings that I've attended, and I've tried to inform myself about what has been said when I wasn't in attendance that any case has been made that the State lands are degraded or abused in any considerable extent. And, in fact, I think that the evidence that is in the record, and I

want to review that very briefly with you from our perspective is to the contrary. And I think that I may be talking about the only evidence on the subject that is before you. And I know that this Board has a great many responsibilities, and I would not expect that this Board would have had a chance to review that in detail. But I think it's important to call to your attention that the lessees presented at the Burns hearing, in addition to the written material, which I have handed up as part of my testimony this morning a considerable amount of scientific and economic information. The scientific information spoke to the condition of the State lands, and I would refer to the notebook that I handed in on May 5 at the Burns hearing, Tab 5, which is a letter signed by William Krueger, Department Head of the Range Land Resources Department at Oregon State University, and I'm going to summarize what he says, but he talks about the condition of the State range lands. He talks about the difference that may exist between grazed lands and ungrazed lands over a period of 60 years as studied by the experiment station over in Burns, which I think some of you have visited, and he concluded that there was no observable difference over that 60-year period between the grazed and ungrazed lands. He also said that a period of nonuse would be ecologically irrelevant to the condition of those lands.

Now, that's just an example. There is also testimony by way of videotape, and there is written material supplied by E. William Anderson, who for almost 22 years was the State

conservationist for the State of Oregon, and who is a highly respected and recognized consultant whose articles on the subject of the condition of the State Lands and the impacts of grazing on them are also continued.

The point that I would make is this. The State statutes under which you, I believe, are required to operate classify these lands as grazing lands. Your rules proposed to classify these differently and to recognize as an alternative use conservation use, which is the absence of grazing, defined as the absence of grazing. We questioned whether that classification is legal. We do not believe that you are entitled to reclassify these lands by administrative rule when the Legislature has already spoken on the subject.

Pursuing the questions of conservation use for just a little bit longer, one of the problems that my clients perceived with the competitive bidding aspect of the rules as it would impact grazing and conservation use is it delegates to the prospective bidders which lands are going to be addressed as -- are going to be subjected to conservation use for periods of up to ten years. That is a decision that cannot be delegated to anybody who qualifies as a bidder. To discuss with you the question of conservation use, I have a couple of pictures which I would like to hand in, and I'd like to have you take a look at. These pictures on the right-hand side of the foreground are pictures of land nongrazed and used -- owned by the Nature Conservancy, which has not been grazed for four years. On the left-hand side

is State land, which is grazed last winter, and the point that I make with these pictures is simply a demonstration of what I think is a misconception that these rules are based upon that somehow nonuse is a good conservation measure as it relates to these lands. I think it's an improper delegation of authority to leave that determination to individual bidders. I also think that is fallacious scientifically as shown by the materials that we've already turned in. I do appreciate the opportunity to appear and discuss this with you. If you have any questions, I'd be glad to respond.

**GOVERNOR BARBARA ROBERTS:** Thank you. Dan, can you clarify again the pictures for me?

**DAN O'LEARY:** Yeah, could I come up and--

**GOVERNOR BARBARA ROBERTS:** Yeah.

**DAN O'LEARY:** Well, I can do it from here, I think, if you can--

**GOVERNOR BARBARA ROBERTS:** Okay.

**DAN O'LEARY:** See what I'm talking about. In your left hand you have a picture shot down a fence line. The brown part is the Nature Conservancy property that has not been utilized for four years. The green part is the State land that has been grazed as recently as March. And these pictures are taken since March. I think they were taken in May of this year.

**GOVERNOR BARBARA ROBERTS:** It's useful for me to be sure that we understood the pictorial pres--

**DAN O'LEARY:** The bottom line is simply that we would request that these rules not be adopted as stated today, that a lot further study and a lot further information should be in the record to justify this kind of a departure.

**GOVERNOR BARBARA ROBERTS:** Other questions on the part of either of the members of the Board?

**SECRETARY OF STATE PHIL KIESLING:** Just one clarification, Dan. How does further study get at the legal question you've raised? I think the legal point you make is that you just don't think the Land Board has the authority to allow nongrazing use.

**DAN O'LEARY:** That's true. We say that it is legally impermissible and scientifically invalid.

**SECRETARY OF STATE PHIL KIESLING:** Right.

**DAN O'LEARY:** Yeah.

**SECRETARY OF STATE PHIL KIESLING:** And more study, of course, can address the legal question--

**DAN O'LEARY:** That's right.

**SECRETARY OF STATE PHIL KIESLING:** If we're going to agree to disagree on the legal question.

**DAN O'LEARY:** I think that there are legal questions that have not been answered in these rules that could be resolved by rule and have not been, and there are very significant legal questions in my opinion, and they have not been addressed. When you say "valid" and "existing leases," I think you could do a lot more work on that and try to pin down exactly what you're talking

about.

**GOVERNOR BARBARA ROBERTS:** Questions, Jim?

**STATE TREASURER JIM HILL:** Yes. Thank you, Governor. Dan, is it my understanding that you have a lawsuit that is filed? Does that have any relevance to the issues that we're dealing with today?

**DAN O'LEARY:** Yes, it does. It relates to the last point that I mentioned, which is the question of valid and existing uses. What I have discovered in my short tenure on this job is that there is a tremendous amount of history and documentation that -- that goes into what has happened to these lands over the last 30 years. There's a lot of correspondence. It's in the record that we submitted in Burns relating to the negotiations that went on, and then there is the document, which I have handed in as part of my testimony, the 1993 Land Board policy, and the 1979 Land Board policy, all of which bear on that question. The issue that is presented, at least at this point by that case, is whether or not when the Land Board in 1983 directed the Division of State Lands to standardize all of its leases to include the terms of 20-plus-20, whether that is an enforceable directive and whether that can be incorporated into the existing leases. And that's a very central issue, it seems like to me.

**GOVERNOR BARBARA ROBERTS:** Other questions, Mr. Treasurer?

**STATE TREASURER JIM HILL:** Yes, thank you, Governor. Dan, before when there is a lawsuit -- the lawsuit that you just described with the determination, conclusion of the lawsuit will it help us clarify the issues that are raised here?

**DAN O'LEARY:** It will help you to understand what valid and existing leases that you have, and when they become subject to the procedures that you're setting up in this rule to not decide that up front as to consign yourself and your lessees to literally a lifetime of litigation, because if it isn't done now, it will have to be done over long periods of time. I mean, there are issues that could potentially not come up till 1920 -- or 2025 about the valuation clauses, for example, that should have been in the 20-plus-20-year leases, and for some reason are not there, even though they were part of the package that was negotiated in 1983. So there are issues that can be repeatedly coming back for you to argue and fight about in court, and that's not cost efficient, as I heard you say earlier to your counsel, nor is it cost efficient for the people that have these leases. They need an answer to this problem that, you know, is something that they can live with. And so far, that has not been forthcoming in these rules, and I feel like it's something that could be addressed over time, maybe not a great deal of time, but it could be addressed over an additional period of time in a way that might shut this thing down and put it to bed.

**STATE TREASURER JIM HILL:** Thank you, Governor. Then we have the Attorney General's Office. They will comment some

time during the proceedings here. They've basically told us that we really don't have very much of an option but to accept competitive bidding in this process. Do you have any comments about that?

**DAN O'LEARY:** Well, I know that in 1979 the Attorney General wrote an opinion that said that competitive bidding was not required as an expression of the trust responsibility of the Land Board or otherwise and, in fact, it was under consideration by the Land Board at that time and was rejected in favor of the 1979 policy, which is with my testimony. The '79 policy is the policy today, I guess, of individual negotiation, so yes.

**STATE TREASURER JIM HILL:** And one final question, Governor. I believe in Idaho, which has practiced competitive bidding, there was a situation very similar to what these rules would lead to for Oregon, and as I understand it, Idaho has gone through a process similar to what we may face. Are you familiar with that case?

**DAN O'LEARY:** I am and it -- well, I'm familiar with it by anecdotally. I am not familiar as a participant nor have I read anything. But my understanding is that what it led to was a bid that transferred a permit or prevented it from being transferred, whichever it was, of \$163,000 up front, which was under the Idaho system just the prelude to getting the right to pay the AUM fees that were related to that particular lease. But it approached -- if I'm correctly informed -- it approached the situation where the participants were bordering on bankruptcy.

**STATE TREASURER JIM HILL:** Governor, may I ask Bill a question? Concerning the Idaho case, Bill, do you know what the current status of that case is now?

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Governor Roberts, members of the Board, I'm not updated on that case.

**STATE TREASURER JIM HILL:** Well, let me -- from what I understand of that case, again, the very issue of a nonuse bidding against a traditional use of grazing, the land would eventually -- the Land Board, I believe, and Idaho eventually found that the ranchers should maintain control of that lease, and that issue is also before the courts right now, and as I understand it, the determination from that case could also shed some light on our situation. Thank you.

**GOVERNOR BARBARA ROBERTS:** Thanks, Jim. Bill, let me ask a question about something Mr. O'Leary raised. And that is, the adoption of a rule despite the lawsuit that has just been discussed, not the Idaho, but the Oregon lawsuit that Mr. O'Leary is involved with. Can you just comment for the Board's edification about our ability to adopt these rules, despite that lawsuit?

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Governor Roberts, members of the Board, you certainly have the authority to do that. The lawsuit at this point at least does not demand that you stop the rule making. I also think it's reasonable to go ahead. The rules at this point do have -- the State (unintelligible) that the State now recognizes that rules must

be given to validate existing contract rights. The lawsuit may well tell us what those valid existing contract rights are, but there's no reason why the rules can't go ahead.

**GOVERNOR BARBARA ROBERTS:** Anything further before we hear from our next person testifying? Thank you very much, Mr. O'Leary, thanks. Let's see. Representative Denny Jones, you're next. Hi.

**REPRESENTATIVE DENNY JONES:** Thank you very much, Governor Roberts, Secretary Kiesling, and Treasurer Hill. Now, Treasurer Hill, he's the one with all the money so, you know, we'll have to--

**GOVERNOR BARBARA ROBERTS:** And we know that.

**REPRESENTATIVE DENNY JONES:** And we know that. You're right. I didn't bring up my big briefcase, you know, for importance to make me look important. I've got mine all here on this card. And, of course, my first statement is going to be that you do not implement these rules at this time based on all of the things that have been said and also the things that will be said before we're over with. And I'm going to refer to some of the things that Mr. Gustafson said just a few minutes ago. And I will probably jump around, but he said the remaining value left on those particular issue -- on this particular lease that I believe that one person has, the value of that -- of the BLM permit that was on there. And I guess the word "remaining" there really bothers me about that, because I think whatever was put in there is still there. So I mean, whatever that is is real

important. And then he also mentioned the undepreciated value of the improvements. Now -- and I would assume that that means whatever the value of the replacement value of those are, I'm not sure what he meant by that, but if you're going to depreciate a fence, if you're a good operator, then your fence is going to remain as good today as it was 30 years ago. Fact of the matter some better because replacing wooden posts with steel posts, so those are just some of the issues that Mr. Gustafson mentioned that were concerns of mine, and that were brought up. Now, the other thing is a competitive bidding issue, and he also said that there are some leases that have a renewal clause in them that are not subject to the competitive bid process. I'm wondering how you can do that. How can you separate out apart -- or I believe that those nine or ten -- 20-year leases represent almost half of the total acreage that we're talking about here.

Now, just because the rest of us -- the other 100 or so of us -- have a ten-year lease that expired in February of this year and another short-term lease that's going to expire in November, how in the world can you treat us different than those others and make us subject to competitive bidding of any kind of a person in the State of Oregon not related to the grazing industry, but any person either environmentalist or whatever you want to call them, can come in and bid, and I believe that Secretary Kiesling told me on the phone that any amount offered above what you offer as a compensation over fees for this grazing, then, would be sufficient to get the lease.

Let me refer to several things here and the importance of that, and the importance of that is when these -- when this State Land issue was first started and these blocks were first started was in 1938. And we happen to have the first -- or at least one of the first two that was consummated at that time on an extended use basis. Well, those were attached to base poverty (phonetic) and that's a real important issue. Those were attached to base poverty at ranch (phonetic), and a growing concern, and, you know, it's going to either make -- help make or else help break your ranch there and your total operation. And now then, you're coming along and saying, "Well, we're going to open this up to competitive bidding not among the grazing association -- or the grazing people but anybody." Anybody. And that certainly, then, you don't need base poverty for -- to bid on a State block for general environmental issues or just to lock it up and not use it for anything from now on, which has been suggested, by the way, and so I just can't figure out how you can discuss that issue even though -- how come they've got an exclusive right to renewal or an exclusive right to a 20-year lease when the rest of us don't have? We're nonexclusive, so that puts us in the position of competitive bidding for people that do not make their -- some of their money that they would use to purchase this by the sweat of their brow, but by other means possibly, and so then we're at a disadvantage to bid against people like that, and there's a number of those agencies like that, and I could name them. There's the Nature Conservancy, and there's the Sierra

Club. There's the ONC that are the Natural Resource Council with an unlimited amount of money, and I'll be danged if I see how that the -- you know, how you can bid against somebody like that if -- and where's the tenure going to be and where's the value to the State of Oregon and the Common School Fund going to be down the road from that?

These are just some things that I'll be danged if I can see how in the world they're going to work, and why when these exchanges were made -- now, I've already mentioned the base poverty issue, but these exchanges were made with grazing land and privileges for grazing land and privileges. And this one person that I am real well acquainted with that has, I believe, 53,000 acres was totally that way, and that's all the grazing he has, and if you let somebody like ONRC have that block of land, then that is certainly not in the best interests of the State of Oregon. And we've already in -- now I would like to get into the minimum bid, and I have no problem with it -- with an increase -- with your first increase. You were saying that the minimum bid shall be \$3.01. That will be 50-cent per AUM increase or 51-cent increase, but where do you justify the incremental increases on down the road for four years? Each year is -- are you projecting that the cow business is going to be that much better each year for four years? If you are, then I would like to know what crystal ball you're looking into and where we're going to get the money. And if we're going to go -- if you're going to assess us, then, \$4.56 in 1998 and the price of cattle -- I mean, I've got

one minute?

**GOVERNOR BARBARA ROBERTS:** No, I mean, your time just got up but I'll let you finish your statement, then.

**REPRESENTATIVE DENNY JONES:** Oh, that's -- you know, these clocks, I never knew that they ran so dang fast. Anyway, I think that I've made my point here and no need to belabor those particular things. I think I've--

**GOVERNOR BARBARA ROBERTS:** Thank you very much. Are there questions of Representative Jones?

**SECRETARY OF STATE PHIL KIESLING:** I wanted to clarify something. I guess if any of us knew where the cow business was going to be going, we'd call up Hilary Clinton's cattle future's broker and make a killing on it.

**GOVERNOR BARBARA ROBERTS:** We'd all be investing. That's right.

**SECRETARY OF STATE PHIL KIESLING:** I did want to just actually clarify that last point, Jeff or Gus. The figures that get thrown out about what it will go to after 3.01. It may not go to the projected, what, \$4.56, because if the cattle prices do go down substantially, you know, let's say 80 cents a pound for -- is the index is wiener (phonetic)?

**REPRESENTATIVE DENNY JONES:** Yes.

**SECRETARY OF STATE PHIL KIESLING:** Have that right. For that 80 cents is there -- it won't be at the \$4.50 even in the last year, is that--

**JEFF KROFT:** That's correct.

**SECRETARY OF STATE PHIL KIESLING:** Is that right? So conceptually if the bottom drops out of the market, you won't get to those figures of \$4.50 an AUM?

**REPRESENTATIVE DENNY JONES:** But Mr. Secretary, let me ask you, though, if things remain normal--

**SECRETARY OF STATE PHIL KIESLING:** Right.

**REPRESENTATIVE DENNY JONES:** Then it does go on up, but where's the justification for an increase from \$3 up to \$4.56, and we're also fighting with the government. The BLM now as to where they're going to come down and whether we -- how much of this can we stand. You're talking about stabilizing the State of Oregon and the Common School Fund. That's what I hear everyday if you're not -- you know, if you're--

**GOVERNOR BARBARA ROBERTS:** Den, let me ask you a question. In watching the fluctuation over the years in beef prices, there have been some good beef years, but the cost of grazing contracts did not go up accordingly during those years, so it has not always been that the connection was that as soon as the beef prices went up, the reevaluation of the leases went up, and I understand that there is a direct relationship between the cost of the grazing land and your profit, but they have not always been in relationship where beef prices have gone up either.

**REPRESENTATIVE DENNY JONES:** Well, Governor Roberts, the record will show that in 1979 this was my proposal, that we set the grazing fee at \$2.50 per AUM based on the price of

cattle, which would fluctuate up and down 10 cents an increment either way. And because the Division did not do that, I have no control over that, and also the ten-year lease program was put into effect at that time--

**GOVERNOR BARBARA ROBERTS:** Right.

**REPRESENTATIVE DENNY JONES:** And these, then, 20 years and so on was added to that later, and why we weren't all put on that beats me, and how you can more or less separate out part of us in one category and not the rest of us is beyond me.

**GOVERNOR BARBARA ROBERTS:** Thank you very much.

**REPRESENTATIVE DENNY JONES:** Thank you.

**GOVERNOR BARBARA ROBERTS:** Bill Perry.

**BILL PERRY:** Thank you, Governor, members of the Board. For the record, I'm Bill Perry, Director of Governmental Affairs of the Oregon Farm Bureau, and if you remember our president is a leaseholder, and he was here last time, and forgot his glasses. Well, he couldn't make it at all this time, so he has sent written testimony, and I will submit that to the Board.

**GOVERNOR BARBARA ROBERTS:** Thank you, Bill.

**BILL PERRY:** Some points I'd like to touch on. There's -- first of all, on competitive bidding, we are against competitive bidding from the points that have been brought up by previous speakers. We feel that the stability of the Common School Fund is in the best interests to keep it in cattle grazing, and we figure that the land itself is better served under grazing. And if by chance this Board decides to go to

competitive bidding, we feel that the base fee, which has been brought up, if you want true market value, it should actually be at zero and the competitive bidding should be set. You know, if you want market value, you shouldn't have a base fee. You should let the market decide for what the land is worth.

And if you need to set a base fee, Fred Overmiller gave testimony that economics says that you should set it at 10.6. It's where the cattlemen starts losing money. A consensus group came to the decision that they will do 13.2 percent and some of the cattle people bought off of it. Obviously some didn't. But it was something that we could probably live with. And now it's in the process of going up to 20, so like the previous speaker says, "We don't -- we can't understand why." And so we are -- we can live with 13.2, but we still support the 10.6 percent because that's what this -- the economic says.

We feel also that if you go to competitive bidding, you should include a provision in there that says agricultural or commercial purposes to be used under competitive bidding. This is what Oklahoma -- the State of Oklahoma did in their competitive bidding process, and we feel that that -- if you want fiduciary responsibility to meet the goals, and also there should be a fiduciary responsibility to the communities that paid for the bonds to build these schools, so by leaving agricultural or commercial, you're allowing people to still get some sort of revenue off those lands and the local communities. And while we're on the issue of fiduciary responsibility, I still have some

real objections, I think, that if these rules are passed, I think your timber proposals under the Elliott State Forest are sending a drastic different message than these rules are. I've expressed that in the past, so I won't go over that again, unless you guys can ask questions. And a fiduciary responsibility is the goal of these. Nontrust lands should not be included. The nontrust lands don't need the fiduciary responsibility and it also gives the Division opportunities to expand their more nontrust type of revenues, which I think were in a mode for cutting government.

Conservation uses and management tool also -- or conservation use under the grazing use. I think these rules give you the perception that conservation use means nonuse and our members do not agree with that. We -- it's our opinion that these lands are getting better because of grazing. Oregon Department of Fish & Wildlife uses grazing on Sauvie's Island to enhance bird habitats. Conservation use in a lot of examples is going to be benefitted -- I mean, conservation is -- the lands are benefitting from this grazing. If conservation use means nonuse, then it should be put in alternative uses. It should not be included in grazing. There are nonuses or resting that is involved in conservation plans now under grazing proposals. It's a management tool. I will agree with you. But it's -- nonuse should not be in the grazing uses. Some facts that we like that are included in the rules not to be -- you know, all bad here, higher noxious weeds are included in these rules, control of those, and I think it's very, very important, especially with the

forest fires now, that these -- if you give it to somebody that is not grazing on it, that they be met to require noxious weed control and fire control. And in the sealed bid process, we do like the fact that the present lessee is enabled given ten business days to meet that high bid.

Some questions that still haven't been answered in my mind is staff still hasn't presented me with a good understanding of what's going to happen under open range laws. If I've got a BLM lease right next door, my cattle happen to cross over the lessee with may be nonuse, are we going to get fined, you know, under open range laws, how is that going to handle -- you know, who's going to be required to build fences? We still have some concerns with all the open range laws going to fall out and plus a general question we've been talking about lawsuits here today. If this has been in grazing for so long and it's been illegal, why haven't we been sued so far? If it is -- if it is the Attorney General's or the Board's opinion that it is -- needs to be done, why do we, who have been doing something for all these years without being sued have to come out and sue to prove that what we're doing is right? That makes no sense to me. If it's fiduciary responsibility and they don't want us grazing on the land because they don't feel it's economically in the best interests of the Common School Fund, they should be suing us to prove that we're wrong. It's just -- you know, you're raising base fees. We're going to be filing the suits, you know, on all these different things. It's just -- to me that's -- I still

haven't got a really good justified answer. I'm not--

**GOVERNOR BARBARA ROBERTS:** One minute. You've got one minute.

**BILL PERRY:** Oh, I'll end there, but--

**GOVERNOR BARBARA ROBERTS:** If I give somebody a signal and stop -- I'm trying to find a way to do this without interrupting, so--

**BILL PERRY:** But I'd be happy to answer any questions you have or if you want me to expand on my timber arguments, which I don't know if you guys were here when I expressed those earlier, but--

**GOVERNOR BARBARA ROBERTS:** We're always here.

**BILL PERRY:** And--

**GOVERNOR BARBARA ROBERTS:** Okay, thanks. Any questions or comments? Mr. Secretary?

**SECRETARY OF STATE PHIL KIESLING:** Just a couple of clarifications. The point you raised about the agriculture and commercial purposes--

**BILL PERRY:** Um-hum.

**SECRETARY OF STATE PHIL KIESLING:** Can you expand on that just a little bit? You'd like to see these particular rules also allow those purposes?

**BILL PERRY:** Yeah. Well, if you're -- like I said in the beginning--

**SECRETARY OF STATE PHIL KIESLING:** I mean, do you know that--

**BILL PERRY:** Yeah, I'm against competitive bidding, but, yeah, what Oklahoma has done is they have basically said -- and I mean, we'd have to get a copy of the rules. I've got a copy back at the office, but what they're basically saying is, okay, say you do something else, actually they're in the middle of a lawsuit down there because somebody has purchased it as a hunting ranch, and they don't know if that's -- you know, there's people against the hunting ranch aspect, but what their rules try to address is, okay, if you're going to take it out of cattle ranching you should still because, you know, the local economies may suffer. Under fiduciary responsibility you should still, you know, be required to bring some sort of income into the local community so that the schools don't suffer in that aspect. Does that answer your question?

**SECRETARY OF STATE PHIL KIESLING:** Oh, okay.

**BILL PERRY:** Okay.

**SECRETARY OF STATE PHIL KIESLING:** Can I clarify another point--

**GOVERNOR BARBARA ROBERTS:** Go ahead.

**SECRETARY OF STATE PHIL KIESLING:** To raise, open range law?

**GOVERNOR BARBARA ROBERTS:** Yeah.

**SECRETARY OF STATE PHIL KIESLING:** You raised a question about who would be required to put up the fencing. Staff want to -- or Bill, maybe you might, it's a legal question -- that is a fair question important to know what our

best sense of that is.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Governor Roberts, members of the Board, as I advised the Division, and they know this, and are (unintelligible) rules, the open range laws don't apply to virtually all of our leases, and that means we have got to make sure that our animals don't stray into other people's property, and it's just going to depend case by case on what the particular situation is. The case that Bill suggests is one we're going to have to deal with.

**GOVERNOR BARBARA ROBERTS:** Oh, go--

**SECRETARY OF STATE PHIL KIESLING:** I think the issue is by vice versa.

**GOVERNOR BARBARA ROBERTS:** Yeah. Yeah, but--

**SECRETARY OF STATE PHIL KIESLING:** The surrounding ranch has the cattle we've leased for nonuse.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Right. How to keep them out.

**SECRETARY OF STATE PHIL KIESLING:** How to keep them out.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Right. If we don't put up a fence, that's why.

**GOVERNOR BARBARA ROBERTS:** Yeah, if you've got a -- isn't this -- I didn't mean to interrupt, though, but if you've got open range policy, which Oregon does--

**ASSISTANT ATTORNEY GENERAL BILL COOK:** That's right. They can go anywhere they want unless they--

**GOVERNOR BARBARA ROBERTS:** The cattle can graze. If someone leases a piece of this land for nonuse, for conservation use, whatever our debate is -- I mean, terminology -- and they don't want grazing on that land, the obligation of that leaseholder, I assume, is then--

**ASSISTANT ATTORNEY GENERAL BILL COOK:** To fence.

**GOVERNOR BARBARA ROBERTS:** To fence their land at their expense.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** That's correct.

**GOVERNOR BARBARA ROBERTS:** Okay. That was my assumption. I don't -- I think that's the way I interpreted it. It's not a matter of leasing out. It's a matter of -- of leasing in. It's a matter of leasing out. I mean, of fencing out.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Right.

**GOVERNOR BARBARA ROBERTS:** Okay. You don't fence -- yeah, so you fence out rather than fence in. Okay.

**SECRETARY OF STATE PHIL KIESLING:** One more question. It -- Doug, I just wanted your take on this because in many respects, it's the heart of what is going on here. You represent a lot of people. You represent people like who grow potatoes. How would those people react if government said, "You can sell your potatoes to Safeway, but you can't sell them to McDonald's even if McDonald's gave you twice as much money for them, because fast food is bad. French fries will kill you"? What would your people say if government said, "You can't do that" or the McDonald's people can't come to an auction, you can't even have

an auction. I'm -- gets to the heart of a little bit of what I struggle with, because I think you've got a lot of good arguments about, like, the general policy things, but you know, let's put the shoe on the other foot for a second. What would your people say?

**BILL PERRY:** Our people -- it's a valid question. It's been raised before and our people are supportive of free market pricing in a general sense. They would want more money than they can get for the potatoes. I think the issue here, which on the site issue kind of two aspects is because -- because of, you know, it's federal or State land. Okay. State land also, ODF&W is in charge of the animals. If it comes onto private land, you're doing damage to the private land, but if elk come onto this land where there's high elk populations in a lot of these areas, you know, they're providing a benefit by enhancing that to the -- you know, as I mentioned earlier for making better wildlife habitat.

And also on the other side of the foot, I think, you know, like, if you want to use home rental aspect, when I was in college I rented a home, and actually the guy gave me kind of more of a break because I'm kind of a handyman. I fix the furnace when it broke, did different things like that. I think, you know, you were hiring -- in an essence you as a Land Board are hiring the cattle ranchers to take care of your land and to provide wildlife habitat. So I think because this is public land, you're making a tradeoff here. We're trying to do what's

in the best interests not only for the School Fund, but what is in the best interests for the lands of this State.

As in the market, you know, I do agree with you. There's -- our people are supportive of high market or best market aspect of it, and the cattle prices, except for a short spurt in the early '90s and some in the '70s has been going down, and this price hasn't gone down because of it.

**SECRETARY OF STATE PHIL KIESLING:** I guess I just struggle with -- and the wildlife question seems a little bit off from what we're dealing with. Why is it okay for private people and not the public, who owns the land, to do it?

**BILL PERRY:** Because you have to take more considerations than the public does is, I guess, my first answer. No, but I mean it's a valid concern, and it's something that, you know, that have struggled with. And, you know, but also you have to look at the aspect of -- you know, it's you're mixing a lot of these lands. In our opinion are, you know, due to nothing else, no water. I mean, there's no riparian management. The areas aren't very good lands. We're trying to enhance them.

**SECRETARY OF STATE PHIL KIESLING:** Which may suggest that very few people will bid for them.

**BILL PERRY:** Yeah.

**SECRETARY OF STATE PHIL KIESLING:** Other than the people who can make income off of them.

**BILL PERRY:** Yeah, but you go, like, we were talking about earlier about a section of Malheur County. You know, that

land -- a lot of that land is -- you get an AUM, could take ten acres.

**SECRETARY OF STATE PHIL KIESLING:** Sure.

**BILL PERRY:** You know, that land is probably if you want to sell it is worth \$15, \$20 an acre, you know, tops. The process of the labor of trying to go into that land and take care of it is, you know, tremendous but, you know, somebody from Portland can go down and bid, you know, \$10 an AUM or cost-wise it's got nothing to do -- that land and in essence from our opinion is going to get worse because you're going to have more fire hazards. Your reproduction of grasses and different things isn't going to continue, so the land as a whole in our opinion is going to be going downhill if you want to -- you know, throw the potato market back into it. What you're doing is that landowner because he wants, you know, more AUM's off that land or whatever is increasing the product where a private landowner selling private potatoes is trying to increase his production. And, you know, that may be another argument where they're trying to improve that land as a capital instead of just a short-term revenue base.

**GOVERNOR BARBARA ROBERTS:** Let me ask you one more question, though. We talked about the public ownership, which really means citizen ownership.

**BILL PERRY:** Um-hum.

**GOVERNOR BARBARA ROBERTS:** If indeed it's in citizen ownership and two people who came to testify today said that

really it ought to stay in grazing only, you said it ought to be an agricultural, commercial use, which includes obviously grazing.

**BILL PERRY:** Um-hum.

**GOVERNOR BARBARA ROBERTS:** And might be some other agricultural use, but if you think of the citizen ownership, and we've got -- let's say we've got 5,000 acres sitting here and it's been leased out to the same family for 30 years, maybe longer, and suddenly a mining operation comes along who would like to have that land for mining, and if you left it for grazing only, clearly that commercial operation could not be there. And even though they might create more jobs, they more create more money for the local schools and the local government, might improve the economy under where we stand now, they wouldn't have that option. So in addition to -- when you say commercial use, we generally think of this land as meaning grazing because that's the most notable commercial use now. But if we had an obligation to the citizens of Oregon without a competitive bidding process, there wouldn't really be an option for that commercial activity to take place, and that economic enhancement to take place in that community. Isn't that true?

**BILL PERRY:** Yeah, and I guess I was unaware that you couldn't go in and mine, mine lands now existing under, but, you know, I mean, you still raise a whole host of questions when that happens. Okay. If you go into mining -- say you go into strip mining, you know, what is the long-term benefit of strip mining?

Maybe you could come in and make a short profit, but that land is basically going to be -- you know, and depending on the circumstances is going to be rendered useless forever after you get done. Is that in the best long-term--

**GOVERNOR BARBARA ROBERTS:** Grazing.

**BILL PERRY:** Yeah, that is -- I mean, so that is a question. I mean, it's something that can be addressed, but the commercial uses we only support if competitive bidding is a legal aspect and we're just saying that for all around fiduciary responsibility, that continues to bring something to the community because--

**GOVERNOR BARBARA ROBERTS:** Thanks. Oh, you have other -- sorry.

**STATE TREASURER JIM HILL:** Yes, when you -- thank you, Governor. When you mentioned commercial uses, do you mean for financial resorts, vacation rental properties as well?

**BILL PERRY:** Oh, that's something that -- I mean, we don't have a definition. That's something that I think, you know, we'd have to probably see this whole process again, but it's -- that's been done in some circumstances, I think, in some other states. Like I said, they -- I think mining and some other things were generally, you know, natural resource production. We're the ones thought of before. Like I said, the hunting ranches, also some of the hunters came unglued when some guy bid for it for a hunting ranch, and so they're in the process of trying to decide, but I don't really have an idea of what it is

necessarily. It's just from the standpoint that, you know, if you're going to take grazing away, you need to -- and in our opinion understand that some income has to go to these local communities.

**STATE TREASURER JIM HILL:** Well, I took it from your statement when you mentioned that you're going to have competitive bidding that you can go to other types of projects, and I guess it would take the arguments, a logical extension of an argument of competitive bidding is that we should go ahead and allow whatever would give us the most money. And if it be a resort or if it be something like that, it gives us the most money, I think we're opening up a box here that I am not sure that any of us want to go to, so I think that -- I think it comes back to the overlay that we have in land use planning where we designate the highest and best use of certain lands and if we go beyond that -- because I think competitive bidding, if we take it logically, we should open it up to anything, and there could be some bids that can come in that would be much higher than conservation and wouldn't we be obligated to look at those as well?

**BILL PERRY:** But, you know, the State under State statute says that this is grazing land to be used for grazing and, you know, in your circumstance of the, you know, resort, that's still going to have to -- you know, I'm no lawyer, but it's going to have to fall under your local land use planning, so that's something that's going to have to be decided is that

many of you zone -- then if it is, you know, those concerns are still going to have to be met, so I think there's more to the issue than that, but it was -- we, you know -- we still support competitive bidding. That land is -- or against competitive bidding, and that land is to stay in grazing. I was just throwing out some options instead of opening it clear up, you know, try to meet the concerns of the community, so it's kind of where I was going to--

**STATE TREASURER JIM HILL:** I understand. I think I just--

**BILL PERRY:** Yeah.

**STATE TREASURER JIM HILL:** Took your argument a little farther. Thank you very much.

**GOVERNOR BARBARA ROBERTS:** Thank you. Thank you very much. Well, yeah. We need to move on pretty soon or we're going to run out of time here.

**SECRETARY OF STATE PHIL KIESLING:** I know, but I actually -- it's a question I'll ask directly to Gus, direct quickly. Gus, I just was concerned about -- Doug has raised the issue of agricultural uses -- or Bill, I'm sorry -- has raised the issue of agricultural uses. Where is -- there he is. If someone were to come forward under our rules and said, "Here are all these parcels up for bid in the fall period of time ten years, whatever," I want to raise hay as a part of that, or I want to raise another kind of a crop, what would we say to them under the way the rules are done?

**DIRECTOR GARY GUSTAFSON:** The way the rules are proposed is that give notice of leasehold availability. At that time if someone had another use that they wanted, they could come forward with that other use. It would then make up a determination as a part of it -- a large part of it would be our fiduciary--

**SECRETARY OF STATE PHIL KIESLING:** Yeah.

**DIRECTOR GARY GUSTAFSON:** Determination, but that made more sense, let's say, than grazing or conservation use proposals (unintelligible) if it did, that we would use another existing authority of these rules. There are other existing authorities under statutes and existing rules to do an agricultural lease.

**SECRETARY OF STATE PHIL KIESLING:** And if two people came forward with an agricultural use, how would we decide between them?

**DIRECTOR GARY GUSTAFSON:** That would make it a little more interesting. We would sit down and decide which one was in the best interests to the Common School Fund, those trust lands or which one gave us the raised public benefit if it was a nontrust fund.

**SECRETARY OF STATE PHIL KIESLING:** Okay.

**GOVERNOR BARBARA ROBERTS:** Thank you very much, Bill. Now, we're going to take three people from the conservation use or whatever, the definition we're using. We're going to begin with Bill Marlett. Seven minutes, Bill. I'll try and give you a two-minute signal. I've done that, but I'm trying not to

interrupt people and you can sort of--

**BILL MARLETT:** Okay.

**GOVERNOR BARBARA ROBERTS:** Dismiss when people are making their statements, but I'll try to do that.

**BILL MARLETT:** Thank you. Governor and Land Board, my name is Bill Marlett. I'm executive director of the Oregon Natural Desert Association based in Bend, Oregon. We're a small grass roots conservation group dedicated to the protection and restoration of arid land ecosystems in Oregon and in -- throughout the west.

Our interest in the grazing rules as proposed is in part specific to an area that we are interested in, the Owyhee Canyon lands, which harbors several leases under State management. One of our primary goals is the restoration of arid land landscapes and removing livestock from these lands is one of the best ways in attempting to restore these desert landscapes that in our opinion are not fit for livestock grazing in the first place.

Most recently the Hart Mountain National Antelope Refuge has gone through a three-year process of determining the suitability of livestock grazing on 275,000 acres in Southeast Oregon. Their mandate is the protection and the propagation of wildlife, fish and wildlife on the refuge. Their conclusion was that livestock are not inappropriate activity on those arid landscapes. We concur.

The area of the Owyhee Canyon lands is very unique. The State of Oregon many years ago designated the Owyhee Scenic

Waterway. The federal government has designated the Owyhee, both the North Fork and the main stem, the federal wild and scenic river. The BLM has designated the canyon lands, an area of critical environmental concern. It's in relatively pristine shape in part because there is a lack of water, which is needed for livestock operations. Without that water, livestock are very concentrated in those areas where there is water, which tends to be at the canyon bottoms. The State of Oregon, Department of Environmental Quality has documented the severe water quality problems in the Owyhee River due to livestock. That is one of a number of sources, but it is the primary source of water pollution in that vicinity of the Owyhee. We are very concerned about that, and one of our goals in leasing lands in this area would be to restore that water quality, restore the riparian habitat as well as the upland habitat.

That's really what motivated us to get involved in these rules. And since then, I guess we've gotten deeper and deeper. With respect to the rules, we do encourage the Board to adopt the rules as proposed. We have three pages of comments that we will submit for the record, and I would hope that the staff of the Board will take under advisement some of our recommendations and look at some of the policy questions that we do raise. There is, however, one particular concern that we would like the Board today to consider and that is striking the provision allowing a person -- prior lessee -- to trump high bid under the sealed bid process.

Currently the rules proposed to means for bidding sealed bid, oral bid in the oral auction, the bidding -- competitive bidding requires high bidder prevail in the sealed bid. The prior lessee can trump high bid. We believe that is unfair and is certainly not conducive to competitive market situation.

The other thing that I wanted to bring to your attention and obviously can't be resolved today, but I do think the state -- Division of State Lands should take it under advisement is the notion that restoring land health should be rewarded. Specifically any use of State land that restores the ecological integrity of native ecosystems should receive a credit for beneficial management. This is basically the equivalent of putting money in the bank. In New Mexico, for example, the State Land Office offers a stewardship incentive program where lessee's of the State land in poor or fair condition receive a credit if they can demonstrate through an independent audit that the lands under their management are making significant improvement ecologically speaking. In any case, this begs the question why are these lands in fair to poor condition anyway, and I think the same situation applies to the State lands in Oregon. I think we'll have a better feeling for that when the resource management plans are completed. A lot of the State lands are not in good condition. And it really raises the question of whether or not grazing is an appropriate use, and we believe that that suitability question needs to be resolved.

There are some concerns pertinent to the lease that we are looking at. The recognition of a valid existing leases, I think, probably will be resolved in the courts. We feel that we should be starting with a clean slate and equal footing for everybody involved, all interests. We are particular concerned about -- we have gone through the records of DSL and something that really concerns us it the notion that these leases, the ones that we're particularly interested in was purchased on the market and we believe that this needs to be resolved. \$340,000 was spent to buy the lease that we are interested in, and this puts the existing lessee in an incredibly awkward situation. And this is something that is not going to get resolved today but, you know, these leases shouldn't be on the open market to be bought and sold by third parties. That's the way it works on federal lands with grazing permits where they are attached to a base property. That is not the situation with State lands, and they shouldn't be treated in that manner.

That's all I have for now, and if there are any questions, I'll be happy to answer.

**GOVERNOR BARBARA ROBERTS:** Thank you very much, Bill. I need a clarification maybe Gus or someone can give me. I -- and you're describing it in my reading of the rule that is before us if a leaseholder sublets, that's permitted, but if they sublet for more than they are paying us, the State gets the money. In other words, they can't make a profit on the lease. That's speaks to subleasing. What do the new rules say about the

question that Bill Marlett just raised about the sale of a lease?  
Can you clarify that?

**DIRECTOR GARY GUSTAFSON:** Yes, Governor. In the same section -- I forget what number it is now -- but it's an assignment of the lease interests, and you can assign a leasehold interest. That is commonplace.

**GOVERNOR BARBARA ROBERTS:** You can?

**DIRECTOR GARY GUSTAFSON:** Yeah, with prior written approval.

**GOVERNOR BARBARA ROBERTS:** So you can sell--

**DIRECTOR GARY GUSTAFSON:** (unintelligible)

**GOVERNOR BARBARA ROBERTS:** You can sell the lease even -- but you're not subject to the same issue you would be on subleasing, so we get the money if someone subleases it, but if they basically sell the lease they can make the profit off of it. Is that -- I'm trying to get some -- I'm trying to understand that issue.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Governor Roberts, if I understood the slight tweaking of that section, it does describe during his presentation this morning, that was intended to expand that concept to cover assignment so that even if there's an assignment we get the profit.

**GOVERNOR BARBARA ROBERTS:** So the situation that Bill has described and that technically selling of the lease to avoid other access to it would not occur under these rules -- could not, of course. Do you believe--

**ASSISTANT ATTORNEY GENERAL BILL COOK:** Well, if it occurred, we would get the profit.

**GOVERNOR BARBARA ROBERTS:** Yes. Okay.

**BILL MARLETT:** I am not sure, Governor, that that's quite -- maybe the interpretation isn't quite accurate here. What I -- this lease was basically purchased on -- it was under -- it was a foreclosed property. And the Division of State Lands actually facilitated the sale of this lease by making improvements to the lease with State money when there was no signed lessee to the property, which is another point that we had a very hard time swallowing, but the State was actually spending money for a lease that was unassigned and basically I'm not--

**GOVERNOR BARBARA ROBERTS:** Oh, this was an unassigned lease you're taking -- okay.

**BILL MARLETT:** At that point in time.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** I think we're thinking about the same things and--

**BILL MARLETT:** Right.

**ASSISTANT ATTORNEY GENERAL BILL COOK:** And I think it's a matter of semantics, Bill. I think you can call it a sale. That's the typical terminology, but it's really an assignment of a lease, and under the new rules, the provision we were just discussing would cover that.

**BILL MARLETT:** I guess what the net effect of what's going to happen, if the Oregon Natural Desert Association puts

in high bid on this lease, there's going to be a lessee out there holding a mortgage that basically he'll have no way of generating a revenue to pay off that loan. And it's not my concern and I don't think it's your concern, but what I guess I'm saying is that we shouldn't let it happen again.

**GOVERNOR BARBARA ROBERTS:** Thanks, Bill. Other questions or comments for Bill Marlett?

**STATE TREASURER JIM HILL:** Yes. Just a question, Governor. For the land that you would like to lease, do you feel that some type of -- say, for example, some type of a developer or residential resort type of development should be allowed to bid against you for that lease?

**BILL MARLETT:** No, we don't. Our feeling is that there may be some situations where you might want to allow some other commercial use. There might be some situations where the Board can sell the land and put that money -- invest that money for the benefit of the School Fund. In this particular situation -- and I think it has to be a case-by-case assessment, you need to look at what the existing and surrounding uses are, and insure that whatever you decide is compatible with those existing activities to whatever they may be.

**GOVERNOR BARBARA ROBERTS:** Jim, can I ask a question to attach to your question?

**STATE TREASURER JIM HILL:** Sure.

**GOVERNOR BARBARA ROBERTS:** What Jim has just asked you and you said, "No, we don't think they should," does that reflect

we just don't want someone to or that because--

**BILL MARLETT:** In this particular situation--

**GOVERNOR BARBARA ROBERTS:** Of it -- yeah, but let me ask a question more specifically.

**BILL MARLETT:** Go ahead.

**GOVERNOR BARBARA ROBERTS:** You described at the beginning of your testimony that this portion of land you were talking about in both the scenic rivers designation of the State and in the wild and scenic designation of the federal government. If someone wanted to bid against you for some kind of a commercial operation that would build the -- I don't know -- hunting shacks down there, a motel or whatever they wanted, they wouldn't be permitted to do that anyway in that setting would they?

**BILL MARLETT:** Not in that particular setting.

**GOVERNOR BARBARA ROBERTS:** Okay.

**BILL MARLETT:** Regardless.

**STATE TREASURER JIM HILL:** Let me broaden my question.

**GOVERNOR BARBARA ROBERTS:** Yeah.

**STATE TREASURER JIM HILL:** Would anybody else -- would you let anybody else be allowed to bid against you other than ranchers?

**BILL MARLETT:** I don't want to sound flippant, but let me reverse the question by asking--

**STATE TREASURER JIM HILL:** Well, you ask one and I'll answer.

**BILL MARLETT:** Right. I think that in this case no one else should be allowed to bid other than conservation use what's described in the rules, conservation use, nonuse or grazing. Even though we don't feel grazing is an appropriate use on the land, we're willing to acknowledge that the State Land Board does feel that way and are willing to compete to change that situation. But again, the decision to exclude -- to make it inclusive -- in other words, a decision has already been made, and there's a prevailing feeling by the ranchers that only grazing should occur and conceivably the State Land Board could decide. We agree. Only grazing should occur on State lands, and end of argument. so I'm just extending the notion that if you can say it's only good for grazing then you can also say it's only good for conservation uses as well, and limit those other possibly other uses that may conflict, commercial uses, and I guess I'm thinking, you know, (unintelligible). Make a lot of money and if the State Land Board thinks that that's a good idea, you know, that's your decision to make, but it's certainly one that we would not agree with, and you know, it's not -- I think you -- you know, you have the responsibility of making these decisions of, you know, what's good. It's -- you know, it's your money in the bank, and you have to make those decisions.

**STATE TREASURER JIM HILL:** Well, Governor, I guess the only thing I have to say is I guess was the question of whether this is a financial issue or this is fiduciary issue, whether it's an environmental issue, but I -- if it's an issue of money

in the bank, I understand the reason for competitive bidding has to do with our fiduciary responsibility, then it should be open to whatever, because that's how we can get the most money. And I'm not -- maybe a commercial, maybe a resort or residential is not what other uses -- I mean, I guess the way -- it's already been decimated by any land use planning that I've seen that the best use so far is not -- is grazing. Now we have another conservation and we're living up to our fiduciary responsibility. Why couldn't we have someone who if we're going to -- maybe the situation like Oklahoma. Just let everybody come and bid and we get the highest bid, and--

**BILL MARLETT:** If it's consistent with the -- you know, local land use plan, you know, maybe that's something that could be considered.

**STATE TREASURER JIM HILL:** And one other question. In terms of the stewardship, if you were to -- stewardship of specific parcel of land that you would like to lease, what do you have in mind as far as taking care of the lands and et cetera. Specifically, how would you do it? What would you have in mind?

**BILL MARLETT:** Well, from our knowledge of the situation, some of the things that we would do immediately would be to remove some of the internal boundary fences, not the outside fences but internally to allow free and safe passage of wildlife. You know, we -- I guess we come from a different paradigm that, you know, we don't feel like we have to handle everything in order to manage it. You know, nature can do a good

job and if given a chance, we'll restore areas that have been damaged. In some cases, that's not always true, but in this particular situation I don't envision that we're going to have to do a whole lot of hands on -- direct hands-on management. So I don't know if that speaks to your question, but--

**STATE TREASURER JIM HILL:** Governor, one other. You mention degradation. We talked about -- and you talked about -- I want to be specific now. We had some testimony earlier that said that there is not -- that a study that was cited said that the condition of grazing land and nongrazing land were basically the same. I guess I want to be clear from you about whether you feel that there's actual degradation of State lands because of grazing.

**BILL MARLETT:** Let me just put that in perspective. Across the board in the West, most arid lands are in a degraded condition. Less than 5 percent of lands westwide could be considered in "excellent condition" ecologically speaking. I guess, you know, I could produce reams of the newer signs that says in documents what is actually occurring out on the land, and has occurred over the past 100 years when livestock were introduced. As you know, livestock are an exotic species. They're not native to desert ecosystems. They are not well adapted to these systems, and they don't fit very well. And as a result of not fitting, a lot of damage is done by the livestock to the land. A fair amount of that was done at the turn of the century when we really didn't know what we were doing. Things

have gotten a little better, but they are still bad. I can't say specifically all State lands in Oregon are in bad condition. I can't say that. But I can -- but I can--

**STATE TREASURER JIM HILL:** About grazing causing the degradation--

**BILL MARLETT:** There's no question about that. And the reason I brought up Hart Mountain National Antelope Refuge was to -- you know, I don't want to, say, take your -- their word over mine. The reason I brought that up was that was National Fish & Wildlife Service that prepared the environmental impact statement for the refuge. And the purpose of the refuge was to manage those lands such to maintain biological diversity, enhance ecological integrity for the benefit of fish, wildlife, and plants. Their conclusion after doing that study, they hired a number of science folks to look into certain issues and problems that they were confronting. Their conclusion was livestock were not compatible with these objectives. They were not enhancing the landscape, in other words. They were clearly detrimental. The decision was upheld at the regional office. No appeal of that was filed. And I think that is indicative of what is happening throughout the west.

You are going to see more and more decisions like that based on good science that say, "Livestock are not compatible in this particular landscape. They've got to go." And what we're saying is we'd like to exercise our rights to try and create another Hart Mountain in the Owyhee Canyon lands, and if the State is

willing to entertain our motion to submit a bid. We'd like to and have these lands dedicated for ecological purposes for the benefit of fish, wildlife, water quality.

**STATE TREASURER JIM HILL:** Thanks very much.

**GOVERNOR BARBARA ROBERTS:** Other questions of Bill? Thank you very much.

**BILL MARLETT:** Thank you.

**GOVERNOR BARBARA ROBERTS:** I'm going to of pure necessity do a two-minute break. Denny Smith said how long -- how quickly the time went, but for--

**SECRETARY OF STATE PHIL KIESLING:** Jones.

**GOVERNOR BARBARA ROBERTS:** Two minutes because we have a lot to cover.

(OFF THE RECORD)

I'm going to call Jim Coons. Jim? I would like to remind you, I know everybody's trying to have -- this is an important issue, but I do want to get to everybody we've indicated would have an opportunity including Ray Simms, who I missed on the list earlier, so, Jim, why don't we begin with you? We'll listen attentively, signal you on two minutes, and see if we can't do this on schedule. I have a timber meeting in Portland, and I'm trying to just -- forest fire timber issue, and it's important, and I'm going to try and see if we can -- I don't know how we're going to do all this, but we're going to try. Jim?

**JIM COON:** Thank you very much, Governor, members of the Board. I'm an attorney from Portland. I represent Oregon

Natural Desert Association, and Citizens for Oregon Schools, and Rest the West. Rest the West and ONDA were bidders in the February attempt at getting some leases here. Citizens for Oregon Schools, I think, has an obvious interest in this issue. I guess I want to respond -- lawyers always want to respond to each other. Dan said a couple--

**GOVERNOR BARBARA ROBERTS:** Well, then you can -- seven minutes.

**JIM COON:** I sure will. That's just part of my time, certainly. Dan spent his first seven minutes on the condition of the range and he handed you a picture with green and brown on it. The green and brown picture, of course, shows you that there's water development on the green and there is on the brown. The condition of the range is something that you can't tell just by looking at that picture.

The issue here is not primarily range condition. That is part, I guess, of your long-term fiduciary obligation. You've got to keep the range in good shape or nobody's going to want it. But the issue here -- and the reason we're here about these rules -- is because John Bishop paid \$19,000 for a grazing lease out there because the Secretary of State audited the Division of State Lands on these lands and found that the return was something like a little more than a half of 1 percent. The fact is that the Common School Fund has not been getting what it should out of these lands. That's what we're here about. That's what competitive bidding is about and that's what Bill Cook's

opinion of March 25 told you this was about, why competitive bidding has to occur. We think that's a legal no-brainer. You have to have competitive bidding on these lands. It's not because of the State statute. It's not even because of the State Constitution. Your trust obligation comes from federal law, the Admission Acts, which gave these lands to the State of Oregon in the first place, so it doesn't matter if the State statute says, "These lands are only for grazing and no one else can bid on them." If that's how it's construed, that that statute violates the federal law and is invalid. I don't think that's what that statute says, but if that's what it says, then it violates federal law, because it means you can't get the money out of these lands that you should be getting, and your obligation to the Common School Fund is paramount. It's a matter of federal law.

Bill has pointed out, if not complained, that there haven't been any lawsuits against them. I can assure you that if these rules don't provide for competitive bidding, there will be grounds for a lawsuit and one will be filed, and you're going to be choosing, of course, which lawsuit you want to defend. I'll point out that Dan's lawsuit has been filed, but not served. That means it's a device for letting you know that the lawsuit might be out there, but it hasn't been served on you as far as I know, so nothing's really happening in court in that case. The reason we haven't filed a lawsuit is we're waiting to see what the rules provide. If the rules followed the law, no lawsuit.

If they don't, then we've got a problem.

An issue was brought up about the lawsuit in Idaho, and the punch line -- Mr. O'Leary's punch line was "Well, if that rancher didn't get to keep that lease, bankruptcy." Bankruptcy is irrelevant here. It is unfortunate, but if the fact is that these ranchers can't survive without low-rent leases, the low-market leases out there, then they're not supposed to survive economically, and that's how we work in this country. There is no way in the world that the school children of Oregon can subsidize ranchers out in Eastern Oregon or anyplace else. The Division of State Lands, I think, knows that. I think Bill Cook's opinion tells you that. You cannot consider people are going to go out of business if we don't keep giving them this deal. It's legally irrelevant. It's morally irrelevant. The school kids aren't here today, but that's whose interests you're protecting with your fiduciary obligation, and Congress knew that 100 years ago in the Admissions Act. That's why it's the law.

I think that's got to be my main point. We're not talking here about balancing interests. We're not talking about political give and take. This is a matter of federal law. The fiduciary responsibility is a matter of federal law and it has to be implemented. The fact that it's hard on the ranchers is very unfortunate for those folks today. The reason it's unfortunate is that they have built a way of life on a policy that has been a give-away for 100 years. It was a dead give-away until the 1930's. You could turn your cows out there, and you

could graze that bunch grass for absolutely nothing. Now there are rates out there, but they are way low. Everybody knows they're way low. The trouble with these rules, they've got to have competitive bidding, but they can't give all the little breaks they now give. They can't give the advantage of allowing to trump -- allowing the existing lessee to trump the high bid. They can't give the advantage of allowing an existing lessee to know "I'm going to be the only bidder, so I don't have to make a real fair market bid. All I've got to do is make that low bid." They can't phase in these numbers. You can't say, "Well, gee, really it's \$4.56 and we know that, but we're going to start at \$3.01 and ratchet that up over four years." The only reason for doing that is to make it easier on the ranchers. You know, we can sympathize all we want, and that's a difficult human situation, but the only reason it's a difficult situation is we've been doing it so wrong for so long. That is not an argument to keep doing it that way. The school children of Oregon shouldn't have to pay for this problem, and they can't.

Let me mention one other legal point and, of course, you'll confer with Mr. Cook about this, the State can breach a contract. The State does it. The PERS retirees come to mind, taxation of their benefits. Supreme Court has held breach of contract to tax those benefits. So now what? Well, then, the State's going to have to come up with a remedy for that, but it's not illegal to breach a contract. If that's a contract that was invalid, if that's a contract you shouldn't have entered in the first place,

then you've got to say legally no contract.

Then the question, I'm not going to tell you it's not there. You might have to pay for having done that, but let me suggest to you that unless these leases are way cheaper than they should have been, there's no value that you would have to pay. The only reason the ranchers want to keep those leases in the family as they have for many years in many cases is that they're worth one lot heck of a lot more than they're paying the State. The only damages they have to pay -- you should have to pay them in a contract breach lawsuit is the money you already should have had from them in the first place. If these leases are really at the right value, you don't owe them a thing, even if you terminate every one of those leases today. Unless the Board has questions, I don't have any further comments.

**GOVERNOR BARBARA ROBERTS:** Question?

**STATE TREASURER JIM HILL:** Yes, I do. We talked about competitive bidding as being the issue, then you would not be opposed to any other type of use bidding against bidding for these leases?

**JIM COON:** Obviously I represent several different clients who have probably several different slants on that issue. Citizens for Oregon Schools says that's right. ONDA and Rest of the West might say, "We're not too comfortable with the destination resort in there." I think the practical answer is you're talking about ten-year leases. No bank is going to lend the money it takes to have another Salishan out there. We might

be talking about somebody throwing up a hunting lodge or something like that, but I wouldn't expect a major development based on ten-year leases. Also, of course, comprehensive planning--

**STATE TREASURER JIM HILL:** Will these have to be ten years? I mean--

**JIM COON:** No. No.

**STATE TREASURER JIM HILL:** If it's for the benefit of the Common School Fund we can make it what we want.

**JIM COON:** That's right. That's right.

**STATE TREASURER JIM HILL:** I'm asking you again, do you feel that -- and given what you said, because you said the only issue here is competitive bidding--

**JIM COON:** Right.

**STATE TREASURER JIM HILL:** That any use whatever regardless of what it is should be allowed to bid. That's how we would get the most money.

**JIM COON:** Right. As I said, because I represent environmental folks and school folks, I have to walk a thin line between that. I will tell you that as a matter of law, I think probably you're right. Anything that can make more money for the School Fund, fine. It can go in there. Subject to all the other rules and regulations and laws that are out there regulating any number of kinds of conduct, you bet. But I don't know. There's nothing certainly in the Admission Acts, and therefore in your trust obligation, that says you shouldn't be looking at hunting

lodges, Disneyland, whatever you want.

**STATE TREASURER JIM HILL:** Well, then, doesn't this -- I guess again we're back to this issue as to whether this is a fiduciary issue or whether this is an environmental issue, but I have to tell you that I'm not interested in having destination resorts out there. And I mean, this -- your logical conclusion to go all the way complete with competitive bidding means we can have the Empire State Building out there as long as we made the most money, and I guess that is -- I don't think that's in the interests -- I don't -- anyone in here would want that--

**JIM COON:** I think those are all -- they are probably mostly EFU zones and other things out there that don't allow the Empire State Building. I mean, there are lots of other controls within which this Board's leasing authority operates.

**STATE TREASURER JIM HILL:** Federal law.

**JIM COON:** That's right, that's right. And this is a federal statute, and then the question is, okay, so do we come all the way around and say, "Well, if we didn't have all those State land use laws, et cetera, could we get more money and are we violating, therefore, our trust obligation?" I hear that argument. That's a legal argument that could be made. Whether it's too long and tortuous to be effective, I don't know.

**STATE TREASURER JIM HILL:** Thank you.

**GOVERNOR BARBARA ROBERTS:** Anything else? Thank you very much.

**JIM COON:** Thank you.

**GOVERNOR BARBARA ROBERTS:** Tom Pringle.

**TOM PRINGLE:** Governor Roberts, Board, I appreciate the opportunity to talk. I'll try to keep my comments quite brief. I'm the owner of an environmental consulting company called Emerald Wetlands Consulting. I normally do wetland delineations and determinations, help people get their fill/removal permits or for (phonetic) permits. As a part of that process, I got involved in mitigation of wetlands, when someone feels they have to mitigate. And the mitigation requirements involve perhaps creating a new wetland and replacing that and bringing in the plants both for the wetland and for the surrounding upland buffer, and so I -- over the last couple of years I've developed a component of my business that is restoration focused, and I see quite a future in that with the federal agencies, BLM, U.S. Fish & Wildlife Service, the Forest Service. I see the agencies moving in a very massive direction towards rehabilitation in riparian areas, restoration of wetlands and so on, so I see an opportunity there for Emerald Wetland.

I bid on, I believe, 11,000 acres of DSL land in the February and December lease expirations. They were not awarded to me, although I do believe I did bid higher in some cases. From a business -- I suppose it's -- I'm not the kind of destination resort developer, but I am a business, and it's -- I'm also in the conservation side of it, so it's probably another thing that's in this Pandora's box that gets opened up with these new rules.

For me, the attraction is some of this land is going for 9 cents an acre. I couldn't lease private land for 9 cents an acre. It would be on the wetlands. It would cost me in West Eugene -- or almost all over the state it costs from \$1,000 an acre to buy a wetland. I could take that \$1,000, buy a 30-year Treasury bond, get \$75 a year and then lease that acreage, but with the Division of State Lands they're only charging 93 cents an acre to lease the wetlands, the swamp -- the 26,000 acres of swamp land that they have as well. And so, in other words, for my \$75 a year instead of getting one acre I could get 80 acres from the Division of State Lands, so for me it's a very attractive proposition from a business standpoint because it's so far below market value.

The swamp lands haven't been talked about this morning, but they're mostly around Crump Lake, Hart Lake. They're very high resource value. I personally think if this was opened up for bidding you would see Ducks Unlimited, or National Wildlife Federation, Nature Conservancy, Conservation Fund. You'll see groups like this who are used to paying that \$1,000 an acre to buy wetlands. They'll see this as a very attractive proposition to lease these in perpetuity. And the difference between the going rates for private wetlands, and the lease rate for Crump Lake is just -- it's a very large difference, and so I could see just the swamp back lands alone bringing in a couple million dollars a year if they were leased out at the going rates, so that's a tremendous difference over what they're getting now.

The nontrust lands, like the swamp back lands as I understand Mr. Cook's memo is they don't have to be managed for maximum revenue. They're managed for maximum public benefit. Right now, there's only 11 beneficiaries from those 11 swamp back leases. So if you did have Natural Wildlife Federation or Ducks Unlimited coming in there, you would probably have a lot more than 11 people enjoying that land. So I think that would be a net improvement, so it's a funny situation where you can get both comply with more public benefit, plus you get more money if you open up these swamp back lands to the competitive bidding. Just as an aside, I don't personally see these destination resorts coming in that made -- one problem is that these lands were very remote. There's no water. The water thing alone would be phenomenal -- you wouldn't necessarily have any water rights. To put a hotel or something like that out in Owyhee, where would you get the million gallons a day of water from, and that's what's limiting the development now. What would be the attraction of going to Riddle Mountain with the destination resort. People want to be in the Steens. Even in the Steens they don't fill up the campgrounds, so how could you fill up one in a burned-over part of Riddle Mountain? I don't see the commercial threat at this time, especially because of the water issue. All the water -- it's already over allocated. There's not any water there to be drilled or that would have to be purchased, but who has any water to sell?

So I -- from my perspective the -- I'd like to speak on this improvements. I find from a business standpoint it doesn't make a lot of sense. It seems to me that as I understand my accountant, the improvements would normally be depreciated, even if it wasn't under an accelerated schedule. It would be a seven to ten years on agricultural improvements, so they would be fully depreciated from the point of view of the permittee.

The reservoirs silt up pretty fast. A lot of them are dry in any case. The value of them is really questionable. What I'd like to see is the State own all the improvements. I think they should sit down, figure out what everything is worth and buy them all out and eliminate all this ambiguity, because I think the ambiguity lessens the attractiveness to other bidders. You hardly know what you're getting in for and a lot of the things were problematic value. I don't -- from my business, which is native plant collection or native seed collection, I don't find any value in someone going out there and spraying 20,000 acres with herbicide and then seeding crested wheat, and that's what happened to a massive extent, so that's not an improvement from my point of view.

Some things that also create ambiguity is this allotment management plans. BLM does not have -- repeat, does not have at this time AMP's for their lands, 90 percent of it. A good example is Beatty's Butte allotment, which enclosed is some State lands. In fact, they have no plans to develop allotment management plans. They don't have the money, so I don't see how