

The Oregon State Land Board met in regular session on July 29, 1994 in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon 97310.

DIVISION OF
STATE LANDS

Present were:

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

STATE LAND BOARD

BARBARA ROBERTS
Governor

PHIL KEISLING
Secretary of State

JIM HILL
State Treasurer

Assistants

Anne W. Squier
Nina Johnson
Randall Edwards

Staff

Gary Gustafson
John Lilly
Gary Van Horn
Jenifer Robison
Gail Lowry
agency staff

Dept. of Justice

Bill Cook

The meeting was called to order at 9:10 a.m. by Governor Roberts. The topics discussed and the results of those discussions are listed as follows. Further details of the discussions may be obtained in the written transcript of the meeting available at the Division of State Lands, 775 Summer Street N.E., Salem, Oregon 97310, (phone: 378-3805).

Governor Roberts said there had been more than a dozen public hearings on the issue of the proposed administrative rules governing the management of rangelands. She asked that those individuals wishing to testify regarding the issue excuse themselves from the meeting for a brief time to select and organize three people representing each general perspective to present their view. She asked that the three individuals from each perspective also limit their testimony to no more than seven minutes per person, for a total of 21 minutes.

Wilsonville

Request for approval of the Wilsonville Tract Management Plan, including authority to initiate a Request for Proposal process for site use in accord with the plan implementation strategy.

Governor Roberts asked that only testimony in opposition to the Request for Proposals be presented today, rather than testimony related to specific uses for the tract.



Director Gustafson said this proposal had been before the Board on several prior occasions. He introduced John Lilly who updated the Board on issues involving the Wilsonville Management Tract. Lilly said on May 10 the Board conceptually approved the management plan for the tract, which included sending out a Request for Proposals (RFP). At that meeting, the Board asked that greater detail be provided regarding how the RFP process would work and the criteria that would be used in weighing each RFP response. The Board also asked that land use issues surrounding the options be reviewed carefully and that an economic analysis be done regarding whether the tract should be sold or retained for a period of time. Lilly said these requests had been met and an economic analysis was included in the plan presented today. The golf course option was deemphasized in the plan, he said, since it is problematic on this property. Lilly also discussed the need for enhanced management of the tract to address the discharge of firearms, open fires and camping. He said the agency plans to initiate administrative rules to deal with these issues.

Secretary of State Keisling asked what the timeline was regarding the adjacent Dammasch Hospital closure and what effect that may have on the general area. Lilly said the situation is being monitored for its effect on the tract. He said it appears that the timeline for the Dammasch Hospital disposal may not transpire for a couple of years. Governor Roberts said the decision may be made in the next legislative session, with implementation then taking additional time. She asked whether a proposal recommending simultaneous, multiple uses of the tract would be considered. Lilly affirmed it would.

Governor Roberts asked if the Board approved the RFP process today, what the schedule would be. Lilly said the RFP would be sent out in the fall and proposals would be required probably in January 1995. Gustafson added that was a generalized timeframe.

Jack Broome expressed his concerns about the RFP process. He said he doesn't believe the competitive process necessarily brings the best results to the general public. He said he didn't understand why the Division, with a select committee of individuals, couldn't put together a management plan avoiding the need for RFP's. He commented that he hoped certain forest practices would not be allowed on this tract, and asked how that aspect could be incorporated into the RFP process. Lilly said a marketplace atmosphere should be created so that anyone meeting the requirements of the management plan could present their best ideas for the use of the tract.

Governor Roberts said they aren't requesting a plan, but rather proposals for use of the land consistent with the management plan that will bring the kind of financial return to the state that is required. She said she knows of no other way, other than the RFP process, to treat people with fairness so everyone is given an equal opportunity to participate. She said if the community and some of its citizens have ideas, they should bring them forward. Gustafson also reinforced that nothing in the request requires a proposer to hire a contractor in order to submit a proposal.

Broome said he still doesn't understand how park districts or private citizens could submit a qualified proposal that would have any credence with the Division when they would not own the land themselves. He stressed this is a rare opportunity for this piece of property, and said he wants to ensure 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 timeframe should really be the issue."

Miles McCoy, Oregon Association of Nurserymen, said they are in full agreement with the entire management plan. He said their research indicates there are ways to solve the land use problems. He said they see some very positive opportunities to work with other entities on the site and wanted that noted in the meeting record.

Debra Iguchi, representing herself and the Friends of Goal 5, agreed with Broome that the RFP process is heavily weighted toward professionals. She discussed the RFP criteria for experience, qualifications, financial preparation, etc., requested in the application. She expressed her concerns as to how she, an inexperienced public citizen, would be viewed in the RFP process.

State Treasurer Hill moved the Board accept the staff recommendation to approve the final Wilsonville Tract Management Plan and direct the Division to initiate the RFP process as outlined in the plan, adding that the Division is to keep the Board informed as the RFP process unfolds. Secretary of State Keisling seconded the motion and the approval was unanimous.

Forestry

Request for approval of the Department of Forestry's 1995-97 proposed Common School Fund budget and authorization to submit the proposal to the Department of Administrative Services.

Director Gustafson said that the Department of Forestry's presentation to the Land Board is part of the management agreement that the Board, Department of Forestry and the Division have entered into. He introduced Jim Brown, State Forester, to make the presentation.

Brown said the Department manages approximately 130,000 acres of common school forest land under an interagency agreement. He said the Department is proposing to spend \$11,153,466 during the 1995-97 biennium--a net increase of around \$300,000 over the current biennium (with a series of reductions and some increases making up the change). He said threatened and endangered species surveys as well as stream surveys will be done in addition to the more traditional forest management activities.

The Department of Forestry projects that management of common school forest land will bring in about \$30.4 million, so spending will be slightly more than 30 percent of the receipts. He commented that the Division had reviewed their figures and believe the expenditures to be appropriate and justified. He said the Division has a concern with a traditional method of prorating the capital construction and capital improvement against all the funding. Their concern is whether this creates a formal vested interest in the property, or whether the Department should charge rent instead.

Brown said both the Department and the Division recommend the Board approve the budget for submittal to the Department of Administrative Services and allow them to work with the Attorney General's Office to review the legality of committing Common School Funds for the purpose of capital improvement and capital construction, and to make any administrative changes recommended by the Attorney General, if it's determined not appropriate.

Governor Roberts clarified that the amount in question is \$151,000. She asked Bill Cook, Department of Justice, to comment on what kind of legal examination would be necessary. Cook said he didn't presently know much regarding the issue, but thought it wouldn't be an enormous research project. He discussed a few of the implications of the issue.

State Treasurer Hill asked if there are other agencies with similar situations. Brown said he couldn't answer that. He said the Departments of Forestry and Fish and Wildlife are unique in that they own their own properties, whereas most agencies either rent space from commercial interests or through the Department of Administrative Services. He guessed that Fish and Wildlife would similarly capitalize construction and improvement across all funds. State Treasurer Hill recommended a request be made to the Attorney General's office requesting a preliminary estimate on the cost of the research.

Gustafson said that if Common School Funds are being committed to a building, even as a proportional share, a review is needed to determine whether this is an investment decision. If it is, then there is question of whether the Common School Fund should have an ownership interest, and receive something if the building is later sold.

Secretary of State Keisling moved the Board approve the Department of Forestry's submission of its proposed 1995-97 budget and that the Attorney General review the legality of committing Common School Fund monies to the proposed capital improvements and capital construction projects unrelated to land acquisitions and exchanges. State Treasurer Hill seconded the motion and the approval was unanimous.

Consent Agenda

Wilsonville Request for authorization to initiate rulemaking to regulate certain public uses of the Wilsonville Tract.

Minutes Request for approval of the June 20, 1994 minutes of the State Land Board.

Minutes Request for approval of the June 30, 1994 minutes of the State Land Board special meeting.

Secretary of State Keisling moved the consent agenda be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

Rangeland Request for adoption of administrative rules governing the management of rangeland.

Dan O'Leary, attorney, asked if individuals representing the counties and one person wishing to speak on behalf of a school board could testify in addition to those already selected, since these folks don't clearly fall within one or the other perspectives. Governor Roberts said she would consider this.

Director Gustafson relayed some of the history of the state rangeland program. Most of the 600,000 acres of rangeland owned by the Division is in Malheur, Harney, and Lake Counties, with 151 grazing leases covering most of the acreage. Of those leases, 44 are large parcel grazing leases covering about 545,000 acres (88 percent of the total). Gustafson said not all of the grazing leases have the same terms. Gustafson emphasized the need for recognizing the valid existing rights of the existing leases. He then reviewed the various, differing terms of the leases.

Gustafson stated that in May 1994, the Division initiated a comprehensive rangeland management policy, to ensure the financial responsibilities were being met as well as rangeland health being maintained or enhanced. Gustafson said a Grazing Fee Advisory Committee was formed in spring of 1993 to assist in determining an appropriate means of establishing a fair market value based rental rate for the use of the state rangeland. The current base fee, he explained, remained unchanged since it was established in 1979 at \$2.50 per AUM for most grazing leases and \$3.50 per AUM for more productive wetland tracts. Initial draft rangeland management rules were then circulated for comment in November 1993, with a provision that most leaseholds (with some exceptions) would be subject to competitive bidding. A crop share approach was used to determine the base fee schedule and the draft rules included a requirement for a rangeland management plan to cover all blocked leaseholds as well as certain selective individual or isolated leaseholds.

Gustafson said the Division brought a second draft of the rules to the Board in February 1994 which included three competitive bid options. These included a minimal change option, a limited competitive bidding option, and a more comprehensive competitive bid option that allowed nonuse. Two informal public workshops were held in Salem and Burns prior to distribution of the second rule draft; and formal public hearings were then held, after distribution of the second draft rules. Public comments were then analyzed, legal advice was sought, and the final draft of the proposed rules (being presented today) was developed.

Gustafson said the new draft rules provide for management of trust land in accord with the need to maximize revenue to the Common School Fund over the long term, and management of nontrust land to obtain the greatest benefit for the people of the state consistent with the conservation of the resource under sound land management techniques. Gustafson said all rangeland will be managed to maintain or improve rangeland health and related ecosystems. He said the proposed rules allow rangeland to be used for either conservation or livestock grazing--other proposed uses will be handled through other existing authorization processes. Uses other than grazing or conservation, such as minerals leasing, may also be allowed in conjunction with rangeland uses, providing the uses don't conflict.

The new rules also require competitive bidding, unless exempted by an existing lease with a renewal provision, or when a determination is made that the Board's fiduciary responsibility would not be served by offering a leasehold through competitive bidding. The crop share formula is proposed as the base rental method, with rent under the formula to begin at \$3.01 per AUM this year and incrementally increasing to \$4.56 an AUM by 1998, except for isolated tracts which will remain at \$3.01 until 1998.

Gustafson said that in the rule development the rangeland management programs of all western states were reviewed as well as those of the BLM, USFS, and some larger private landholders.

Approximately 7 to 12.5 percent of additional revenue is expected to be generated from 1994 to 1998 as a result of the rules, culminating in an estimated \$100,000 of additional revenue in 1998.

Gustafson said he believes that the competitive bidding process would accommodate the nonexclusive right to negotiate for a new lease contained in some of the existing leases.

Ten current leases have what is known as 20/20 or 10/10 terms, as these lands were acquired in prior land exchanges with the BLM. These leases are for 20 years with a 20-year extension, or 10 years with a 10-year extension. Gustafson suggested the Board invoke immediately upon adoption of the rules the rental redetermination clause which would increase the rent on these leases from \$2.50 an AUM to \$3.01 an AUM, then further increase in accord with the rules until 1998. He said with respect to the termination clause, the Division should consider termination action only on a case-by-case basis where a viable proposal is received to use a leasehold for another nongrazing use at a higher rental amount.

Gustafson recommended the Board adopt the final rules as included in the appendix and repeal the current grazing policy. He also recommended that certain valid clauses in the existing leases be interpreted by the Board to direct the Division to subject these leases (granting a nonexclusive right to negotiate for a new lease) to the competitive bid process required in the new rules. He also recommended an immediate base fee increase on the 20/20 and 10/10 leases to \$3.01 per AUM for 1994. He stressed only invoking the termination clause for these leases on a case-by-case basis.

Two clarification changes to the rules in the appendix of the agenda item were explained. The first is to revise the wording in subsection 141-XX-013(4) on page 20, clarifying that subleasing will be allowed, but that the Division will receive the additional revenue generated. The second change is on page 23 in 141-XX-015(1), providing if a lease is awarded to a person other than the prior lessee, the new lessee must compensate the prior lessee for the remaining undepreciated value of any Division-approved developments within the leasehold owned by the prior lessee.

Gustafson recognized the work of Jeff Kroft of the Division who led the rulemaking efforts, praising him for his contributions.

As requested, Governor Roberts agreed to give 3-5 minutes to both Lou Davies from the Crane High School and Judge Dale White, Harney County, to allow them to discuss impacts (in addition to the other testimony). Coos County Commissioner Gordon Ross agreed that, rather than speaking today, he would allow his letter to be added to the record. He did comment on his concern regarding fire danger in areas where timber harvests won't take place. Governor Roberts also noted that a written statement had arrived from Senator Wes Cooley that would also be submitted into the record.

Dan O'Leary, representing a lessee, also asked that Ray Simms of Lake County be allowed to speak. O'Leary disputed an article from the Oregonian claiming state leaders are ignoring poor range conditions. The article mentioned a survey done in 1970 by OSU regarding the state's rangelands. He said between 350,000 and 575,000 acres of state lands have been exchanged since then with the federal government--so the lands aren't the same ones referred to. He said at the 12 hearings held on the subject, that no case had been made that state lands are degraded or abused in any considerable extent. He referred to a letter by William Krueger, Department Head of the Rangeland Resources Department at Oregon State University discussing rangeland conditions. Krueger states there was no observable difference over a 60-year period between grazed and nongrazed lands. He said a period of nonuse would be ecologically irrelevant to the condition of those lands.

O'Leary said the statutes under which the agency is required to operate classify the lands as "grazing." He said the draft rules propose to use the land for other purposes--allowing potential conservation uses. He questioned the legality of reclassifying these lands by administrative rules. He also said the rules would delegate to the prospective bidders which land would be subjected to conservation uses for periods of up to ten years. He presented several pictures of land owned by The Nature Conservancy which had not been grazed, comparing them with adjacent state land that had been grazed; saying this shows a misconception that nonuse is a good conservation measure as it relates to these lands. He requested the Board not adopt the rules today, and spend time for further study and information.

Secretary of State Keisling asked O'Leary how further study would address the legal point he raised of the legality of allowing nongrazing uses. O'Leary felt it would. He stated that nongrazing uses are legally impermissible and scientifically invalid.

In response to a question by State Treasurer Hill, O'Leary said the lawsuit filed deals with whether or not the 1983 direction of the Board to standardize all its leases to include the terms of the 20/20 leases can be an enforceable directive and be incorporated into the existing leases. O'Leary said the lawsuit will help in understanding what valid existing leases the agency now has, and when they become subject to the procedures in the rule.

State Treasurer Hill asked if O'Leary had a comment regarding the Attorney General's advice that the agency doesn't have an option but to accept competitive bidding. O'Leary responded that competitive bidding had been under consideration before but was rejected in favor of the current individual negotiation, after a 1979 Attorney General opinion saying competitive bidding was not required as an expression of trust responsibility.

State Treasurer Hill discussed a case in Idaho where competitive bidding has been practiced. He said the outcome of the case should shed light on this situation.

Governor Roberts asked Assistant Attorney General Bill Cook to comment on adoption of the rules with the lawsuit being filed, as referenced by O'Leary. Cook said the state recognizes that the rules must recognize valid existing contract rights. He said the pending case against the Land Board and the Division may well tell us what those valid existing contract rights are, but he said there is no reason the rules cannot be adopted at this time.

Representative Denny Jones requested the Board not adopt the rules at this time. Jones questioned how the agency could treat some lessees differently than others by making them subject to competitive bidding. He said lessees will be at a disadvantage by having to competitively bid against entities such as The Nature Conservancy, the Sierra Club, and the Oregon Natural Resource Council. Jones said he agreed with the initial increase in fees to \$3.01 per AUM, but doesn't agree with the incremental increases for four years, since there is no guarantee as to what will occur with cattle prices. Secretary of State Keisling clarified with Director Gustafson that, if the cattle market goes down significantly, the price per AUM will not rise to \$4.56. Governor Roberts reminded Jones that the beef market has previously fluctuated with prices going up without relationship to the price that was paid per AUM to the state.

Bill Perry, Oregon Farm Bureau, said they are against the competitive bidding process. He said it's in the best interests of the stability of the Common School Fund to maintain the land in cattle grazing, and it serves the land better. He said if competitive bidding is allowed, there should be no set fee, but rather the market should decide what the land is worth. He said if a base fee must be set, he would rather it be at 10.6 percent, rather than going up to 20 percent, as is planned. He also said that if competitive bidding is chosen, a provision should be added providing that agricultural or commercial purposes only will be allowed.

Perry noted that the proposals for the Elliott State Forest are sending a drastically different message than these rules. He said the rules give the impression that conservation means nonuse. His opinion is that the lands become better by grazing. ODFW uses grazing on Sauvie Island to enhance bird habitat, he said. He believes nonuse should be categorized with the alternative uses, rather than with grazing. He said they are glad that in the sealed bid process, the present lessee is allowed 10 business days to meet the high bid.

He asked who will be required to build fences under the open range law. Assistant Attorney General Bill Cook said the open range law doesn't apply to all our leases, so it will be a case-by-case determination. If the law doesn't apply in the area, it is the rancher's responsibility to ensure his animals don't stray. If a person leases land for conservation use, and the open range law does apply, it is up to the lessee to fence the animals out.

State Treasurer Hill asked if by "commercial uses" Perry was including such things as financial resorts, vacation rental properties, etc. Perry said any use would need to comply with the local land use planning. He said he is still against competitive bidding, but was presenting options that might bring some money to the local community. He prefers the land should stay in grazing.

Secretary of State Keisling asked Director Gustafson what would happen if someone came forward requesting a lease to raise a crop. Gustafson said that first a determination would be made based as to whether the fiduciary responsibility was best met by the proposed use. If so, the request would be handled under another existing authority under statutes and rules for agriculture. If two requests for agricultural leases came forth for the same property, a determination would need to be made as to the one that would serve the best interests of the Common School Fund, or which would give the highest benefit in the case of a nontrust property.

Bill Marlett, Executive Director of the Oregon Natural Desert Association, said they are specifically interested in the Owyhee Canyon lands. Their primary goal there is to restore arid landscapes and he said removing livestock from these lands is one of the best ways to do that. He commented that these desert landscapes are not fit for livestock grazing.

Marlett said that a 3-year survey was done on the Hart Mountain National Antelope Refuge to determine its suitability for livestock grazing on 275,000 acres in southeastern Oregon. The conclusion of the study was that livestock is not an appropriate activity on those arid landscapes.

Marlett said one of their goals in leasing land in this area would be to restore water quality and the riparian and upland habitat. He encouraged the Board to adopt the rules as proposed. He asked the Board to strike the provision allowing a prior lessee to trump the high bid under the sealed bid process. He said this is unfair and not conducive to competitive bidding.

He suggested that any use of state land that restores the ecological integrity of native ecosystems should receive a credit for beneficial management under a stewardship management system.

Marlett said in going through agency records, they noticed that leases are bought and sold on the open market. He said this issue needs to be resolved. Governor Roberts asked for clarification on this issue. Director Gustafson said that leases can be assigned, which is a different issue than subleasing as discussed previously, where the Division gets the money. When assigning a lease, the lessee selling the lease gets the money. Assistant Attorney General Bill Cook said the new wording of the subleasing section of the rules will prevent the former lessee from profiting from the sale or assignment, and that any profit will accrue to the Division.

State Treasurer Hill asked whether Marlett thought other types of developers (i.e. residential resort development) should be allowed to bid against the Oregon Natural Desert Association. He disagreed saying that the use must be compatible with existing activities. He said this should be determined on a case-by-case basis.

State Treasurer Hill said it is a question of whether this is a fiduciary issue or an environmental issue. If it is clearly a fiduciary issue, then it should be open to the highest bidder for whatever use in accord with the land use planning already done for the area.

Marlett said they would immediately remove some internal fences to allow free and safe passage of wildlife. Other than that, he doesn't expect to have to do much hands-on management, feeling that nature does a good job in most cases. State Treasurer Hill asked Marlett if he believed actual degradation of state land has occurred due to grazing. He answered that less than 5 percent of lands westside could be considered in "excellent condition." Livestock are an exotic species, he said, not adaptive to the desert ecosystem, therefore doing a lot of damage.

Jim Coon, attorney representing Oregon Natural Desert Association, Citizens for Oregon Schools, and Rest the West, said the Secretary of State audited the Division and found that the return on the rangeland is little more than half of one percent. He said the Common School Fund has not been getting what it should from these lands--which is why he feels competitive bidding should occur. He said this is not because of the state statute or the state constitution, but rather the trust obligation that comes from the Admissions Act (the federal law) which gave these lands to the state of Oregon. If the statute says the lands are only to be used for grazing, then the statute violates federal law and is therefore invalid. He said if the rules don't provide for competitive bidding, there will be a lawsuit. They are waiting for the outcome of the rules to determine what action they will take. He said it is the school children's interests that are to be protected. The fiduciary responsibility is a matter of law and has to be implemented. Whether a rancher goes out of business, he said, is irrelevant. He said the rules shouldn't give the advantage of allowing the existing lessee to trump the high bid. He said any use that can make more money for the Common School Fund should be allowed, subject to all the rules and regulations surrounding the property.

Tom Pringle, Emeralds Wetlands Consulting, said he assists with the mitigation of wetlands. He bid on 11,000 acres of Division land in the February and December lease expirations. He said wasn't awarded the bids, though he felt he was high bidder in some cases. Some of this land, he said, is being leased for nine cents per acre. Many groups are paying \$1,000 an acre to buy wetlands. He believes the swampland alone could bring in a couple of million dollars a year to the Common School Fund if they were leased out at the going rate.

Pringle said the improvements should be depreciated on a seven to ten year schedule. He said the state should determine what all the improvements to the lands are worth and purchase them to eliminate the ambiguity. As an example, he said, as a native plant and seed collector, having 20,000 acres sprayed with herbicide and seeded in crested wheat is not an improvement.

He suggested the Division should create the management plans for the land prior to the bidding, to avoid lessees entering into the contract and later finding out the agency's goals. He prefers a sealed bid auction with the existing lessee not being able to trump the high bidder.

Lou Davies, Chairman of the Crane Union High School Board, read a letter from their board as well as the Crane Union Grade School Board protesting any increases in grazing fees and competitive bidding of state rangeland, stating it will be detrimental to local communities and local school funding. He asked why the Board hasn't interviewed all the school boards of the districts involved. He asked how so much of the school land moneys could be used for administration. He recommended that administration be turned over to the county judges and commissioners with 100 percent of the grazing fees going directly to the schools in the same district as the land.

Dale White, Harney County Judge, said 90 percent of the state's rangelands are not the original Admissions Act lands. He said they were acquired by exchanges, but with assurances that certain things would be done by the state. He said most of these lands were acquired through exchanges with the BLM in which the lessee had a vested Class 1 grazing right. White said promises made to the lessees when the exchanges occurred were to ensure that rights to the state lease would not be lost. He said rules proposed today break those promises and should not be approved. He said the consequences of adopting these rules would be to destroy the ranches, break the owners financially, and destroy the way of life in rural counties. He suggested postponing acting on the rules until these issues are resolved.

He stated there is a higher calling than a fiduciary or trust obligation and that is the moral obligation of keeping your word.

Ray Simms of Lake County spoke next as Assistant to the Board of Commissioners, Land Use Planner and Economic Development Director. He said he echoes the comments made by White. He reiterated that because state statutes and the constitution both refer to these lands as Common School grazing lands, he feels the Board goes beyond its authority in redefining them as rangelands, and asked that this issue be considered.

He said if leases are lost with existing ranchers in Lake County that it will cause an instability in the local economy there, and in the town of Lakeview and Paisley as well since they are so closely tied to each other and the commercial activities are taking place there.

Simms said he is concerned that the rules may allow the land to be taken out of productive agricultural use, which is inconsistent with the land use plan in Lake County. He asked that the Board delay a decision on the issue.

Governor Roberts explained that she needed to leave for an out-of-town meeting but would continue the discussion over her car phone for approximately 40 minutes before having to attend another meeting. State Treasurer Hill said he had a number of issues he felt he needed to discuss and wanted to ensure that sufficient time would be available to discuss them fully.

Secretary of State Keisling moved the Board approve the staff recommendation which would do the following:

1. Adopt the attached final rules governing rangeland management.
2. Repeal the Division's Grazing Policy, including the Land Board's conceptual approval (adopted January 25, 1993).
3. Interpret certain clauses in valid existing leases by:
 - a. directing the Division to:
 - i. subject leases granting a "nonexclusive right to negotiate for a new lease" to the competitive bidding process required in the new rules;
 - ii. immediately increase the rentals on "20/20" and "10/10" leases to the \$3.01 base rental fee for 1994 set in the new rules.
 - b. consider invoking the termination clause for the "20/20" and "10/10" leases only on a case-by-case basis if a future viable proposal is received to use a leasehold for a non-grazing use at a higher base rental amount.
4. Approve the revised wording in Subsection 141-XX-013(4), Page 20, which clarifies a lessee's financial obligations in the event of subleases, assignments, or pasture agreements.
5. Approve the revised wording in Subsection 141-XX-015(1), which clarifies an existing lessee's right to compensation for developments.

Governor Roberts seconded the motion. She then left the meeting and was shortly thereafter reconnected via speaker phone from her car.

State Treasurer Hill asked whether it was fair for the Board, who helped to create this situation (meaning the ranchers use of the land for grazing) to stop immediately and implement a program totally contrary to what has been happening. He asked for legal advice on this question. Director Gustafson said the agency had addressed the issue of competitive bidding for over two and one-half years, and competitive bidding has been in each draft version of the rules. Assistant Attorney General Bill Cook said a trustee must honor legally enforceable promises, and he believes the rangeland rules provide for that. Some of the leases, he said, do have renewal rights--many do not. Most of the current leases are not inconsistent with what the rules say. Cook said there are equity issues on both sides of potential lawsuits, so the determination will be made by the court's interpretation of the intent behind the lease clauses.

State Treasurer Hill asked whether the Grazing Fee Advisory Committee dealt with the issue of competitive bidding, and if not, then why. Director Gustafson said the committee was only asked to establish an equitable base fee. He said after the base fee was determined, then the question of competitive bidding could be addressed.

State Treasurer Hill asked Dr. John Tanaka, Associate Professor in the Department of Agriculture and Resource Economics at Oregon State University, to describe what the impacts of adoption of these rules would be. Tanaka said from strictly an efficiency viewpoint, the increased fee will cause an obvious increased cost of production to the ranchers, causing an adverse impact of higher costs and reduced profits.

The Treasurer then asked if the competitive bidding process would cause more funds to go into the Common School Fund. Tanaka confirmed it would to the extent that users of the resource would be able to pay a higher fee in the short run. He said it would be difficult to predict what the value of different viewpoints would be in the longer term and ability to raise funds, if revenue is not being produced from the resource itself. The Treasurer asked if it would be possible to predict this if there were more time for further study. Tanaka confirmed it could be, but said for the amount of money a study would take, it may not be a good use of funds. Tanaka said most studies show if you raise fees, whether base fee or going to a competitive bidding process, there will be an adverse impact both in profitability and in terms of the overall value of the ranch.

Governor Roberts cited the State of New Mexico where they doubled their leasing rates and found it created no different economic dislocation or leasehold vacancy rates. She said even with the doubling of the rates, it would be an increase of less than one-half of one percent in terms of the cost per head of cattle. She asked where the negative economic results are derived. Tanaka answered the impact was from the reduction in profits. The Governor replied that by any economic standard it shouldn't be a large enough impact to put any rancher in a noncompetitive position. Tanaka agreed that, though it is a negative impact, it wouldn't be highly significant. He said another negative impact is on the value of the overall ranch. Another component, he said, regarding a competitive bid is if the rancher loses the lease through the process, that will cause adjustments in their operation if they stay in business.

The Treasurer asked if competitive bidding involving a nonuse is a very new concept, and if there is a track record where it has been successful. Tanaka said it has been used in Idaho. Director Gustafson said the State of New Mexico has competitive bids for nonuse. He said he also believes that Oklahoma has received some unsuccessful bids for nonuse. The Treasurer asked if any states have demonstrated more funds going into the Common School Fund as a result of competitive bidding for nonuse. Jeff Kroft, Division of State Lands, confirmed that Oklahoma has for a number of years offered leases for various uses, proving this increases the desirability of the parcels. Director Gustafson agreed that no firm data were available at this time.

Treasurer Hill said it is understood what is currently being done for stewardship. He asked whether there will be changes to the stewardship, if we move into competitive bidding for nonuse. Director Gustafson said the answer lies in the rangeland management plan required of all new leases. Its thrust will ensure that the overall integrity of the land is maintained.

Treasurer Hill then asked if the Division has done any analysis of the effects of competitive bidding on the long-term value of the land, to which Director Gustafson said no. Hill asked if the Division has done studies concerning what could actually happen to the funds coming into the Division as a result of the competitive bidding. Gustafson said that surveys of the other states that competitively bid show they get more applicants when leases are competitively bid and therefore increase the opportunity to raise additional funds.

Treasurer Hill asked what the cost would be of implementing a competitive bid system and asked that it be compared to the gains. Gustafson said there would be a slight increase in cost over what has been done previously, but there would also be an increase in the base revenue input. He said that if there is reason to believe that the cost of conducting a competitive bidding process would outweigh the benefits, the rules allow the tract to be exempted from competitive bidding.

Treasurer Hill asked again what specific revenue increases expected from competitive bidding. Director Gustafson said spreadsheets have been developed based on various scenarios of what revenue would be expected from competitive bidding (whether 10 percent, 20 percent or 30 percent were actually bid). Gustafson said these projections show a definite revenue gain under competitive bidding.

State Treasurer Hill asked whether degradation of state lands has occurred due to grazing. Kroft said the last study was done in 1970 of the lands that were held at that time. Since then, he said, range managers have done a comprehensive job of documenting the conditions of the lands under numerous climatic and other conditions. Gustafson said there hasn't been a scientific, criteria-based analysis of state land since 1970, and that the rules will assist in determining how well these lands are being managed in terms of rangeland health. Secretary of State Keisling said the answer to that is really indeterminate, based on a lack of good systematic research. Director Gustafson agreed.

State Treasurer Hill asked if the asset management plan will help manage all land including the grazing land better. Director Gustafson said though it won't answer everything, it will help by providing a land classification system and where it will be applied. It will also assist with questions of whether to sell or retain properties, as these decisions are faced. Treasurer Hill asked whether development of the asset management plan should come prior to the rules. Gustafson said that in structuring the new lease terms, if the rules were adopted, they would tie into the adoption of our management plans, which are an outgrowth of the asset management plan.

State Treasurer Hill asked whether further exchanges with the BLM might not alleviate some of the concerns that the ranchers have of being under state jurisdiction. Gustafson said that is possible, but said another set of rangeland rules currently being developed on the federal side may or may not make those ranchers more comfortable than the state rules.

State Treasurer Hill asked if the Board could wait for exchanges to occur that would allow the ranchers to perhaps have a choice between being under the BLM or under the state with competitive bidding. Director Gustafson said that exchanges with the federal government generally take a long time. He said there may be some strategic land exchanges that could help in some areas, but overall it likely wouldn't be an answer.

State Treasurer Hill asked why there is a rush to implement this immediately without taking time to determine the experience of other states with competitive bidding for nonuse and considering the equity issues. Director Gustafson said the Board from a fiduciary standpoint must maximize the revenue return and competitive bidding is the best way to start doing that. He said the situation is changing with use of competitive bidding and that it is beginning to be used more commonly. Assistant Attorney General Bill Cook commented that if the Land Board doesn't move toward some kind of a market mechanism soon for rangeland leases, he believes there will be a battle in court. He said the Board would need to articulate to the courts in trust terminology why it is in the best interest of the Common School Fund to wait longer.

State Treasurer Hill again questioned why the Board would rush into competitive bidding for nonuse while being unsure of the impact it will have. Secretary of State Keisling said that experience shows if you have more than one bidder, chances are that more revenue will result. He said the Board has 50 years of experience and he's unsure how further experience will be gained, unless the Board moves ahead. He said if you own something, you ought to have some ability to decide the terms by which people can bid on it, and who you sell or lease to.

State Treasurer Hill said he's not against raising the rangeland leasing fees, but is concerned rather with the uncertainty involved with competitive bidding. He said fiduciary responsibility means you eliminate as much uncertainty as possible. He said competitive bidding for nonuse is a new issue and has not been evaluated very well.

State Treasurer Hill moved the Board eliminate competitive bidding from the rules before adoption. There was no second for the motion.

State Treasurer Hill moved the Board allow competitive bidding, limiting it for only grazing purposes. There was no second for the motion.

Governor Roberts reiterated that this issue is of concern to the many people, particularly those of the eastern part of the state who have been involved in cattle grazing. She said that from the states who do competitive bidding that it is clear that fiducially it is more advantageous because more funds are returned to the state, but also that it has not been highly disruptive to the agricultural or grazing systems in operation for a long time. She said most ranches will probably continue, and she doesn't predict any drastic changes. She believes the new rules will assist in maximizing revenue from the land and also deal with rangeland health. She said it shouldn't be a risk financially, or in the long run a risk to the health of the rangeland.

State Treasurer Hill again stated his concerns of risk with competitive bidding for nonuse. He said with more time the risk could be eliminated. He commented that the impact will be tremendous, especially on small or medium-sized ranchers and again stated that he doesn't understand why the Board must rush into the issue. He said he will vote no on the motion.

Secretary of State Keisling said the Board is compelled by law to make the decision now. He said Oregon would be among the very few states to allow nonuse, but right now Oregon is among the few western states who don't allow competitive bidding.

He thanked everyone involved for the work done to bring the rules to the Board.

The previous motion passed with a two-to-one vote, State Treasurer Hill voting nay.

Governor Barbara Roberts moved the Board adjourn. State Treasurer Hill seconded the motion and the approval was unanimous. The Board adjourned at 1:20 pm.


Gary Gustafson, Director


Barbara Roberts, Governor