

The State Land Board met in regular session on February 11, 1997 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97310.

Present were:

John Kitzhaber	Governor
Phil Keisling	Secretary of State
Jim Hill	State Treasurer

Assistants

Paula Burgess
Rollie Wisbrock

Staff

Paul Cleary
John Lilly
Steve Purchase
Gary Van Horn
Jenifer Robison
Gail Lowry
Jeff Kroft
Steve Moser

Dept. of Justice

Bill Cook

Governor Kitzhaber called the meeting to order at 9:10 am. The topics discussed and the results of those discussions are listed as follows. Further details of the discussions may be obtained in the written transcript of the meeting available at the Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310 (phone: (503) 378-3805).

Rules

Request for approval of administrative rules establishing a General Authorization for removal-fill associated with recreational and small scale placer mining within essential indigenous anadromous salmonid habitat.

Director Paul Cleary explained that these rules will replace temporary rules that expired in October. They allow the agency to control recreational placer mining by requiring permits for removal of any amount of material exceeding 25 cubic yards within essential indigenous anadromous salmonid habitat, and by using a General Authorization (GA) for any removal of less than 25 cubic yards.

Cleary said the GAs are like a standardized permit, that must be applied for and reviewed by the Division to ensure that the minimum conditions are being met to adequately protect the resource. Additional conditions or restrictions can be added as needed or, if the need justifies, a regular permit can be required. The GAs can be retroactively modified or terminated if necessary to address resource or cumulative impact concerns. Cleary said the Oregon State Police, ODFW, BLM and the Forest Service will assist with monitoring.

Cleary stated that a temporary staff person will be hired again this summer to be in the field. He said meetings will be held with the National Marine Fisheries Service (NMFS), land management agencies, resource agencies, miners and conservation interests to develop a monitoring protocol. Adjustments to the rules allow non-motorized hand operated equipment to be used and require that individuals not dig outside of or extend the wet perimeter. The GA provides for best management practices that the Division hopes would become standard operating procedures regardless of whether individuals are operating in essential indigenous anadromous salmonid habitat or not.

Cleary said the agency will work with the federal agencies to help effectively regulate activities on their lands, since the highest concentration of activities were noted on federally managed lands. He said if an effective job is done in regulating these activities, it is possible they may be able to continue. If regulation is ineffective, the activity may be prohibited.

He reviewed the proposed rule revisions and clarifications that were provided as a handout to the Land Board at the meeting. He also reiterated that each GA application must be reviewed and would be elevated into the individual permit process if there are problems. He said this process allows the agency to regulate minor activities, while focusing more resources on the activities with a greater impact.

Liz Frenkel, Corvallis resident, said the temporary rule previously required general authorization holders to file an annual end-of-season report indicating where they operated and the approximate amount of material removed. She said in the proposed rule, this requirement is deleted. She would like a report form to be turned in after the mining season. Frenkel added that at the end of every five years the agency must review the general authorizations to ensure that activities were similar in nature and would cause only minimal impacts, not long-term harm to the resources of the state. She said the agency needs concrete records for its accountability. She mentioned also that a monitoring protocol is needed to know who is checking these activities and how they are monitoring compliance.

Cleary said a provision could be added to the rule requiring an annual report. He said a form would be developed and mailed to GA holders to make this simpler.

Sue Hallett, Oregon Independent Miners (OIM), thanked Division staff for their efforts to work with the miners to resolve some of their objections to the rules. She stated the concern that, while these rules are fine for essential habitat, she doesn't want them to be applied statewide.

Hallett said the temporary rule reporting requirement was always voluntary. She said OIM is also interested in undertaking their own survey regarding the effects of mining.

She requested that OIM be invited to play an active role in the salmon summit. Governor Kitzhaber said they would be an important part of the process if a salmon summit is convened.

Cleary commented on a letter received from NMFS by saying that protection of the resources is a paramount activity under this program. He said the GAs allow the staff's focus to be on the activities which have the greatest impact, while protecting the resource. He said a provision will be added to require an annual report for those with GAs on a form provided by the Division, developed in cooperation with the OIM, and that a monitoring protocol committee will be formed.

Secretary of State Keisling moved the rulemaking be approved with the proposed changes as outlined and an additional requirement for annual reporting for GA holders:

#1 changes to OAR 141-89-030(1)(c):

- (1) To be eligible for this General Authorization, recreational and small scale placer mining operations must conform to the following:
 - (c) Nozzling, sluicing, or digging shall not occur outside the wet perimeter, nor extend the wet perimeter.

#2A changes to OAR 141-89-030(1)(f):

- (1) To be eligible for this General Authorization, recreational and small scale placer mining operations must conform to the following:
 - (f) The activity shall not include movement of boulders, logs, stumps, or other woody material within the wet perimeter other than movement by hand and non-motorized equipment.

#2B changes to OAR 141-89-030(1)(l)(G):

- (1)(l) In addition to OAR 141-89-030(a)-(k) of these rules, within Oregon Scenic Waterways:
 - (G) The activity shall not include excavation from the streambank or movement of boulders, logs, stumps, or other woody material other than movement by hand.

State Treasurer Hill seconded the motion and the approval was unanimous.

Rules Request for approval of administrative rules regarding: (1) the establishment and operation of compensatory wetland mitigation banks; (2) payment to provide compensatory wetland mitigation, and (3) protection of wetlands in lieu of compensatory wetland mitigation.

Director Cleary explained these new rules would provide and control three additional wetland mitigation options: mitigation banking, payment to provide, and protection in lieu. Cleary emphasized that these rules will provide greater flexibility in processing permits and providing mitigation, but will not lower permit standards. He said a guidance manual, standardized forms and case study models will be developed to ensure the success of the banks. He commended the technical advisory committee that worked with the agency for fourteen months, as well as Larry Devroy, mitigation specialist at the Division, who he said did a "yeoman's job on the rules."

Daniel Heagerty, David Evans and Associates, commended the staff for the rules saying they will substantially improve our record for wetland restoration and permanent protection, while supporting watershed and ecosystem approaches. He said it will allow us to better achieve sustainability of our wetland systems. He encouraged the Board to move forward with the rules as proposed.

Jean Underhill-Wilkinson, general counsel for the Oregon Cattlemen's Association, spoke on behalf of Fred Otley, President of the Association. She asked the Board to temporarily postpone the adoption of these rules, since the Association felt they had not had adequate opportunity for input and are uncertain of the ramifications of the rules. She said agriculture interests potentially would be the majority of those who will be owning property next to these wetland preserves and this could have a widespread effect on those in agriculture. She said those interests should be represented and have input in the planning stages of where banks should be located.

Governor Kitzhaber asked Director Cleary to explain the public input process that had occurred in the rulemaking so far and to respond to the Association's concerns. Cleary explained that a technical advisory committee was formed in May with 22 members which met through October with ten public hearings held in various locations around the state. Draft rules were mailed to 130 different individuals.

Cleary said when a proposal is received to create a mitigation bank, notice is to be published; all adjacent landowners must receive a notice, as well as state and local planning agencies, and soil and water conservation districts in the area. Cleary said it is important to have the involvement of the agricultural interests and the adjacent landowners in proposals for development of the banks to ensure they are appropriately located and don't create problems for adjacent

landowners and to protect the bank sites from activities occurring on adjacent lands. He said these notification requirements are built into the rules.

Governor Kitzhaber asked that Wilkinson relay to Mr. Otley that the agency will work with the Cattlemen's Association as well as other agricultural interests to ensure their concerns are addressed when the program is implemented.

Steve Gordon, speaking on behalf of the City of Eugene and the Council of Governments, spoke in favor of the administrative rules. They have operated a mitigation bank since 1993. He said mitigation banking represents a comprehensive approach at large scale mitigation as opposed to incremental piece meal mitigation that takes place at the individual level. Regarding concerns about taking the property out of the tax base, Gordon said that, at the regional level, the loss of putting the lands into wetland mitigation banks is more than offset by the taxes on development that buys the credit.

Gordon suggested the concept of "banking" might also effectively be used in other areas such as stream enhancement and riparian restoration.

He asked for clarification regarding Section 420, to ensure that it is referring to establishing rather than amending a bank in a manner that wouldn't substantially impact functions and values. He proposed adding language to the rule that would exempt existing banks, if his understanding was incorrect. Cleary said he agreed with Gordon on his interpretation of the rule, and he saw no need for added language.

Pete Test, Oregon Farm Bureau, said mitigation banking is important to agriculture and to preserve the wetlands. A concern of his was that the common person could not understand the rules. Parts of them, he said, are unclear. He echoed the concerns of the Cattlemen's Association, saying the Farm Bureau would also like to work with the Division to have input and to deal with the Bureau's concerns. Governor Kitzhaber assured Test that the Farm Bureau would be involved.

Secretary of State Keisling moved the item be approved. State Treasurer Hill seconded the motion and the approval was unanimous. Governor Kitzhaber reiterated the need for the Division to sit down with the agricultural interests to address their concerns regarding implementation of the rules and Director Cleary committed to that follow-up.

Secretary of State Keisling said this was outstanding work and a commendable example of how new tools can be added to help landowners and others meet the needs of the economy and environmental protection.

Governor Kitzhaber asked that the item regarding the Grants Pass Jetboats be removed from the Consent Agenda, since individuals were present wishing to testify regarding the issue.

Scenic Waterway Request for approval of a scenic waterway permit to be issued to Grants Pass Jetboats, Inc. to do limited channel dredging to enhance channel depth within the Rogue River State Scenic Waterway.

Director Cleary said this is a request to allow the removal of up to 50 cubic yards in two scenic waterway sites on the Rogue River, at White Horse and Hog Riffles, to provide safe boat passage for commercial and non-commercial boats. Cleary said the agency worked with the Parks and Recreation Department, Department of Environmental Quality, Water Resources Department and Department of Fish and Wildlife to ensure that resource related concerns are addressed.

BLM, who manages the river use, is preparing a management plan to address issues such as the jetboat size, the number and timing of trips, etc. Cleary said the agency developed a list of conditions that must be met as part of the proposed material removed. He added that the request meets the requirements of a removal-fill permit and the Scenic Waterway Act. He informed the Board that a trip is planned for May with the resource agencies and the operator to view the sites to determine whether any additional work is necessary and how to do that in a manner that minimizes any impact on the resources. Cleary said the Board could defer making a decision on the issue until the April Board meeting, if they chose.

Randy Hicke said he believes the Board should grant this request, and stated also that the Board should experience this trip down the river in a jetboat. He asked what the Board's liability would be under civil law if they deny the request and someone is injured because of restricted boat passage.

Robert Hamlyn, President of Hellgate Jetboat Excursions, reviewed his business saying of the 104 wild and scenic rivers in the country, there are only four where one can actually do a jetboat excursion down the river. He reported that his company has operated for over 40 years with no loss of life or major injury, but almost every year end up rescuing someone. They have the largest tourism business in Josephine County with the local economic impact of over \$6 million.

He said they may not need to use the permit this year, but if work is needed, it will benefit not only the commercial users, but all river users as well in improved safety.

Secretary of State Keisling asked if there is a good possibility that requests for removal and dredging of these two particular spots will come up again because

they fill back in over time. Director Cleary agreed that because these locations are on sharp bends in the river, they likely will require continual attention. Cleary said the permit would authorize work for this year only. If it is allowed and the work occurs with minimal impact, a permit renewal may be considered.

Keisling asked whether there were any other requests of a similar nature on the horizon. Cleary responded that he knows of none. He said considering the flood damage, when they visit the area, they may see other problem sites. He said this would require an amended permit and a whole new public review and consultation process.

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

Consent Agenda

Scenic Waterway Request for approval of a scenic waterway permit to be issued to the Oregon Department of Transportation for removal and filling for the realignment of the Clackamas Highway within the Clackamas River State Scenic Waterway.

NHAC Request by the Natural Heritage Advisory Council for approval of the addition of three sites to the Register of Natural Heritage Resources (Williamson River Delta, Kingston Prairie, and Illinois River Forks State Park).

Minutes Request for approval of the minutes of the December 10, 1996 meeting of the State Land Board.

State Treasurer Hill moved the items on the Consent Agenda be approved. Secretary of State Keisling seconded the motion and the approval was unanimous.

Informational Items

Navigability Update regarding Sandy River navigability study request.

Director Cleary reported that a review of the request by the Northwest Steelheaders Association for a navigability study on 37 ½ miles of the Sandy River was found to meet all the information requirements. The Steelheaders have requested the study to address conflicts between the waterway users and landowners and to clear up the ownership question.

Cleary said the next step in the process is to do a public and adjacent landowner notice to solicit comments from all sides to determine fully what the issues are, as well as what the possible alternative solutions might be, short of doing a navigability study. This comment period will extend about 45 days. After that time, Cleary said he would like to meet with the landowners and the Steelheaders to discuss what was learned during the input process. He said the issue will probably be brought before the Board again in June to determine if there is indeed "broad and substantial public interest" in doing a full navigability study. If a study is initiated, Cleary said there will be at least three additional points where the public will be notified and formal opportunity will be available for comment. Governor Kitzhaber said there were some individuals present who wanted to testify on the item. He said he would provide some time at the end of the meeting, after the rest of the agenda was finished.

Rules Update on progress in establishing rules to identify significant wetland resources.

Director Cleary said the rules on outstanding statewide wetlands that were brought to the Board as part of the locally significant wetland rules in December were pulled from that agenda, since there had been concerns with the proposed identification and assessment approach. It was determined that additional public comment would be received. Cleary said that new draft rules are out for public comment and should be back before the Board in April.

Legislation Update on 1997 legislation introduced by the Division of State Lands.

Director Cleary reported on the various legislation introduced by the agency. He said the bill that would allow the Division to assume the federal 404 permitting program was currently on hold while discussion takes place regarding various issues and concerns with interest groups. Cleary stated that a decision from a lawsuit in Washington, DC may change the landscape of that bill. He also reported that the agency budget will be before the Legislature the week of February 24.

Removal-Fill 1993-95 removal-fill biennial report.

Director Cleary said the biennial report for the removal-fill program has been completed. This material was provided to the Board.

Testimony Regarding Northwest Steelheader's Request for a Navigability Study

Larry Beaver, Director of the Sandy River Chapter of the Northwest Steelheaders, said they are anxious to have something happen with their navigability study request for the Sandy River, since they are experiencing problems with landowners. He said they also have a request for a study on the John Day River that should be resubmitted soon, as well as other requests in the process.

Kathy Amundson, Sandy River property owner, shared her concerns that Division staff were trying to cover up the fact that they had received a study request from the Steelheaders on the Sandy River. Governor Kitzhaber said that she should have been notified of the request, but that the process is just beginning and explained that she hadn't been excluded from that process. She stated that some property owners feel the Board has made the decision in advance to rule in favor of the recreationists, rather than the property owners in this dispute. Governor Kitzhaber said he didn't believe any of the Board had yet made up their minds on this issue. Amundson said that during last summer's navigability stakeholder negotiation process the landowners and sportsman were never given the opportunity to break into groups to try to work out problems.

Beverly Jones, Sandy River property owner, stated that the Sandy River is not navigable according to a study done in the 1980s and the Lewis and Clark journals. She expressed her desire to see a floatage easement to assist with the waterway user-landowner problems. She stated her willingness to work with the Steelheaders.

Jones said she doesn't have a problem with individuals walking on the banks on her property as long as she knows she won't be liable for any injuries they may suffer. She stated that other property owners should have the right to post their property if they choose. She would rather a navigability study not be done. Governor Kitzhaber said that the Board doesn't have a choice whether or not to consider doing a study, if one is requested. Jones said another issue that needs resolved is the problem with high water line markings.

Governor Kitzhaber agreed with Jones that it would be preferable to develop some mutually agreeable floatage easement, if possible. He suggested some individuals gifted in alternative dispute resolution processes might be of assistance here.

Director Cleary said the notice should be sent out to newspapers within two weeks. He said staff is working on compiling landowner addresses from county records and they should receive notice within four weeks. He said staff will also investigate alternative dispute resolution processes with the landowners and Steelheaders.

Governor Kitzhaber adjourned the meeting.

John A. Kitzhaber, Governor

Paul R. Cleary, Director