

Oregon

DIVISION OF
STATE LANDS

STATE LAND BOARD

BARBARA ROBERTS
Governor
PHIL KEISLING
Secretary of State
ANTHONY MEEKER
State Treasurer

The Oregon State Land Board met in regular session on July 28, 1992, at 9:00 a.m. in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon, 97310.

Present were:

Barbara Roberts	Governor
Phil Keisling	Secretary of State
Tony Meeker	State Treasurer

<u>Assistants</u>	<u>Dept. of Justice</u>	<u>Staff</u>
Anne W. Squier Nina Johnson Steve Smith	Bill Cook	Janet Neuman Gary Gustafson Earle Johnson Gary Van Horn Steve Purchase agency staff

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

Tongue Point Request for approval to enter into a Memorandum of Agreement with the Port of Astoria, Port of Portland, Economic Development Department and any other interested lower Columbia River port for development of a long-term master planning program for North Tongue Point, near Astoria.



Director Neuman reviewed the Land Board's 1989 approval for a lease with CARS, Inc. for development of a car import facility at North Tongue Point. The terms of this lease provided for a three-year Phase I period which would allow interim uses of the property by the lessee during the time that a car facility was being developed. Director Neuman stated that it is uncertain at this time whether CARS, Inc. will be able to make the deadline for submitting a site development plan. If no site development plan has been submitted by October 31, 1992, containing a specific commitment from a car manufacturer to import or export cars through the site, the lease will terminate on December 31, 1992.

Director Neuman explained that a contingency plan is necessary for the site in case the lessee is not able to submit a site development plan and the lease is terminated on December 31. She proposed a Memorandum of Agreement between the Port of Portland, Port of Astoria, and the Economic Development Department to assess the facility, to determine the best long-term development prospects and their impacts, and to develop a joint master planning process. She said that it is EDD's intention to use their best efforts to seek lottery funding for the planning process, but said at this time they cannot assure the Board that lottery funds will be available. Director Neuman said the process should take between 12 to 14 months to accomplish after funding is obtained. Director Neuman clarified that marketing opportunities and interim leases will continue to be pursued during this planning period.

Both Secretary of State Keisling and Governor Roberts commended the cooperation with the ports that is occurring related to this planning proposal.

Director Neuman said the big question is whether funds can be identified for the project for this biennium, or whether the major portions of the project will need to wait for the next biennium. She stated there is groundwork that can be done before the actual funding is obtained, using in-kind and staff services of the ports and the Division. The outcome of the plan, she said, will be to provide a viable return to the Common School Fund from the North Tongue Point property.

Dick Sadler, representing CARS, Inc., told the Board that the auto industry has been in a depressed state the last few years. He said that two Japanese auto manufacturers are very interested in the site, but that their commitment

to developing/using the site is contingent upon the foreign corporate management feeling comfortable enough with the American auto industry to make long-term commitments.

He stated that CARS, Inc. is considering expanding its marketing activities at North Tongue Point beyond automobiles to any other kind of normal port development work. Information about North Tongue Point was distributed to a number of major carriers in Asia; he reported that one of them has shown interest in the site for various uses, including automobiles. He requested that the Board postpone formal approval of the request for the Memorandum of Agreement to do the planning for the site, since he felt this move on the part of the Board will cause those with whom they are trying to negotiate to question what is happening concerning the availability of the site.

Governor Roberts said if the Board waits to do preplanning that they could risk the possibility of the property sitting idle. She said after two and a half years they had hoped to see something more positive from the lease efforts.

Dick Sadler asked to be able to share with the Board at a later date some other marketing possibilities.

Director Neuman stated that the Port of St. Helens may also be interested in becoming a signatory with the other parties to the Memorandum of Agreement.

State Treasurer Meeker moved the Board authorize the Division to execute a Memorandum of Agreement with the Port of Astoria, the Port of Portland, the Port of St. Helens, the Oregon Economic Development Department and other interested lower Columbia River port issues in terms of master planning for the North Tongue Point facility. Secretary of State Keisling seconded the motion and the approval was unanimous.

State Treasurer Meeker reiterated that this is a wonderful opportunity to accept the offer of the lower Columbia ports and to work together on this project.

Investment Policy Review of investment policies governing investments of the Common School Fund.

Director Neuman introduced this item stating it was the third annual review of the Common School Fund investment policy. After the change in the constitution and the statutes allowing Common School Fund stock investments,

the Board decided to invest all new revenues in equities of \$160+ million and maintain the bond portfolio at its (then) current level. In April 1991, the Board requested the State Treasurer's office to conduct an in-depth study of the Common School Fund investment mix to allow further refinement of the policy. On June 9, 1992, the Land Board received a report of the Wilshire Associates, Inc., study done under contract with the State Treasurer's office. According to Director Neuman, the report indicates with the current investment mix, it would take 297 years for the Fund to contribute 5 percent of the total school costs within moderate inflation and no growth in school population. Currently it is contributing .45 percent. The Wilshire Report recommended an investment mix of 45 percent in bonds, 50 percent in stocks, and 5 percent in cash. (Current levels are 66 percent in bonds, 16 percent in stocks, and 18 percent in cash.)

Director Neuman said there are three options as far as the level of distributions that will be made to the schools:

1. Concentrating on rapid growth of Fund principal, allowing near-term distribution decreases.
2. Setting a target level of distributions, to be maintained while implementing the other policies to the greatest possible extent; or
3. Implementing growth strategies using new revenue, conversion of cash investments, and reinvestment of stock earnings, while maintaining the bond portfolio at the current level for the near-term.

The preferred option would be the third. This option would allow the Board to manage the Common School Fund with a long-term goal of creating the sustained level of distributions that would amount to at least 5 percent of the total school expenses. The proposal is to: •continue investing all new revenue into stock index funds; •reinvest capital gains and dividends from these stocks into additional stock investments until the desired mix and distribution level is achieved; •convert a portion of the short-term cash account into equities as soon as possible--keeping only what's needed in cash for liquid expenses; and •maintain the bond investments at approximately their current level until the effects of Measure 5 have started to stabilize.

Director Neuman also recommended the Board continue to review the policy annually, and that quarterly meetings take place between DSL staff and Treasury staff to review and implement the policies.

State Treasurer Meeker suggested that a former Attorney General opinion requires the Board to recommend a policy to the Investment Council and that the Council should be the one to actually set the policy. Secretary of State Keisling asked if that would give the Investment Council veto power over the Board's recommendation. Governor Roberts said she felt the Board was to determine the mix of stocks, bonds and the Investment Council's job was to make the investment choices. State Treasurer Meeker suggested this would be something for the Attorney General's office to investigate.

State Treasurer Meeker moved the Board approve the Division's recommendations. Secretary of State Keisling seconded the motion and the approval was unanimous.

Asset Management	Request to begin development of a comprehensive asset management plan to guide administration of the real property holdings of the Common School Fund.
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Director Neuman introduced this item saying that along with concentrating on the Fund itself, and making the most out of the investments there, it is also important to be doing the same with the real property assets the Board manages. In order to manage them to the best extent possible, the Division needs a comprehensive real property asset management plan. The main purpose of this plan would be to formulate long-term goals for the performance of the real property portfolio, provide some standards to guide ongoing DSL management decisions, and clarify for the public and the education constituencies the Board's long-term expectations for the land assets.

The plan should contain the following components:

1. **Property inventory**--detailed information about the land and resource base; including specific resource information, income history and potential, and fair market value analyses.
2. **Current rates of return**--performance of various categories of assets in terms of net revenue minus administrative costs, and a comparison of these returns to the investment portfolio return.
3. **Goals and objectives**--desired levels of return commensurate with trust and statutory responsibilities; and identification of other values the Board wants to advance, particularly on non-trust lands (i.e., public trust uses, public access, education, etc.).

4. **Acquisition policies**--identify types of land to add to the Common School Fund portfolio and guidelines to apply to determine acquisition suitability.
5. **Retention and disposal policies**--guidelines for determining which lands should be disposed of and which should be retained and actively managed.
6. **Investment/development priorities**--guidelines for investment in particular properties or categories of land, in the form of site-specific management planning, infrastructure development, land use changes, etc.

Director Neuman stated the request before the Board would be to direct Division staff to begin work on development of an asset management plan by preparing a request for proposals to obtain planning services. This activity would be done in consultation with the Land Board assistants. Simultaneously, another effort would be pursued to expedite efforts on the resource inventory.

Secretary of State Keisling asked what the timeline would be for the project. Director Neuman stated it would probably be 60-90 days before there is information for the Board to review.

Secretary of State Phil Keisling moved the Board adopt the Division's recommendations. The approval was unanimous.

Budget Request for approval of proposed 1993-95 budgets for Division of State Lands, Oregon Wetlands Revolving Fund, South Slough National Estuarine Reserve, and Natural Heritage Advisory Council.

Director Neuman introduced this item explaining that the Division of State Lands' budget is comprised of the operating budget of the Division, the revolving fund for the wetlands mitigation banking program and, the operating budgets of the South Slough National Estuarine Research Reserve and the Natural Heritage Advisory Council. The budget also includes a capital improvement expenditure limitation for needed maintenance, repairs and emergencies on State Land Board property. She explained that the budget instructions which the Division must operate under for this biennium include a 10 percent reduction in any Common School Fund category and a 20 percent reduction in any General Fund category, in addition to the position

reductions the agency has been participating in as mandated through the Executive Department. The Division was allowed two exceptions to its base budget: 1) the finders' fees paid to contract auditors for unclaimed property were allowed as a "nonlimited" expense and were removed from the base, and 2) funds were added to cover a workload increase in the Environmental Planning and Permits Section to help meet statutory permit review deadlines. The Current Service Level Budget after claiming the above two exceptions and after the required 10 percent reduction totals \$7,457,620. Besides the position reductions, this reduced budget eliminates some of the funds used for building maintenance, service charges, publicity and publications, services and supplies, computer maintenance, Attorney General charges and professional services. Though this reduction will allow the agency's base programs to continue operations, there will be a corresponding reduction in work production and some delays in response time.

The Division's proposed base budget deletes three FTE positions (from 54.5 to 51.5 FTE). These reductions will likely result in some public service displacement.

Eight decision packages were submitted. Director Neuman said instructions from the Executive Department were that any decision packages must be related to the central agency mission, must have strong justification, and can only take the agency back up to 100 percent.

The proposed decision packages are 1) continuing the property manager position, 2) requesting a position to develop resource inventories and land allocation plans for DSL ownership, basically in Eastern Oregon, 3) requesting a position for contract monitoring, federal grant coordination and auditing, and supporting increasing workloads associated with state and federal regulations, 4) requesting a software analyst position, 5) requesting a position to assist in processing the increased number of waterway lease applications, easements and related functions, and 6) requesting two positions associated with the permit's base budget exception. (The other two packages request restoration of the South Slough and NHAC 10 percent and 20 percent reductions.)

Director Neuman stated that South Slough intends to make its required budget reductions by converting to a four-day work week. This is the equivalent of eliminating one FTE. They will also need to reduce the Federal Funds they receive by 10 percent. Their decision package would be to restore their funding in the same way it was taken away.

The reduced budget for the Natural Heritage Advisory Council would cause them to be unable to provide as much data base research service to state agencies under contract as they do right now. They are also proposing a decision package to restore their funds to the original level. Reduced Federal Funds will also mean fewer research projects.

Director Neuman discussed the proposal of discontinuing the student loan program by describing this program as being the lowest ranking in the agency because it doesn't link to the central mission, or relate to management of either land or water resources.

State Treasurer Meeker suggested determining what the rate of return would be if the program was serviced by someone other than the Division, and if it was considered as an investment rather than a program. Secretary of State Keisling questioned whether retaining the program in that manner might require the agency to keep the line item in the budget.

Governor Roberts stated that the program is really for higher education and is contrary to the kindergarten through 12th grade responsibilities of the Common School Fund.

Secretary of State Keisling commended Renata McCartney for the terrific job she has done with the program, and said it is painful to think about cutting any position. He asked if it would make more sense to get a change in law and house the program at the Treasurer's office.

State Treasurer Meeker said that this could be viewed as a bond substitute, since it will net returns equal to the bond market.

Director Neuman said that cuts must be made, and this program, since it is least directly related to the agency mission, seemed the best candidate for reduction.

Lois Davis, Director of Government Relations for Oregon Health Sciences University, and Phyllis Miller, Assistant Director for Financial Aid Services, came forward next to address the Board. Ms. Davis said she appreciated State Treasurer Meeker's approach to determining whether someone in the private sector might be able to administer the program. She said they see this program as an investment

in people, and stated that this loan program has been one that has been used by lower-income students. She said that rather than investing the Fund in stocks, it should be invested in students who will be providing health care to the state. She stated that if transferred, OHSU would be glad to administer the program.

State Treasurer Meeker asked whether there are other outside scholarship programs in which OHSU processes the front-end application. Ms. Miller affirmed that the majority of what they process are outside scholarship programs, basically federal funds. State Treasurer Meeker said perhaps we should consider a change in law to make the State System of Higher Education the administrator of the program.

Secretary of State Keisling asked about the college's foundation or endowment fund and how it is invested. He explained the Land Board's requirement under the prudent person rule to gain the highest return for the Common School Fund. He suggested that perhaps the college could take over this as part of the endowment they are investing. Ms. Miller stated she was unsure whether that would be possible and said she would provide him with information about the policies and rules for the foundation.

Governor Roberts asked if the Board were to move forward with the budget cuts including the student loan account, whether that would prevent us from saying the funds are still available legally, then investigating other options for managing the program, including OHSU.

Director Neuman said she believed that is possible, but said if the student loan item were left in the budget, then other cuts of \$90,000 would still be needed.

State Treasurer Meeker suggested the Board investigate both options of the private sector or OHSU taking over the administration of the loan program. Secretary of State Keisling suggested exploring the option of transferring the program to the State Treasurer's office. The Governor added that another option would be to discontinue the program permanently, or for a period of two years, until the budget problems improve. Collections would still need to take place, so there would continue to be a cost involved. Governor Roberts asked for an estimate of the cost for collection of the remaining loans.

It was further discussed that the Board may want to proceed with the cuts as proposed in the budget, including an estimated figure of what the cost will be to have the collection done. The alternatives could then be explored further.

State Treasurer Meeker moved the recommended budget be approved including reduced funding for the student loan program. Secretary of State Keisling seconded the motion and the approval was unanimous.

Scenic Waterway Request for approval of proposals by Thomas Jacobson and Jay Wright to conduct gold placer mining in the Elk River Scenic Waterway within the Siskiyou National Forest.

Director Neuman explained this item was a request brought before the Board at the last meeting where the decision to grant the permits was postponed pending an analysis of state ownership claim, royalty potential, and in view of how this situation fits with the recreational gold mining issue on state scenic waterways. Director Neuman stated it would take more evidence at this time to determine if there is a claim to this stretch of the Elk River. She also stated that under the current leasing rules it would be difficult to obtain revenue. These two issues, she said should not play into the decision at this time. She recommended a deferral of the decision, since substantial concerns have been raised about a Water Resources Commission rule that is said to exempt this kind of activity--possibly in conflict with the statute that says there should be no placer mining in state scenic waterways. She stated also that there have been concerns raised by Oregon Department of Fish and Wildlife as to the impacts of this activity and whether it is appropriate in a scenic waterway. The applicants also have sent mining proposals to the federal government, and an environmental assessment is being done, which should provide information useful in making a decision. Director Neuman said that deferral will not prevent the applicant from making their livelihood since this is a recreational activity, and the applicants have other claims they are pursuing on nonscenic waterways.

Neil Kagan from the Oregon Natural Resources Council voiced his opposition to granting this application stating the Board does not have the legal authority to grant the applications, since it is prohibited by statute. He said the Attorney General opinion on this issue is purely

advisory and that the statute takes precedence over the Water Resources rule. He said he feels the Attorney General's advice was wrong, as well as the Water Resources rule, and he will petition the Oregon Natural Resources Council to appeal that rule. He also said there could be a possibility of legal action with the issue. Whether the rule is rescinded or not, he said, it's void due to the lack of authority to adopt it.

Secretary of State Keisling made a motion to defer action on the issue at this time until further study has been done. Governor Roberts seconded the motion and the decision was unanimous. Secretary of State Keisling asked Assistant Attorney General Bill Cook if the Board approved the permit, whether the Board could be a possible party to a suit. Mr. Cook affirmed that could be the case.

**Emergency
Permits**

Request for approval of two emergency permits issued by the Division to allow temporary placement of sandbags in the Rogue River Scenic Waterway to aid safe passage by recreational boats through areas of extreme low water.

Director Neuman introduced this item by saying the statutes require that any emergency permits granted by the Division allowing fill or removal in a State Scenic Waterway must be presented for review at the next Land Board meeting. Emergency removal-fill permits were issued within the Rogue River State Scenic Waterway to Hellgate Jetboat Excursions, Rogue Wilderness, Inc., and Jerry's Rogue Jets to place sandbags on an emergency basis in the Rogue River where water levels were exceedingly low, making boat passage dangerous. The sandbagging would allow more flow in the main boating channels, thereby enabling boats to avoid dangerous situations on their excursions.

Director Neuman stated the situation is a temporary one, because the Corps of Engineers, which artificially controls the water level of the river, will be making additional releases on August 11. The Bureau of Land Management, who manages the boating permits for these excursions, contacted us regarding their concern for public safety and accidents that had occurred. Division staff discussed the permit requests with the Department of Fish and Wildlife and the Parks and Recreation Department and they weren't opposed to the issuance. Some opposition was received, primarily scenic concerns.

Governor Roberts asked who has the authority to prevent boats from using a waterway during situations of low water. Director Neuman said that the Marine Board is responsible for that, but because of enforcement problems, they have exercised that authority just once.

Secretary of State Keisling voiced his concern with the precedent this might set. He said that decisions like this should be made in a more comprehensive way.

State Treasurer Meeker requested the Division to develop a policy on issuance of the emergency permits and asked that the Attorney General be involved in the policy development.

Governor Roberts questioned whether it would be best to place sandbags in a river that is considered dangerous or remove the boats. She stated this could place the Board in a liability situation. She reiterated that a policy needs to be in place for future requests.

Secretary of State Keisling asked what the issuance of these permits had cost the Division. He said in the future, if the individuals making these requests are required to pay for the costs involved, they may change their minds about them.

State Treasurer Meeker made a motion that staff should develop a policy for issuance of emergency permits for the Board to review, including application fees. Secretary of State Keisling seconded the motion and the approval was unanimous.

Consent Agenda

Administrative Rules Request for authorization to initiate rulemaking to revise the administrative rules governing the issuance of easements on state-owned lands.

Administrative Rules Request for authorization to initiate rulemaking to revise existing administrative rules governing procedures for the reservation and release of state-owned mineral resources.

Minutes Request for approval of June 9, 1992, State Land Board minutes.

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

AG Opinion

Presentation by the Department of Justice concerning a legal opinion in response to questions regarding trust land management responsibilities within the Elliott State Forest.

Director Neuman introduced Deputy Attorney General Jack Landau to discuss the Attorney General Opinion regarding the trust land management questions asked by the Land Board.

Deputy Attorney General Landau introduced Don Arnold, administrator of the General Counsel Division, and Amy Veranth, the opinion coordinator, to assist him in answering questions. Mr. Landau reiterated that an opinion is just that--not a court ruling but a professional guess of what the courts would do if confronted by the question.

In response to the first question of whether the Oregon Admission Act limits the Board in applying standard in Article 8, Section 5, of the Oregon Constitution for management of Admission Act lands, Mr. Landau stated the answer was no. He further explained that the Admission Act which is the federal grant of certain lands to the state for the use of schools, does impose a binding obligation on the Land Board to use those lands solely for schools. Article 8 of the state constitution provides that any of the proceeds from the Admission Act lands be dedicated in trust to the Common School Fund. Mr. Landau replied that though there was an amendment to the Article in 1968 which inserted the management standard that the Land Board must manage for the greatest benefit of the people, this is consistent with the Board's obligations under the Admission Act.

Mr. Landau stated that the answer to the Governor's second question of whether the Admission Act or the Oregon Constitution requires the Board to maximize revenue consistent with the prudent investor rule for management of Admission Act lands is yes. This is maximizing revenue over the long term, revenue that includes resources other than timber, while considering noneconomic constraints to the extent that they do not diminish long-term financial interests.

In respect to the third question of whether the Oregon Admission Act or the Constitution exempts the Board from complying with the federal or state Endangered Species Acts on admission act lands, Mr. Landau replied the answer is no. He said there is no express exemption in any federal law or any state constitution or law allowing noncompliance with the federal Endangered Species Act. With respect to the state Endangered Species Act, he said the Legislature can enact legislation limiting the authority of another constitutional office so long as it doesn't unduly burden the exercise of the constitutional functions of the office.

The fourth question, Mr. Landau stated, is whether or not the Common School Fund is entitled to compensation from the federal government for asset or revenue reductions caused by compliance with the federal Endangered Species Act. He stated the answer was probably not. It must be proven that all or nearly all of the value of property has been taken before it can be established that a constitutional taking has occurred.

Tony Meeker asked if there's been any case law developed regarding a take where there has been a trust created through the Admissions Act in our Constitution. Mr. Landau replied they had found no cases in point, but that each was evaluated on a case-by-case basis.

State Treasurer Meeker asked if revenue generation were reduced to 80 percent of where it had been from prior history, whether this might be a justifiable case. Mr. Landau stated that it is possible--depending on a number of factors, the most important being the diminution in value.

Mr. Landau stated the final question was whether the school fund is entitled to compensation from the state General Fund for asset and revenue reductions caused by compliance with the state ESA. He said the answer is no, because it would be an impossible situation for the obligations of the Endangered Species Act to so interfere with management obligations that it would create a taking. He explained that would be an undue burden and the Legislature couldn't do that.

State Treasurer Meeker made a motion that the Board adopt an interim proposal using the 70-acre take standards developed by the State Department of Forestry in regard to the Elliott State Forest, which he said would enable sales to proceed and Constitutional responsibilities to be met until a time that standards are developed.

Secretary of State Keisling asked Russ Peterson, Field Supervisor of the Portland field office of the U.S. Fish & Wildlife Service, if the federal government is legally required to provide guidelines with respect to the northern spotted owl. The answer was negative. The guidelines, he said, were developed to help people understand the responsibilities under the Act with regard to take. Mr. Peterson stated that 70 acres was the habitat required for a juvenile owl before it leaves the nest, but was not sufficient habitat for adult owls or breeding owls trying to maintain juveniles. Keisling inquired of Mr. Peterson if Meeker's motion passed, whether the Land Board could be sued for violation of the federal Endangered Species Act. Mr. Peterson confirmed this would be possible.

State Treasurer Meeker inquired of Mr. Peterson his authority in the State of Oregon. Mr. Peterson stated that his agency reviews the actions of other agencies and provides advice and guidance. He stated that he doesn't have the authority himself to enter into a lawsuit; that a potential take situation, as described before, would be referred to the regional director who, with the Justice Department would decide whether to enter into a suit. State Treasurer Meeker questioned what the definition for "take" is, and whether Mr. Peterson had recommended action against any private person under the state Forest Practices Act 70-acre rule.

Mr. Peterson said that he had not recommended any action. Take, he explained from the definition in the Act, is "generally harm and harassment." From the Act, he read the definition of harm as "An act that actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding or sheltering." He continued by reading the definition of harassment as being "An incidental or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering."

State Treasurer Meeker inquired whether there would be instructions developed and Mr. Peterson said there is currently an effort underway to define through the rulemaking process what a take is in relation to the spotted owl. Mr. Peterson could not give him a time frame as to when to expect the guidelines, but said the question of take would be dealt with on a case-by-case basis in the absence of the rule or guideline.

Secretary of State Keisling asked Ray Craig, Assistant State Forester with the Department of Forestry, if the Treasurer's motion would violate the federal Endangered Species Act. Mr. Craig replied there were three things that State Forestry must consider in a policy recommendation: 1) their contract requirements to the State Land Board; 2) state and federal law; and 3) contract considerations with Forestry as a seller and purchaser of timber. The proposed motion would maximize revenue under the contract requirements, at least in the short term. He said the Attorney General's office has advised not to adopt the 70-acre rule. Mr. Craig continued by saying that Forestry is reluctant to enter into contracts with purchasers in a situation of possible legal problems, since they may have to break a contract down the road.

Secretary of State Keisling asked Assistant Attorney General Bill Cook whether using the 70-acre take standard course of action would be considered a violation of the law. Mr. Cook confirmed that the Board would risk exposing the trust to a liability. He said there are possibilities of civil penalties, criminal penalties and injunctions as well. He also described a citizen suit provision allowing any person to bring certain types of enforcement action or to request enforcement action from the federal level.

Secretary of State Keisling asked whether this course of action could be considered a breach of our fiduciary duty by committing the Board to a substantial probability of incurring substantial legal defense costs. Mr. Cook confirmed this. The Secretary of State said the Board is the only public seller of timber in the state right now not morassed with litigation. He stated that the risk is unacceptable, and that he, therefore, wouldn't second the Treasurer's motion.

Governor Roberts expressed her frustration at being unable to obtain any action from the federal government on this issue. She said that after the amount of work the state has done to prepare a spotted owl recovery plan, the document is sitting on someone's desk in Washington. She cautioned about the pitfalls of trying to find other routes to get the job done, and said the Board is making progressive movement toward harvest without being mired in the courts. She asked Director Neuman about the timeframe for completion of the management plan.

Director Neuman reported that a one-day work session on August 17 was planned with the Land Board assistants, DSL staff and Forestry staff to begin implementing the Attorney General's advice and discuss an interim timber management plan. She said it is possible for information on an interim management plan to be available by the next meeting.

State Treasurer Meeker commented that of the 13 million board feet sold, two out of the five sales have been halted. Ray Craig from Forestry said that the two purchasers were notified that owls were located on their sale property and that circles were drawn using federal guidelines of 1.5 miles forming activity centers which affected the sales. He said no activity has taken place on the property, and if the owls are not detected the next time, the purchasers will be notified that they can proceed.

State Treasurer Meeker asked how much of the 13 million board feet has actually moved ahead. Clark Seely responded that the three other sales represent about eight million board feet.

State Treasurer Meeker asked if 70 acres doesn't provide adequate protection, then what does. Bill Cook said that as a lawyer, he couldn't say, but that the advice from the Attorney General's office is to follow the rescinded Fish and Wildlife Service guidelines to avoid a take.

State Treasurer Meeker withdrew his motion, but advised that he will present it at the next meeting with a blank number to be filled in as to the number of acres the Board will protect around an owl activity center.

Governor Roberts said the all-day meeting on August 17 should help with guidelines to move forward on the Elliott allowing the Board to meet the legal framework required, giving protection to the owls and helping proceed with additional sales.

State Treasurer Meeker said maybe the Board should move to request an incidental take permit on the Elliott State Forest within certain parameters.

Governor Roberts stated she thought a habitat conservation plan was required in order to request an incidental take, and that plan is what the Board is preparing.

Secretary of State Keisling made a motion for Forestry to return to the next meeting after consultation with Fish and Wildlife and DSL to present an interim sales plan that is consistent with the July 24, 1992 Attorney General's opinion and reflects the State Forester's best judgment in complying with the state and federal law. State Treasurer Meeker seconded the motion and the motion was unanimous.

State Treasurer Meeker commented that, had the Board acted on an acreage definition, some sales would have moved forward.

Legislative Proposals

Director Neuman stated that a written outline of the agency's legislative proposals was being presented to the Board for informational purposes only, with no need for discussion today. She said these proposals were approved by the Executive Department and have been submitted to Legislative Counsel for drafting.

Navigability Status Report

Director Neuman stated that the written materials regarding the navigability status report were also presented for information only with no need for discussion. She said an open letter to the editor will be sent regarding the ongoing discussions in regard to the Chetco River state ownership and the Board will receive copies of that letter.

Resignation of the Director

Governor Roberts presented this item to the Board regarding the resignation of Director Neuman, who is leaving to take a job as visiting professor of environmental law at Lewis and Clark College. The Governor expressed her appreciation for the wonderful job that Director Neuman has done during, what she referred to, as a period of many difficulties.

Secretary of State Keisling moved the Board appoint Gary (Gus) Gustafson as Acting Director beginning August 4, 1992, make the appropriate salary adjustments, and initiate the search for a permanent director. State Treasurer Meeker seconded the motion and the approval was unanimous.

The meeting was adjourned.