

The State Land Board met in regular session on July 9, 1998 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97310.

Present were:

John A. Kitzhaber Governor

Phil Keisling Secretary of State

Assistants

Paula Burgess
Rick Hanson
Rollie Wisbrock

Staff

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

Dept. of Justice

Roger Alfred

Governor Kitzhaber called the meeting to order at 10:05 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).

CSF Forests Evaluation of management of the Common School Fund forest lands—Joint report from Division of State Lands and Department of Forestry.

Director Cleary began the meeting with a discussion of the report on the Common School Fund forest lands. He said the report came about as a follow up on the Asset Management Plan and the Secretary of State's audit asking for a continued examination of forest management costs for efficiency and effectiveness and to compare these costs with other forest managers. Director Cleary introduced Jim Brown, State Forester.

Brown said the report allowed the Department to review whether they are doing business in a cost effective and an environmentally sound way. He introduced

Mike Bordelon, State Forest Director, who worked to develop a contract and a request for proposals, and selected John Beuter of Duck Creek Associates to conduct the study. He then introduced John Beuter to give a summary of the report and said Bordelon would later describe how the Department intends to respond to the report.

Beuter said that his company was asked to consider a number of questions with regard to the state forest lands, both Board of Forestry (BOF) and Common School Fund (CSF). The basic questions were: 1) Are the forest lands being managed effectively and efficiently? 2) How can ODF's efficiency and effectiveness be improved? 3) Are there different management practices and costs between BOF and CSF lands?

In answer to the questions, Beuter said 1) ODF is generally efficient and effective in managing both BOF and CSF forest lands, considering the legal, policy and contractual obligations.

2) Based on comparison studies with other forest land owners, there are opportunities for ODF to improve efficiency and effectiveness, but these comparisons depend on an understanding of ODF's management responsibilities and the purpose for which the lands are being managed.

3) In general, ODF integrates management plans of the CSF lands and BOF lands as if they were one ownership. Timber sales locations and harvesting are scheduled at the district level when they are timely without regard to ownership.

He reported that between 1992-95 the CSF overhead costs averaged about 22 percent of all the ODF forest management overhead, compared with 16 percent of the acreage. By 1996 the overhead costs for CSF lands dropped to 17 percent, which is in line with the distribution of acreage.

Beuter said overall the state forests are well managed. ODF foresters have adapted well to new management challenges from concerns over water quality, fish, wildlife, and other issues. ODF is working with regulatory agencies to balance environmental values with income production.

Beuter said CSF lands are managed to maximize income to the CSF over the long term. ODF manages CSF lands under an agreement with the Board and bills the CSF for the direct and indirect costs of management. He said fiduciary responsibility is not so apparent for the BOF lands.

Beuter commented that ODF's efficiency is reasonable taking into account the complexity imposed by social and political overlays on the state forests that are less significant for other forest owners.

ODF's overall 1992-96 management costs (\$25/acre/year) were about the same as those of the Washington Department of Natural Resources (DNR). These were higher than the average management costs for industrial forests (\$20/acre/year). The differences in management emphasis, management intensity, forest conditions and organizational constraints are all considerations.

ODF's annual income from timber (\$42/acre/year) was below that of Washington DNR (\$65/acre/year) and below the average for the other comparison owners (\$157/acre/year). The lower annual income per acre for ODF reflects a higher proportion of the state forests in young age classes, harvesting restrictions in recent years because of threatened species, and prohibition of log exports, which account for some of the higher values on other comparison owners' forests.

The overall average price received for ODF timber (\$312 /MBF) was close to Washington's (\$345/MBF) and below the average for the other comparison owners (\$413 MBF), which Beuter said was within reason, given the situation.

Beuter stated that he was impressed with ODF's standards and performance for environmental protection, which he said generally exceed the minimums set by law.

He added that there is room for improvement. Beuter said ODF needs to reevaluate its silvicultural practices in light of the Elliott State Forest Plan and the proposed changes to the structure based management on the BOF lands. Compared to the past when the ODF was much more timber oriented, there are different intensities of timber production and longer rotations, as well as a desire for more biodiversity being expressed today. Those things affect the economics of the silvicultural practices, such as regeneration, animal damage control and fertilization. Most of the economic justification for the silvicultural prescriptions was done in an earlier time with different objectives in mind.

He said district foresters should have more explicit responsibility for evaluating the cost effectiveness of their operations. There is a question as to whether some of the practices they are currently doing should be continued in the future. They need to determine how these practices fit into the new concept of management. One area especially needing attention is road construction and maintenance. Beuter said much of the costs for road construction and maintenance are buried in timber sales and not accounted for in the budget or accounting records.

He said undertaking this study for state lands was difficult in that comparisons were made with private landowners who were managing their lands primarily for producing timber. State and public lands are shifting away from that as a primary objective, though it is still an important one, therefore it is difficult to compare practices, costs, income, etc. He added that the beneficiary interests for the BOF lands are not as clear as for the CSF lands.

Landowners that were used as comparisons to evaluate ODF management practices and costs are all in the timber business. In some cases, they are industrial companies. Washington DNR and the school forest at Oregon State University were also both used as comparables. All others producing timber are subject to some constraints. In the case of the industrial owners it is the State Forest Practices Act. If the state land management shifts primarily to non-timber objectives, the study will be less meaningful. Beuter said they tried to use the Siuslaw National Forest as a comparison and gathered information, but couldn't use it because the Forest Service objectives were too diffuse to provide meaningful cost comparisons.

Beuter recommended this report serve as the beginning of the process for ODF to identify problems and search for better ways of doing business. He said the priorities should be to review poorly justified management expenditures, develop a means of accounting for roads and secure flexibility in the use of management funds where they are most needed to enhance the value of state forests to beneficiaries, including infrastructure development and rehabilitation. Later, efficiency and effectiveness may be further improved by changes in organization structure and staffing, and in developing more responsibility and accountability for cost-effective management at the district level.

Mike Bordelon, State Forest Director, discussed plans for implementing the report. He said the report was objectively done, and that it pointed out both ODF's strengths and weaknesses. The first observation deals with better documentation of economic analysis in forest management plans and habitat conservation plans. Bordelon said the economic analysis must be more visible in these planning documents and also in discussions with the BOF and SLB.

The second issue deals with the roads and the need for better cost accounting and road planning. Bordelon said ODF had been using an outdated cost accounting system for road costs that related to project work and timber sales. He reported they have a new accounting system that will allow them to capture and track costs related to road construction in a direct way. Completion of this system is expected in 1½ years. He said the first piece of road planning (the inventory) is now basically in place on state forest lands. The next step is a systematic planning effort done in conjunction with implementing forest management plans.

The third area relates to the need to develop new silvicultural analysis tools. Bordelon agreed that ODF's current analysis tools are outdated. He said progress has been made in that area, but they are about 1½ years away from having a whole set of tools. They want to provide those tools to field managers so they can make site specific decisions about what silvicultural adjustments are appropriate.

The fourth key area is continuing to improve their budgeting and cost tracking system; Bordelon said progress has been made since the 1995 Secretary of State's audit.

ODF's business manager is working with a group and by fiscal year 2000 they will have in place an enhanced budget and cost tracking accountability system.

In conclusion, Bordelon said the evaluation was very valuable to ODF. He said they are committed to implement the needed improvements in cooperation with DSL.

Secretary of State Keisling applauded ODF's actions and said it has been a constructive response to prior evaluations and audits. One of the issues in the audit was Legislature's reluctance to approve the staff needed to do some of the basic accounting work, which is the foundation on which cost analysis is built. Keisling said he would be willing to be help if there is a similar reluctance during the upcoming legislative session.

Budget Request for approval of the Division of State Lands' proposed 1999-01 budget request for submission to the Department of Administrative Services.

Director Cleary presented this item for approval of the Division's 1999-01 budget request for submission to the Department of Administrative Services for their review prior to the Legislative Session. Cleary reviewed the major budget issues:

1. Developing a credible removal-fill compliance and effectiveness monitoring program to support Oregon Plan commitments.
2. Continuing regulatory streamlining and adaptive management efforts, with additional emphasis on non-regulatory tools and incentives for wetland and watershed restoration.
3. Strengthening unclaimed property audit capabilities and assisting holder self audits.
4. Maintaining budget support and flexibility for core administration, proprietary, regulatory and public service programs.
5. Supporting South Slough Reserve core program operations and increasing flexibility for grant projects.
6. Supporting the Oregon Natural Heritage Program at a level that will allow it to fulfill statutory requirements.

Cleary said this request is about an 8.5 percent increase in the CSF biennial allocation for the Division and South Slough programs, from \$11.5 million to \$12.4 million. Federal Funds would increase about 20 percent to \$1.8 million, with approximately \$1 million for South Slough.

The only General Fund portion of the agency budget is associated with the Natural Heritage Advisory Council's program; a significant increase under three option packages with their first priority being about \$200,000 for data bank enhancements. Director Cleary said it may be that this should be considered in a memo budget along with other natural resource agencies data base and geographic information system requests.

Cleary said the agency is requesting 6.5 new positions, and retaining 7.5 limited duration positions, converting them to permanent. At South Slough, where temporaries have been being used for grant supported activities, the agency would like to create four "vacant unfunded" positions, which would be filled for the duration of the project grant.

Cleary said the recommendation to the Board is to approve the request for submitting the budget to DAS, realizing this is the first pitch of the game. Secretary of State Keisling moved this be approved. Governor Kitzhaber seconded the motion and the approval was unanimous.

Administrative Rules Request for final adoption of amendments to the General Authorization for removal-fill associated with recreational and small scale placer mining within essential indigenous anadromous salmonid habitat to conform with 1997 statutory changes: (a) exempts non-motorized prospecting (under certain conditions) from permit requirements; (b) defines "beds," "prospecting," and "wet perimeter;" and (c) establishes standards for conducting prospecting.

Director Cleary explained that after the legislative changes made last session, if less than a cubic yard is being disturbed, no permit is required. If a motorized suction dredge is being used disturbing less than 25 cubic yards, it operates under the General Authorization. Any mining activity disturbing over 25 cubic yards within essential salmonid habitat requires a permit. Any mining activity above 50 cubic yards outside essential salmonid habitat requires a permit. Seven public hearings were held on these rules. Few comments were received on the General Authorization. The agency has worked closely with the mining associations and have done aggressive field monitoring over the last summer and this season as well. Cleary said in general there is pretty good compliance with the permit conditions; but there is still a lack of awareness of the need to obtain a permit.

Cleary said the agency's recommendation is to adopt the final amendments to the General Authorization administrative rules as proposed.

Glen Spain, Northwest Federation of Fisherman's Association and a member of the technical advisory committee that helped draft the rules, encouraged the Board to adopt the amendments. He said they are a good compromise, help clarify definitions in past rules and limit the potential for conflict between small recreational placer miners and fishermen. He shared his concerns about the sidetracking of the essential salmonid habitat rules, but said the issue could be addressed at a later time.

Secretary of State Keisling moved for final adoption of the rules as proposed. Governor Kitzhaber seconded the motion and it was approved. Governor Kitzhaber commended the Division staff for their work on the rules.

Land Sale Request for approval of the sale of 78 acres of state land (zoned heavy industrial) along the Columbia River at Dibblee Point near Rainier to the Port of St. Helens.

Director Cleary said this land was zoned heavy industrial and had been previously considered for various uses including steel mill sitings. The Port wants to acquire the land and package it with about 47 acres of adjacent Port-owned land, reselling the entire parcel to US Gypsum for a wallboard manufacturing facility. He said state and local economic entities are in strong support of this proposed sale and use. The property is statutory land created by accretion and dredge spoil deposits, rather than Admission Act land. The statutes allow a direct sale of these types of lands to political subdivisions and give discretion in whether to restrict the resale to private entities. The purchase price offered is \$30,000 per acre or \$2.4 million. A recent appraisal valued the state land in a stand alone fashion at \$25,000 per acre. The Port/U.S. Gypsum offer shows the plottage value that was captured, associated with combining the two adjacent parcels. The state would enter into a one-year purchase agreement with the Port of St. Helens, for a consideration of one percent of the appraised value (approximately \$24,000). If the sale is completed within that one-year period, there would be a simultaneous closing. There will be an excess profits clause, should there be some enhancements captured by the Port through their negotiations with U. S. Gypsum, so the Common School Fund would benefit as well.

Secretary of State Keisling moved approval of the sale.

Governor Kitzhaber asked what process had taken place to consider housing, transportation, and other issues that affect community quality of life.

Mike Sykes, Port of St. Helens, said that Rainier housed Trojan and 1,000 jobs were lost around 1993. He said there is a glut of housing on the market both in

Clatskanie and in the Rainier area. He said this proposal would create about 200 jobs in the community and about 200 trucking jobs as well. The location is about three miles from I-5, so it's attractive from the transportation standpoint as well. He added that it also helps keep a small rail line in business.

Peter Williamson, General Manager of the Port of St. Helens, said this is similar to the opening of Armstrong World Industries plant in St. Helens. He said the proposal would add jobs to the Columbia County community, where currently 60 percent of the workforce commute to jobs outside the community because of the lack of work there. He said this should cut down on commuting and solve other issues, as well.

Governor Kitzhaber seconded the motion and the approval was unanimous.

Treasure Trove Request to proceed with a legislative concept that would repeal Oregon's law on treasure trove permits.

This item was removed from the Consent Agenda since there were individuals who wanted to testify on the issue. Director Cleary commended Jenifer Robison for her work of laying out the history of this issue in the written agenda materials. Cleary said the Board imposed a moratorium on treasure trove permits in 1989 and repealed the associated administrative rules due to conflicts with, and Native American concerns about, archaeological and historic site preservation.

With the changes in statutes in 1993 and 1995, staff realized that any treasure trove that may be found on state land would either be archaeological or historical, including shipwrecks, or would be considered unclaimed property, and therefore covered under another statute. If the agency were to issue a permit it would be in conflict with other statutes.

Cleary said the proposal before the Board is to authorize development of this legislative concept, then implement whatever legislation is developed through the process.

Don Landes, Attorney for LaVerne Johnson, shared how Johnson had attempted to get a permit from the Division to search for a sunken treasure ship he said he discovered in the early 1980's. Landes believed that after the nearly 10-year moratorium, rules would be developed that would allow Johnson to apply for the permit. Landes said the agency is now asking for a total elimination of the treasure trove statutes.

Landes asked if the Board proposes a total elimination of the treasure trove statutes, that they grandfather in those who had previously attempted to get a permit but had been prevented, due to the moratorium. He added that a better approach, rather than total elimination, would be to work out procedures that would accommodate everyone's legitimate interests.

Governor Kitzhaber said he agreed with the last approach, to review the conflicting statutes and determine whether there's a way to reconcile the conflicts. Cleary said he could bring together the State Historic Preservation Office (from State Parks), the Legislative Commission on Indian Services and the treasure trove people in a working group to see what kind of proposed legislation may be developed through the process.

Secretary of State Keisling said this is kind of a one-stop permit idea. LaVerne Johnson said the agencies would be glad to issue a permit as long as the state gets all the treasure. The problem is that no one will do the diving and the work to turn it all over to the state. Johnson said that in three cases taken to court where shipwrecks were found outside the three-mile territorial limit, under the federal government's jurisdiction, all three of the finders were awarded 100 percent of the profits.

Governor Kitzhaber said some of the issues that concern him are the issues that affect the relics and remains of Native American citizens. He said the Board could hear about the progress of the workgroup at the October Land Board meeting.

Consent Agenda

Model Rules Request for approval to adopt the Attorney General's Model Rules of Procedure as amended and effective September 15, 1997.

Minutes Request for approval of the minutes from the April 14, 1998 State Land Board meeting.

Director Cleary briefly discussed the amendments to the Attorney General's Model Rules of Procedure made to conform to changes made during the 1997 legislative session.

The Board also considered the minutes from the April 14 Land Board meeting.

Secretary of State Keisling moved the Consent Agenda be approved. Governor Kitzhaber seconded the motion and the decision was unanimous.

Informational Agenda

Navigability Status report on navigability issues.

Cleary said there have been no new navigability requests. The agency meets bi-monthly with the Joint Legislative Interim Committee on Navigability (JLICN). In addition, a small working group of user representatives and landowner

representatives was formed and has met. Cleary said the Board would be kept informed on how things are progressing.

Legislation Update on preliminary legislative concepts for 1999.

Director Cleary said eight concepts were filed with Legislative Counsel and all were approved for drafting, two of which were placeholder items (one for the treasure trove issue and one regarding Common School Fund accounting).

Riparian Areas Report on Urban Riparian Inventory and Assessment Guide.

Director Cleary said this report was developed with EPA funding under contract. Copies of the report were provided to the Board. He commented that it should help integrate stream and riparian corridor protection with community land use planning.

Grazing Status Update

Director Cleary reported that the Board had conditionally authorized an appearance before the June Emergency Board meeting to request the allocation of \$3.5 million to be transferred to the Common School Fund as compensation to the trust for implementation of a forage lease renewal preference/assured leasing system pursuant to Senate Bill 5523 from the 1997 Legislature. The Board conditioned that approval with the requirement that the lessees withdraw the Mendieta lawsuit, because it was not a good use of taxpayer's money to pursue both the lawsuit and the SB 5523 allocation. The lessees' steering committee then voted not to withdraw the lawsuit, because the proposed lease didn't include a valuation clause, ensuring lessees would be paid if the lease wasn't renewed and the land was put to another use. Cleary told them that a valuation clause would make the proposed lease legally vulnerable. He discussed some of the reclassification criteria and language that were used to try to address the lessees' concerns, and indicated some additional concepts that will be forwarded for the lessees' consideration.

Cleary said he would report back to the Board in August as to whether there's been any reconsideration by the lessees' steering committee.

Governor Kitzhaber adjourned the Board at 11:10 am.

John A. Kitzhaber, Governor

Paul R. Cleary, Director