

The State Land Board met in regular session on October 13, 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
Jim Hill	State Treasurer

Assistants  
Paula Burgess  
Rollie Wisbrock

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

Dept. of Justice  
Bill Cook

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).

**Emergency**  
1998  
**Board**

Request for approval to appear before the November 20, 1998 Legislative Emergency Board regarding the allocation and transfer of \$3.5 million to the Common School Fund as compensation to the trust for implementation of a forage lease renewal preference/assured lease system pursuant to Senate Bill 5523 (1997).

Director Cleary explained that during the April meeting, the Land Board gave contingent approval for the Division to appear before the June Emergency Board regarding allocation and transfer of \$3.5 million as compensation to the Common School Fund for implementation of a forage lease renewal preference system pursuant to SB 5523. He said the Board wanted the lessees to decide whether they would pursue this via a lawsuit or the fund transfer. An agreement was reached in early September regarding the proposed land reclassification language and a 15-year lease term. The lessees joined with the state in removing the *Mendieta* oral argument slated for September 9 from the state Supreme Court's calendar and are prepared to withdraw the lawsuit, on the basis of the Division proceeding to the Emergency Board. Director Cleary then reviewed the steps for complete dismissal of the lawsuit.

Bob Phillips spoke representing the Oregon Natural Desert Association and the Oregon Natural Resources Council asking that the Board reject the recommended transfer, saying that it would benefit the lessees, rather than the beneficiaries of the trust lands, Oregon's K-12<sup>th</sup> grade school students.

Director Cleary added that the issue has been reviewed with legal counsel and the proposal was considered as the best opportunity to resolve the *Mendieta* lawsuit and other leasing system litigation in a manner consistent with the trust and land steward obligations.

State Treasurer Hill moved the Board approve the appearance before the November 20, 1998 Legislative Emergency Board 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 lease renewal preference/assured lease system pursuant to SB 5523; and to direct the Division to continue to work with lessee and conservation interests on finalizing the rangeland leasing rules and lease form to present for Land Board adoption on December 8, 1998. Secretary of State Keisling seconded the motion.

Secretary of State Keisling asked Director Cleary to explain the process that would occur if an interested party came forward wanting to buy a particular parcel of land during a lease term. Director Cleary described two provisions in the proposed lease form: 1) where the land could potentially be sold at any time, subject to the remaining term of the lease, and 2) where the lessees would be provided two years' notice of lease termination. At the conclusion of the two years, the lease is terminated and the land could be sold without encumbrance on it. If the lessee wanted to purchase the land, they could waive the two-year notice requirement and proceed to purchase it, with the lease terminated.

Secretary of State Keisling said he would support the motion, but shared his concerns on determining what the Board's fiduciary responsibility needs to be on grazing lands. He stressed the need for the Board to have a conversation on

whether they should continue to maintain this amount of acreage in rangelands, or should consider possible sales. He said the action today does not solve the long-term challenges with these lands. Governor Kitzhaber agreed with Secretary Keisling's final point and noted that the debate needs to continue as Mr. Phillips pointed out. He asked Director Cleary to discuss the process for withdrawal of the lawsuit.

Director Cleary explained that if the Board approves the Division's appearance before the Emergency Board, the parties will go to Judge Yraguen at the Harney County Circuit Court to request approval of a class action settlement. At the November Emergency Board the Division will request the fund allocation, then will come back to the Land Board in December for final adoption of the lease form and rules, which will complete the lawsuit dismissal. Director Cleary said the lease form is currently being reviewed by the Department of Justice. He said new grazing leases will probably be effective March 1, 1999. In response to Secretary Keisling, Director Cleary said the agency would be bringing forth some land sale proposals. He also agreed that the Board needs to review the cost of management and the revenues being derived from the rangelands, dealing with the long-term issues, as well as litigation costs.

Governor Kitzhaber asked if there were objections to the motion. There being none, the motion was approved.

**Administrative Rules** Request for final adoption of administrative rules governing public recreational use of land administered by the State Land Board.

Director Cleary introduced this item saying these rules would reiterate the Board's policy that state lands are open and available for public use. He said there are times when area closures or site restrictions are necessary to address site specific resource protection or public health concerns. He said restrictions would be preferred to outright closures. These rules would establish the process, criteria and notification for those actions. Director Cleary said very few public comments were received on the rulemaking. Any public use restrictions or closures would be reported to the Board; and the Land Board could rescind or modify any restriction. Director Cleary said the agency's recommendation is to adopt these rules as final.

Secretary of State Keisling moved the rules be adopted. State Treasurer Hill seconded the motion. There was no objection and the motion was approved.

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

Director Cleary said this request would allow the agency to proceed with the legislative concept to repeal Oregon's law on treasure trove permits. This was discussed at the July Board meeting and the Board asked the Division to work with stakeholders to determine if other solutions could be found to resolve conflicts between the various statutes and authorities, rather than outright repeal of the treasure trove law.

Director Cleary said with further investigation more legal conflicts became apparent and revealed the need for this law to be repealed. He said salvage of shipwrecks was found to be governed by federal law, not subject to treasure trove provisions. This was the case with LaVerne Johnson, who was at our July meeting. A copy of the Attorney General's opinion has been given to Mr. Johnson explaining why he cannot be grandfathered in his request for a treasure trove permit.

The agency has discussed the prospect of contracting with Mr. Johnson in conjunction with historical and archaeological entities. This would allow the agency to use Mr. Johnson's knowledge and services on the shipwreck that he believes he has discovered.

Director Cleary said the agency believes that alternatives exist to the treasure trove permit process that don't create the conflicts caused by the current law. The agency is willing to contract with individuals for noninvasive exploration activities.

Director Cleary said the agency recommends the Board authorize the Division to develop a legislative concept to repeal the treasure trove law.

State Treasurer Hill moved the item be approved. Secretary of State Keisling seconded the motion. There was no objection and the approval was unanimous.

### **Jeff Marcus Presentation**

Governor Kitzhaber asked Jeff Marcus, Boy Scout Troop 18, to come forward to receive a certificate of appreciation on behalf of the Land Board and Division for his organization and spearheading of the July 18 and 19 clean up on the Section 11 site near Bend. Governor Kitzhaber read a letter that enumerated the work that was completed under this project and he thanked Jeff for the work.

## **Consent Agenda**

**AG Model Rules** Request for approval to adopt the Attorney General's Model Rules on Collaborative Dispute Resolution and the Combined Rule -- Confidentiality and Inadmissibility of Mediation Communications.

Director Cleary said the above item (4b) regarding adoption of Model Rules was being removed from this meeting agenda, so that additional process steps can be taken that are necessary on the Combined Rule (Confidentiality and Inadmissibility of Mediation Communications). He said these steps will be taken and the item will be brought back before the Board for a request for approval at a later date.

Director Cleary then briefly reviewed the remainder of the agenda items on the Consent Agenda, as shown below.

**Administrative Rules** Request for authorization to initiate rulemaking to revise the administrative rules for issuance and enforcement of removal and fill permits, including revising existing definitions, proposing new definitions and consolidating the now separate "Removal Permit Policy" and the "Fill Permit Policy."

**NHAC** Request for approval of the addition of four sites to the Oregon Register of Natural Heritage Resources, three owned by The Nature Conservancy and one owned jointly by the Conservancy and the Oregon Department of Fish and Wildlife.

**Easement** Request by City of Portland for an easement for a wastewater effluent outfall pipeline over state-owned submerged and submersible lands of the Oregon Slough and the Columbia River in Multnomah County.

**Mineral Rights Sale** Request for approval of the sale of state-owned mineral rights within Fairview Industrial Park to the City of Salem.

**Minutes** Request for approval of minutes of September 13, 1998 State Land Board meeting.

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

Director Cleary informed the Board that copies of the following written informational items were available at the meeting. He offered to answer any questions or discuss the items with interested parties after the meeting.

**Navigability**                      Status Report on Navigability Issues.

**S & S Lands**                      Progress Report on Registration of Structures on State-owned Submerged and Submersible Land.

**Legislation**                      Update on Legislative Concepts for 1999.

Governor Kitzhaber noted for the record that Dave Miller had submitted written comments at the Board meeting on the registration of structures on submerged and submersible lands. Director Cleary said the letter will be entered into the rulemaking comments on this matter.

With no other items before the Board, the meeting was adjourned at 10:34 am.

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John A. Kitzhaber, Governor

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Paul R. Cleary, Director