

The State Land Board met in regular session on February 9, 1999 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
Rollie Wisbrock
Rick Hanson

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 10:10 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).

Director Paul Cleary recognized two guests attending the Land Board meeting - Denis Kizyrev and Svetlana Kislova, both foreign exchange students from Zeya, Russia. Governor Kitzhaber welcomed them.

Terry Drever-Gee, Director of Government Affairs for the Eastern Oregon Mining Association presented Governor Kitzhaber with a picture taken at the Governor's hoedown.

Administrative

Request for final approval of amendments to the administrative

Rules

rules for Oregon Essential Indigenous Anadromous Salmonid Habitat and related amendments to the administrative rules for General Authorizations for removal-fill associated with fish habitat enhancement, erosion control, certain road construction projects and wetland restoration and enhancement.

Director Cleary explained that these rule amendments for essential habitat designations and related General Authorizations would allow the agency to regulate removal or filling of less than 50 cubic yards in spawning and rearing areas used by salmonid species that have been listed by either the state or federal government as threatened, endangered or sensitive. He said these activities are regulated by imposing in-water work periods and basic common sense best management practices. Cleary discussed those activities that are exempted from the rules.

He said lifting the 20 percent of any waterway ceiling on essential habitat designations and the ODFW's steelhead listing resulted in an increase in essential habitat designations from about 4,500 to 17,000 miles, or approximately 16 percent of the state's rivers and streams. Cleary said new maps were available showing these designations. If adopted by the Board, the rules and the new maps would go into effect on May 1, allowing time to get information to people for making their summer work plans.

Cleary said a pilot study was done to determine whether ODFW's field biologists did a good job in identifying spawning and rearing areas. Data showed that they were conservative in their designations.

Regarding the placer mining General Authorizations, he said that over two years of monitoring showed that if the miners do the work at the right time of the year and under the prescribed best management practices, their activities are of minimal impact and should be allowed to occur. Cleary said the permitting/regulatory program helps protect the resource and the user. The Division provides the "cover or heat shield" for the users if they stand behind that. He said that is the proposed approach with the expanded designations and the amendments to the various General Authorizations.

Tim Cramer, Director of Government Affairs for Oregon Independent Miners (OIM), said though they have a few problems with the Rogue River pilot project, OIM feels the Division is going in the right direction by tying the data to the mapping process. He believes the Governor's executive order regarding the Oregon Plan for Salmon and Watersheds requests that baseline population numbers also be added to this mapping and clearly defined goals be set. Mr. Cramer, therefore, recommended the proposed administrative rules be sent back to the technical advisory committee for further refining.

Director Cleary said his understanding of the executive order is that it requires agencies to ensure their direct development activities and those they permit do no harm to the species recovery. He believes these rule amendments give the agency a tool to support the executive order by allowing regulation of removals and fills of less than 50 cubic yards in areas key to spawning and rearing. Cleary said baseline populations would be population levels or targets that would have to be achieved before the species is considered recovered and can be delisted. He said he's not sure that is a function of the Division or even the state. Cleary said Cedric Cooney with ODFW was present to answer questions on the Rogue Basin study and their evaluation of spawning and rearing habitat.

Terry Drever-Gee, Director of Government Affairs for the Eastern Oregon Mining Association, complimented the Division for the partnership work they have done with her association. She agreed that there is a need for clearly defined goals, not more layers of regulation.

Governor Kitzhaber discussed the challenge when working with various industrial user groups operating on or near the river to ensure that, if they are in compliance with these guidelines, their activities won't result in the take of a species, bringing the regulatory authority of the National Marine Fisheries Services down on them. He said determining the baseline population data will be a long and involved process. He said they will be working with the Legislature to develop these specific goals. He added that the permitting process could be a defense for miners working within this framework if a federal agency suggested they were taking endangered species.

Governor Kitzhaber suggested that rather than sending the rules back to the technical advisory committee, they should be watched closely to see if there are problems and brought back before the Board in the future for a review.

Terry Drever-Gee said many of the miners are willing to assist with getting data to the state. Governor Kitzhaber said it would be good for someone from the mining industry to be involved with a stakeholders group that is meeting regularly.

Glen Spain, Northwest Regional Director for the Pacific Coast Fishermen's Association and a member of the technical advisory committee, said he believes these rules reduce layers of bureaucracy. He stressed to the committee the need for the rules to provide protections that are consistent with good biology, consistent with the executive order, and consistent with the need for state programs to move forward without being at the mercy of the federal courts on these issues. He said he urged that the rules provide a expedited way of streamlining the process for projects such as stream restoration, when it can be shown that best management practices are being done.

Secretary of State Keisling moved the rules be adopted and the Division report back to the Board late next fall on the progress of the changes. Governor Kitzhaber seconded the motion and the approval was unanimous.

Director Cleary expressed appreciation for the technical advisory committee who worked for eighteen months on these rules.

Administrative Rules Request for final approval of proposed General Authorization for removing and disposing of sediment behind tidegates for channel maintenance and related amendments to removal-fill definitions and consolidation of "Removal Permit Policy" and "Fill Permit Policy."

Director Cleary introduced this request for approval of rules on a proposed General Authorization for removing and disposing of sediment behind tide gates for channel maintenance, along with related amendments to the agency's general removal-fill rules involving definitions and consolidation of some policy statements.

Cleary noted that a memo provided to the Board proposed additional rule revisions based on comments that were just received from DEQ and ODFW, not included in the earlier agenda materials. He also clarified for the record that irrigation and drainage ditches dredged entirely from upland, in a manner that doesn't affect wetlands, and that are fitted with fish screens are not "waters of the state" under the Removal-Fill Law and are not regulated by the Division. Channelized streams are "waters of the state" whether or not they contain fish and are regulated by the Division.

Cleary said when certain conditions can be defined, such as the time when people can conduct activities, General Authorizations can be good tools to provide advance notice to people as to what to expect when submitting applications. This assists the reviewing agencies to focus on major individual removal fill permits, rather than being overburdened with routine activities that can be covered by General Authorizations. This allows a streamlined process without lowering the standards.

Cleary explained this channel maintenance authorization can't be used to remove gravel, only silt sediment. It also can't be used to widen or deepen channels beyond sediment removal. These General Authorizations are issued for five years. Additional conditions can be added to them if necessary, and they can be revoked if the conditions of the General Authorization have not been met.

Secretary of State Keisling moved adoption of the proposed General Authorization. Governor Kitzhaber seconded the motion and the approval was unanimous.

Land Sale Request for approval to directly sell 20 acres of trust land in the Wilsonville Tract (Clackamas County) to West Linn-Wilsonville School District.

Director Cleary explained said this 20 acres was identified for sale several years ago. The school district would like to purchase it for an elementary school site. The remainder of the tract (about 230 acres) would still be available for purchase via the Metro Greenspaces program. Cleary said a reversionary clause will be included in the deed requiring the tract to be used for public education purposes or to revert back to the Board. The school district accepted these terms.

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

Land Exchange Request for approval of an exchange of Common School Fund forest land and mineral rights and Board of Forestry land and mineral rights for land and minerals rights owned by Simpson Timber Company. Request for approval to execute timber agreement with Board of Forestry as part of exchange.

Director Cleary said this exchange of 77 acres of Common School Fund and 310 acres of Board of Forestry land and minerals for 382 acres of Simpson Timber land blocks both the state and private land into more manageable units. Similar volumes of timber are involved on both state and private land, and the Department of Geology and Mineral Industries' review showed mineral value as approximately equal with all parcels having minimal potential. To equalize the value between the Common School Fund and the Board of Forestry, a ten-year timber reserve agreement with the Board of Forestry for 91 acres on the Green Mountain parcel of the Simpson exchange was proposed. Cleary said Lincoln and Polk County Commissions as well as the Board of Forestry have approved the exchange. He recommended the Board also approve it.

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

Consent Agenda

Administrative Rules Request for final adoption of amendments to administrative rules regarding unclaimed property, escheat property, and estate administration.

Administrative Request for approval to repeal the "Waiver of Removal-Fill

Rules Permit Requirements for Commercial Shellfish Harvest Activities,” an expired form of General Authorization.

Easement Request for approval to modify the consideration recovery provision in the Alaska Northstar Communications LLC easement for a submarine fiber optic cable route.

Minutes Request for approval of December 15, 1998 State Land Board meeting minutes.

Director Cleary briefly reviewed the items on the Consent Agenda with the Board. Secretary of State Keisling moved the Consent Agenda be approved. Governor Kitzhaber seconded the motion and the approval was unanimous.

Informational Agenda

Legislation Update on Division of State Lands proposed legislation.

Director Cleary said the Division pre-session filed five bills: 1) HB 2157, reducing the dormancy period for unclaimed securities; 2) HB 2158, adding the State Geologist to the Natural Heritage Advisory Council; 3) HB 2159, eliminating duplicative regulation of treasure trove; 4) HB 2160, allowing agencies to charge for easements and rights-of-way across state lands and 5) HB 2161, increasing removal-fill permit fees. As of the date of the Land Board meeting, hearings had been held on four of these, with the easement bill yet to be scheduled. Cleary reviewed these bills for the Board and discussed other bills of interest.

Director Cleary announced the retirement of three long-term employees of the Division, Mickey Schwinkendorf, A.K. Majors, and Burt Lewis, and recognized their contributions to the Division’s programs and mission.

The meeting was adjourned at 10:55 am.

John A. Kitzhaber, Governor

Paul R. Cleary, Director