

The State Land Board met in regular session on June 8, 2004 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97301-1279.

Present were:

Theodore R. Kulongoski	Governor
Bill Bradbury	Secretary of State
Randall Edwards	State Treasurer

<u>Assistants</u>	<u>Staff</u>	<u>Dept. of Justice</u>
Jim Myron	Ann Hanus	Lore Bensel
Jesse Cornett	John Lilly	
Inga Deckert	Steve Purchase	
	Jeannette Holman	
	Gail Lowry	

The Governor called the meeting to order at 10:09 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 Department of State Lands, 775 Summer Street NE, Suite 100, Salem, Oregon 97301-1279, (phone: (503) 378-3805, ext. 224).

### **Presentation of State Land Board Awards**

Director Hanus discussed the new Land Board awards program. She thanked the Land Board Assistants and the other committee members for the time they spent soliciting nominations and judging responses for the three award categories.

She described the unique plaque designed for the winners of those categories. The plaque was based on a pictograph found along the Columbia River, the work of Portland artist and Warm Springs Oregon native, Lillian Pitt. Her mask depicting "She Who Watches" is attached to each of the plaques.

Hanus introduced the artist, Lillian Pitt. Pitt said the mask is appropriate for the awards, since the Land Board also watches over the land, as does the woman in this legend.

Governor Kulongoski agreed that this mask is symbolic of the Land Board, since they are charged with stewardship responsibility over the assets of the state. On behalf of the Board, Governor Kulongoski thanked the artist, Lillian Pitt, for her creativity, saying what makes Oregon so great is its citizens. He added that it is only fitting to honor the citizens of this state who have made Oregon a better place to live with this award. Secretary Bradbury and Treasurer Edwards agreed. The Board announced the following recipients of these awards:

**State Land Board Lessee of the Year Award:**

- Craig Smith of BC Excavation and Sand Sales in Rainier.
- Bill McCall, Windsor Rock Products of Keizer.

**State Land Board Stream Award:**

- Ted Reese and Janet Oatney of Murtaugh Creek Project, Washington County Operations Division.

**State Land Board Wetland Award:**

- Mark and Debbie Knaupp of Mud Slough Wetland Mitigation Bank in Rickreall.
- Jett Blackburn, Neal Goldsmith and W.J. Ellis of Sodhouse Farms south of Burns.

**Consent Items**

- 1.a. Request by the Oregon Department of Transportation to construct and maintain a permanent roadway easement for a public highway within the right-of-way boundaries of Eastern Oregon Highway No. 20.**
- b. Request by the Oregon Youth Authority to amend the 1996 bargain and sale deed reversionary interest clause.**
- c. Request to initiate review and determination for sale of nine isolated parcels (mostly rangeland) in Wheeler, Malheur, Wallowa and Jackson counties.**

- d. Request for: (1) approval of amendments to OAR 141-088-0000 through 141-088-0020 (Use of State-Owned Property), and (2) repeal of OAR 141-084-0010 through 141-084-0100 (Managing State-Owned Submerged and Submersible Lands), the content of which is included as an amendment to OAR 141-088-0000 through 141-088-0020 (Use of State-Owned Property).**
- e. Request for approval to appear before the Legislative Emergency Board to request increased Other Funds and Federal Funds expenditure limitation for construction and operations projects at the South Slough National Estuarine Research Reserve.**
- f. Request for approval of State Land Board minutes of the April 13, 2004 meeting.**
- g. Request for approval to appear before the Legislative Emergency Board for approval for the Department to apply for a U.S. Environmental Protection Agency grant to pursue the implementation of the State Programmatic General Permit, for approval to accept the grant if awarded, and for an increase in Federal Funds expenditure limitation.**

Director Hanus reviewed the items on the Consent Agenda for the Land Board's consideration. Regarding the request by ODOT for a permanent roadway easement (Item 1), Governor Kulongoski asked about State Parks' reference in the agenda item of a sensitive site in the area. Assistant Director Steve Purchase responded that when the agency circulated its public notice, State Parks identified a possible sensitive area at this site. He explained that a survey was done of the site to ensure the road alignment would not impact or interfere with any Native American remains or any threatened and endangered plant or other similar issue.

On the second agenda item, Governor Kulongoski asked for clarification regarding the correction of the reversionary clause on the Oregon Youth Authority's deed. Hanus explained that the Oregon

Youth Authority wants to deed the property to the Oregon Military Department. The deed and reversionary clause needed to be revised to allow this transfer. The original reversionary clause would still apply if the property were ever sold to or used by a non-governmental entity. In that case, the property would revert to the state.

Secretary of State Bradbury read a statement reflecting the Board's intentions to retain the Elliott State Forest, saying it continues to be a major asset for the Common School Fund. He said the cost-benefit study being conducted would provide information important for determining the Land Board's fiduciary responsibility in development of the Asset Management Plan.

State Treasurer Edwards read a statement affirming that the Board has no intention of selling large tracts of currently leased rangelands. He said that priority will be given to isolated tracts of rangeland and lower priority to selling a few small isolated leased tracts that are difficult to manage. He added that a Grazing Fee Advisory Committee would be formed to review the Secretary of State's Audit Report findings, analyze whether current fees reflect the fair market value rate and make recommendations to Director Hanus about the fee formula and rates. Director Hanus will then report these findings to the Land Board. Secretary of State Bradbury agreed with this statement.

Governor Kulongoski expressed his agreement with the two statements that were read. He also read a statement addressing people's concerns over rangeland sales and potential sale of the Elliott State Forest. He reiterated what the other two members said about the Board retaining both the Elliott State Forest and the large tracts of rangelands.

Governor Kulongoski asked whether there would be a public hearing regarding the rules for the use of state-owned property and asked for clarification regarding what is being amended in the rule. Hanus responded that public hearings have been held. She said in the past the director had put rules in place on a seasonal basis to restrict certain areas to public use. The Department of Justice is advising that any area restriction decisions should come before the Land Board, rather than being approved by the director.

Assistant Director John Lilly responded to several questions from the Land Board about potential restrictions of public lands. He described the areas and the reasons for these restrictions. Lilly said it is best to work with law enforcement and other public land managing agencies to address problems through other methods before using restrictions. He said the proposed restrictions are reasonable, well measured and appropriate.

State Treasurer Edwards noted how important it is to monitor issues that arise after navigability determinations are made, since these determinations set up the potential for management that did not exist before. He added that it is important to show the public on both sides that there are positives that can come out of public ownership of the beds and banks.

Governor Kulongoski requested a memo to the Land Board detailing the director's authority for fire protection on state lands and describing the coordination that is occurring with other agencies.

State Treasurer Edwards moved the Land Board approve the Consent Agenda Items. Secretary of State Bradbury seconded the motion and the approval was unanimous.

### **Action Items**

#### **2. Request for approval to submit the Department of State Lands' proposed 2005-2007 budget request.**

Director Hanus outlined the budget request, which the agency will forward with the Board's approval to Department of Administrative Services. She said it represents a bold approach manage the state's assets more aggressively, as well as provide the funding to protect the lands from fire and noxious weeds and deal with issues such as the Portland Harbor.

State Treasurer Edwards commented that the budget is a pretty aggressive one for this economic climate. He asked if the agency has established performance benchmarks they will aim to achieve with the new positions being requested. Hanus confirmed there would be performance measures connected with the budget, and the agency will report back and monitor achievements.

Chuck Bennett, Confederation of Oregon School Administrators (COSA), said his group strongly supports the overall direction the DSL budget proposes in terms of revenue production, resource stewardship and protection of Common School Fund assets. He said COSA would be actively lobbying for the budget and the requested positions. He noted his concerns that the agency has been continually under-funded, given the importance of the mission and COSA's desire to see aggressive actions relative to the growth of the Common School Fund.

Otto Schell, Oregon PTA, said the PTA is taking a more active role as it relates to the Common School Fund. He read a resolution from the PTA in support of management of the trust lands of the Common School Fund.

Secretary of State Bradbury voiced his appreciation of the aggressive approach of managing the resources for a greater return. He said if you want to maximize resources, it will take resources to do that.

Director Hanus said she believes the agency is poised to make a big difference to future generations of kids, but added that it will take significant investment.

Secretary of State Bradbury moved the request be approved. State Treasurer Edwards seconded the motion, and the approval was unanimous.

### **3. Request for approval to submit the Department of Forestry's proposed 2005-2007 Common School Fund budget.**

Director Hanus explained that the Department of Forestry just received their 2003-05 budget numbers from the Department of Administrative Services that are necessary to compile its 2005-07 budget projections. She said Forestry submitted this request to our agency shortly before our deadline for printing. Hanus said a quick review of the budget suggests the 2005-07 budget should reflect closer to what will be needed in 2005-07, given the expenditures for 2003-05.

Hanus recommended the Board approve the Department of Forestry's submission of their budget to the Department of Administrative Services as part of agency's total budget, but with direction to revise its 2005-07 request to be more in line with projected needs for 2005-07.

Secretary of State Bradbury moved the request be approved as amended. State Treasurer Edwards seconded the motion and the approval was unanimous.

**4. Request for action on whether to proceed with a navigability study for the Rogue River from Grave Creek to Lost Creek.**

Director Hanus said in 1997 the agency received a letter from Timothy Thompson who was at that time the District Attorney for Josephine County. The letter requested a navigability study be undertaken for the Rogue River from Grave Creek (River Mile 68.4) to Lost Creek Dam (about River Mile 158). She said due to the agency's limited staffing and other pending navigability issues, the request had been delayed. The current District Attorney, Clay Johnson, wrote a letter to confirm that he still wanted the navigability study.

Hanus said letters had been sent to individuals along the Rogue River advising them that the study was being considered, and law enforcement agencies were contacted for their insight on whether the study was warranted.

Hanus explained the Board must determine whether there is either sufficient economic justification or a broad and substantial public interest to undertake the effort. She said there does not seem to be the economic justification, since there is no gravel mining, electrical generation or anything that would be significant in the river. In speaking with law enforcement officials, Hanus said law enforcement believed that it is important to be able to clarify the state's ownership for law enforcement purposes. She recommended the Board authorize the study to proceed.

Josephine County District Attorney Clay Johnson joined the meeting by phone. Governor Kulongoski asked Johnson for his comments on the need for this navigability study. Johnson said he supports the study. He added that clarity is needed regarding the rights of landowners versus the public concerning the use of the Rogue River.

District Attorney Johnson said since writing the letter, he recently spoke with both the county sheriff and state police law enforcement officers who relayed that issues have calmed down significantly since the original 1997 letter requesting the study. He noted how the two

agencies he spoke with would handle the issues in a totally different manner from each other, which further demonstrates the need for clarification.

Johnson said though issues currently seem less critical, he would still recommend the study be done to determine who has rights to the river.

Governor Kulongoski asked how much of the area requested for a navigability study is in each of the two counties. John Lilly responded that about 39 miles of the reach are within Josephine County and 68 miles within Jackson County. Hanus said the Jackson County commissioners seem to be split about whether or not to do a study, with probably more against it than for it.

In response to State Treasurer Edwards' question about contacting property owners, John Lilly replied that upland property owners and interest groups were notified that the Board would be considering the study.

Hanus outlined the legal process the agency must follow when a navigability study request is made. Governor Kulongoski asked what action the Board took in February 1998 when this issue was brought before them at that time.

Lilly said the issue was brought before the Board as an informational report to let the Board know that a request had been received; no action was required.

Governor Kulongoski asked what was different today that requires the navigability determination to go forward now. Lilly responded that in the agency's Strategic Plan the Rogue River was the next river to be under consideration, consistent with the order the requests were received.

Governor Kulongoski expressed his concerns that the lack of action taken since the first notification was made in 1997 could be misconstrued by some to mean the issue had been resolved.

Hanus explained what had occurred to cause the determination to be put on hold, citing a combination of limited staff with other rivers to consider, and working with the legislature in their efforts to develop an alternative solution. The Governor said if a similar issue occurs in the

future, he recommends a letter of public notice should be sent to inform people that the issue has not been resolved. He requested that a letter be sent to the landowners affected by this study with an explanation of what has occurred and why the request for a study is going forward at this time.

State Treasurer Edwards explained that he had another commitment and had to leave the Board meeting. He commented that he shared the Governor's views about being sure that the public is informed about what is happening.

Secretary of State Bradbury said the legislative solution was not successful last session, but the Land Board still has an on-going responsibility that does not go away because the legislature did not adopt the proposal. He commented that the property owners received a notice on April 5 that the issue would again be coming before the Board. He said the Board should move forward according to the legal process provided and hopefully as a result of continuing to move forward the need to enact a legislative solution will become more evident.

Director Hanus outlined two approaches that could be taken by the Board. Governor Kulongoski determined the agency should send a letter explaining that the Land Board has delayed taking action until the next meeting and giving the reason for the delay. He said the letter should advise them of the date that the Board will take action on the navigability study request. He said a hearing would not be necessary.

Secretary of State Bradbury voiced his concerns over the delay, asking whether it might set a precedent for other rivers that are on the list awaiting a navigability study. Hanus said future letters to landowners could include a background and history of what has happened in the process. Secretary of State Bradbury agreed that this should be standard.

It was determined that this agenda item would be delayed until October, when it will be presented again to the Board.

Gary Berlant, property owner on the Rogue River and member of the Grants Pass City Council, said the ambiguity does not serve anyone. He said use of the river is increasing rapidly, public walkways are going in and the city is planning at least one white water park.

Because these things will affect him as a private property owner and as a city councilor, he said clarity is needed so that everyone will know how to move forward with the plans for the region. He asked the Board to keep in mind that of foremost importance is ensuring the public's access rights to those resources left in trust for the public when Oregon became a state.

He disagreed with the Department's evaluation that there is not "sufficient economic justification," saying that the jet boat tour operators, dock lessees, and other proposals could all be sources of revenue for the Common School Fund.

Lawrence Edwards from Silverton said all the citizens of Oregon are property owners on the Rogue River. He said those who have deeds along the Rogue River are being notified of actions on the river, but he is concerned that no one is notifying recreationists regarding the issue. He said there are over 1,800 anglers in the Rogue River area that are concerned about the issue and want it resolved.

He said he strongly supports the Rogue River navigability study, adding that in a 1917 declaration, the Oregon State Legislature qualified the entire Rogue River as being navigable and in 1921 they passed a law guaranteeing the public's rights to use the beds and banks of the Rogue River below the high water mark. He said in 1923 the legislature again took up the issue of navigability and amended the law regarding streams that are navigable for a portion of the year.

In addition, he cited a 1940 U.S. Supreme Court ruling that he said made moot the question of navigability of the Rogue River. He said they handed down a very clear test for navigability.

Governor Kulongoski told him that the issue would be brought back again at the October Land Board meeting and asked Lawrence to provide a written copy of his testimony. Lawrence commented that the Board is again stalling.

Art Israelson, River Access Director for the Northwest Steelheaders, reviewed the history of what has happened with the issue of navigability. He said each step in the process has been a stall and added that the Board's actions today are another stall. He voiced his agreement with Edwards.

Director Hanus said the agency would send a letter out as the Governor requested and would return to the Board in October for further consideration of the issue.

**Informational Items**

- 5. Briefing on Oregon's response to the U.S. Commission on Ocean Policy Report.**
- 6. Update on Strategic Plan accomplishments.**
- 7. Navigability study update.**
- 8. Removal-fill streamlining update.**
- 9. Update on rangelands.**
- 10. Update on Elliott Cost-Benefit Study.**

Due to time constraints, it was decided that the Ocean Policy Report would be presented to the Board at its October meeting.

Hanus said the Board could read the written materials provided for the other items.

The Governor adjourned the meeting at 12:25 pm. A reception was held after the Board meeting to honor the recipients of the Land Board awards.

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Theodore R. Kulongoski, Governor

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Ann Hanus, Director