

The State Land Board met in regular session on April 12, 2005 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>
Mike Carrier	Ann Hanus	Lore Bensel
Jesse Cornett	John Lilly	Richard Whitman
Inga Deckert	Steve Purchase	
	Gail Lowry	

The Governor called the meeting to order at 10:16 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).

Director Ann Hanus reviewed the following Consent Agenda Items:

- 1. a. Request for approval of administrative rules relating to volunteers on Department of State Lands' managed lands and the operation of volunteer organizations, commonly known as "Friends" groups.**
- b. Request to initiate review and determination for sale of four parcels of land in Clatsop, Multnomah, and Wasco counties.**
- c. Request for approval to appear before the 2005 Legislative Ways and Means Committee to request permission to apply for two Environmental Protection Agency grants.**

- d. Request for adoption of the Asset Management Plan Implementation Progress Report.**
- e. Request for approval to support legislation for transfer of the Unclaimed Property Program to the State Treasurer's Office.**
- f. Request for approval of the February 8, 2005, State Land Board minutes.**

Secretary of State Bradbury moved the Consent Agenda be approved. State Treasurer Edwards seconded it and the approval was unanimous.

2. Colonel Richard Hobernicht, U.S. Army Corps of Engineers, status report on the Corps' evaluation of the process to issue a Statewide Programmatic General Permit.

Director Ann Director Ann Hanus introduced Colonel Richard Hobernicht of the U.S. Army Corps of Engineers. Hanus said the Statewide Programmatic General Permit (SPGP) is a major part of the Governor's streamlining efforts.

Colonel Hobernict gave an update on the SPGP saying that the coordination should be completed soon with the permit becoming a reality in the coming months. He said streamlining the process by means of the SPGP would let applicants know how to design their projects to achieve faster permit decisions. He added that the permit would free up the Corps' regulatory staff allowing them to devote more time to ensuring compliance of existing permit conditions.

State Treasurer Edwards asked when the Colonel expects the permit to be signed. Colonel Hobernict responded that it should be signed prior to his changing command on July 22nd.

Colonel Hobernict recognized the work of John Lilly, Assistant Director for Policy and Planning, and Eric Metz, Regulatory Policy Specialist, for their work on the SPGP. He presented both of them with a Corps of Engineers Portland District Command Medal.

Director Ann Hanus also recognized the contributions of Deborah Chenoweth, Don Borda and Judy Linton of the Corps.

3. Presentation of the 2004 Stream and Wetlands State Land Board Awards.

Director Ann Hanus announced that plaques would be presented for the 2nd annual State Land Board award to the recipients of these awards who were nominated for promoting and recognizing responsible, sustainable stewardship of natural resources.

The plaques presented to the award winners were the work of Portland artist and Oregon Native, Lillian Pitt. Hanus said the award recipients would also be recognized at the May 18th Oregon Plan for Salmon and Watersheds Awards event at the Capitol.

Award winners of the 2004 Stream Project were for the Longley Meadows Restoration Project: Alta Cunha Ranches and Moss Creek Ranches with Shauna Mosgrove, Kelly Stinnett and Carla Cunha, owners.

Award winners of the 2004 Wetland Project were for the Vanport Wetland Mitigation Site, Port of Portland: Bill Wyatt, Executive Director; Larry Devroy, Natural Resources Manager; Scott Carter, Project Development Coordinator; all Port of Portland; and Mark Vlahakis, consultant with SWCA.

Governor Kulongoski presented these awards, and photographs were taken with the Land Board.

Bill Wyatt, Executive Director of the Port of Portland, said the 60-acre site, which had been the original radio tower site for the broadcast services in the Portland Metropolitan area, is now home to every manner of wildlife from bald eagles and peregrine falcons to the Pacific Tree frog. He explained this is a mitigation site for a variety of things the Port has been involved in. He thanked the Board for the award, accepting it on behalf of all those who worked to make it happen.

4. Oral report by the Attorney General's Office relating to navigability opinion.

Assistant Attorneys General Lore Bensel and Richard Whitman both made presentations to the Board and answered questions summarizing

a draft Attorney General Opinion regarding ownership and use of waterways in the State of Oregon with an emphasis on title navigability, the doctrine of public use, and reviewing whether or not members of the public can exercise these rights independent of any further action by the state.

Because a member of the public had requested to present testimony at the meeting to the Board regarding the navigability determination of the John Day River, Governor Kulongoski asked Bensel to comment on the Board's ability to accept that testimony, since the public comment period had closed. Bensel said the law would not allow the Board to consider additional public input regarding the decision on the John Day. She said the Board is to consider the materials in the record at this date, along with the report and recommendation prepared by the agency. She clarified that no further public input would be allowed.

Governor Kulongoski requested that Bensel and Whitman review Senate Bill 1028, analyzing it in the light of what is in the draft opinion to determine if the bill is in agreement with the draft opinion.

Secretary Bradbury agreed with the request asking that Bensel and Whitman look at the rights of waterway users and landowners in SB 1028, comparing that to the doctrine of public use, as they had outlined to the Board, to see how they compare.

All members of the Board requested the opinion be finalized. Bensel said that could be done in a week.

Director Hanus suggested that in the interest of time the Board could read the next two items at their leisure

5. Asset Management Plan Revision Status Report.

6. Legislative Update.

Director Hanus noted that there are three bills relating to the use of the waterways that the Legislature is considering: Senate Bill 423, Senate Bill 1014, and Senate Bill 1028.

State Treasurer Edwards said Senate Bill 1028 is to codify common law rights around rivers and work on how to manage the public on the waterways and assert certain property rights for property owners. He said this is an alternative to the navigability process. He reiterated his desire to see how this bill and the draft opinion mesh.

7. Request for Land Board adoption of the findings and conclusions contained in the Final John Day River Navigability Report.

Director Hanus said this item was initiated as a result of a written request submitted by the Northwest Steelheaders in 1997. The study began in November 2003 after authorization was given by the Board to begin the 18 steps in the process. Hanus reported the agency is now on Steps 17 and 18 of the process and said the Final John Day River Navigability Report represents the third report presented to the Board.

The report concludes that in 1859 the 174-mile study segment of the John Day River was susceptible of being used in its ordinary and natural condition as a highway of commerce over which trade and travel could have been conducted in the customary modes of trade and travel at that time; that there was no federal action that reserved or otherwise prevented a transfer of ownership to the state; and that the state has owned the land underlying the study segment of the John Day River since statehood. The state ownership extends to all lands located below the line of ordinary high water along the 174-mile study segment, unless lawfully conveyed or granted to another entity by the state since statehood. The Department recommended the Board:

- (1) Adopt the findings and conclusions in the John Day River Final Navigability Report pursuant to OAR 141-121-0040 and in so doing, determine that since statehood in 1859 the State of Oregon has owned the 174-mile study segment of the John Day River that lies below the line of ordinary high water; and
- (2) Issue the written declaration of navigability.

Director Hanus outlined the Board's options as follows:

- (1) Adopt the findings and conclusions in the John Day River Final Navigability Report and declare public ownership of the John Day River from River Mile 10 to 184 -- if it determines that the preponderance of the evidence in the record proves the factual aspects of the federal test for title navigability;
- (2) Adopt the findings and conclusions in the John Day River Final Navigability Report and declare public ownership of a smaller portion of the John Day River – if it determines that the preponderance of the evidence in the record proves the factual aspects of the federal test for title navigability on only part of the 174 mile study segment;
- (3) Reject the findings and conclusions in the John Day River Final Navigability Report -- if it determines that the preponderance of the evidence in the record does not prove the factual aspects of the federal test for title navigability;
- (4) Refer the John Day River Final Navigability Report to the Department for additional action to be determined by the Board;
or
- (5) Take no action.

Governor Kulongoski asked whether the draft Attorney General's opinion has been laid next to the report to determine whether they are compatible. Hanus said the Department of Justice reviewed the report, but has not been asked specifically to compare the report with the information in the draft opinion.

Governor Kulongoski moved the Board hold off on making a decision on the navigability determination until the June Land Board meeting to allow everyone interested an opportunity to review the final Attorney General's opinion when it is issued, to allow the Attorney General's office to compare the information that is in the opinion with the report, and to give the Legislature opportunity to review the materials about the doctrine of public use.

Secretary of State Bradbury seconded the motion. Treasurer Edwards expressed his appreciation for what the Governor offered, saying that, in his view, what the Board is trying to achieve is a statewide solution, rather than a river-by-river process. Treasurer Edwards believes it is critical that the Board take a step back and assess what the final opinion says, digesting that and reviewing it with Senate Bill 1028.

The Treasurer commented that if the Board could achieve that in this session they would make history. He said Senate Bill 1028 is a balance approach. Secretary Bradbury agreed, saying it makes sense to try to solve this problem on a much larger scale for the whole state. The motion was approved.

Director Hanus invited everyone to attend the reception in the Mill Creek Room immediately following the Land Board meeting to honor the recipients of today's awards.

The meeting was adjourned at 12:10 pm.

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Theodore R. Kulongoski, Governor

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Ann Hanus, Director