

The State Land Board met in regular session on June 14, 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>
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 10:00 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).

1. Request for Land Board decision regarding whether the federal government transferred the ownership of the land underlying the John Day River, between River Mile 10 (at Tumwater Falls) and RM 187 (at Kimberly), to the State of Oregon at statehood in 1859.

Director Hanus said this item had been deferred from the April Land Board agenda to allow the Attorney General's Office to complete its opinion regarding navigability and the rights of the public to use Oregon's waterways. The Board requested that the Attorney General's Office review the John Day River Final Navigability Report to determine whether it is consistent with their Attorney General opinion on navigability.

Director Hanus said the Oregon Court of Appeals issued its opinion in *Northwest Steelheaders Association, Inc. v. Simantel*, confirming that Oregon holds title to the John Day River below the line of ordinary high water at the locations in question.

Hanus explained that this is the final step in the process and reviewed the options the Board could take. The agency 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 the State of Oregon has owned -- and continues to own -- the land of the 174-mile study segment of the John Day River that lies below the line of ordinary high water since statehood in 1859; and
- (2) Issue the written declaration provided in Appendix D of the agenda item.

Treasurer Edwards complimented staff on the work they have done on this issue. He said everyone has struggled with the process, but added that he does not believe it is the right time to decide the issue. He said their top priority has been to find a legislative solution to address the public's rights along rivers rather than following the navigability process, which he said does not resolve the core issues of reducing conflict and managing use of our rivers. Edwards distributed a letter from the legislative leadership showing their commitment to pass Senate Bill 1028, a river rights and management bill.

Secretary Bradbury expressed appreciation for the Treasurer's efforts to work with groups to find a compromise and a statewide solution. Bradbury said the Board's choice is to determine whether the river is navigable or not. He said the Board does not have the authority to find a middle ground. He added that the legislature should continue to move toward a statewide solution, but said until such a time, the Board must continue the process of determining navigability river by river.

Secretary Bradbury moved the Board accept the recommendation of the agency.

Governor Kulongoski echoed Secretary Bradbury's comments. He discussed SB 1066, the companion bill to SB 1028, saying he probably would not support the bill, commenting that if passed it could make decisions even more divisive and contentious. The Governor said the public needs certainty. He said the Board should take action, rather than waiting until the October Land Board meeting. He added that there is nothing to prevent the bill from going forward and applying to other rivers in the state. The Governor seconded the motion.

State Treasurer Edwards said there is the potential for finding the statewide solution. He feels progress is being made on the legislative front. He reported that he would abstain from the motion.

Secretary Bradbury stated that he sees no reason the legislative solution could not move forward and feels we need to answer the question this study has raised.

Governor Kulongoski and Secretary Bradbury voted to approve the motion. State Treasurer Edwards abstained from the vote. The motion was approved.

2. Request for approval of the revised Management Agreement (Forest Management Agreement) between the State Land Board, the Oregon Department of Forestry and the Department of State Lands for the management of the Land Board's Common School Forest Lands.

Director Hanus said this management agreement was last updated in 1993. She reviewed some of the important changes that have happened since that time. The new agreement beefs up performance criteria and cost accountability and strengthens business relationships between the Land Board, Department of State Lands and Department of Forestry by laying out a specified scope of work, describing the need related to tracking expenditures and revenues and keeping costs in line with comparable management. Hanus said the agency recommends approval of the agreement.

Secretary of State Bradbury made a motion that the management agreement be approved. State Treasurer Edwards seconded the motion.

Steve Thomas, Assistant State Forester, said the Department of Forestry worked diligently with the Department of State Lands to develop the agreement and believes the changes will benefit both agencies.

The motion was unanimously approved.

Consent Agenda

- 3.a. Request for authorization to initiate rulemaking to repeal and adopt rules pertaining to the Department of State Lands' revised state agency land use coordination program pursuant to the requirements of ORS 197.180 and OAR 660, Division 030.**
- b. Request for authority to initiate rulemaking to adopt administrative rules governing personnel practices and criminal record background checks for potential new employees and volunteers.**
- c. Request for authority to initiate rulemaking to amend the administrative rules governing the exploration for and development of geothermal resources (OAR 141-075-0010 through 141-075-0575).**
- d. Request to initiate review and determination for sale of two parcels of land in Columbia and Multnomah counties.**
- e. Request for authorization to sell three isolated parcels in Wallowa County and two isolated parcels in Malheur County.**
- f. Request by Multnomah County for a permanent easement for the Stark Street Bridge across state-owned submerged and submersible lands of the Sandy River located in Multnomah County.**
- g. Request for approval of the release of Oregon Department of Forestry mineral rights in Lane County.**
- h. Request for approval of minutes from April 12, 2005, State Land Board meeting.**

Director Hanus briefly described each item on the Consent Agenda. State Treasurer Edwards moved the Consent Agenda be approved. Secretary of State Bradbury seconded the motion and the approval was unanimous.

4. Willamette River Water Trail Presentation by Louise Solliday.

Louise Solliday, Willamette Legacy Project Manager, discussed the effort to develop a water trail along the Willamette River from Eugene. She reported that about a hundred people came to the grand opening held to celebrate the first phase of this trail from River Mile 107 at Buena Vista Ferry to River Mile 72 at the Wheatland Ferry. Solliday said the Department of State Lands owns three islands in this first segment of the trail they needed permission to utilize, and she added that more requests for permission would be needed for property upstream and downstream as they continue work on the trail.

Solliday distributed copies of the *Guide to the Willamette River Water Trail*, which are printed on waterproof paper. She told the Board that development of the trail and the Guide is being supported through both public and private resources. She added that there is a coalition of folks who worked together on the project, including several state agencies.

One note of concern, she noted, was that with increasing use there might be increased problems with garbage and potential vandalism to various public land amenities.

Parallel to the river, they are also developing the first-ever Oregon scenic bikeway, called the Willamette Scenic Bikeway. This will result in people being able to do "peddle and paddle trips."

5. Asset Management Plan Revision Update.

Director Hanus briefly noted that the agency is developing an updated Asset Management Plan focusing on performance, targets, and strategies. She said there have been good discussions about what the rate of return should be for the different classes of lands.

6. 2005 Elliott Cost/Benefit Analysis Follow-up.

Director Hanus said the Board could read this item at their leisure, adding that this analysis has been especially helpful in reviewing economic benefits and the management goals for the Elliott State Forest.

7. Removal-Fill Program Report for 2002-2004.

Pat Allen, Office of Regulatory Streamlining, discussed the efforts of the group he chaired that came together to explore ways of improving the water-related permitting process. The issue was boiled down to two sets of problems: 1) the permitting process is too complicated and 2) applicants can't easily determine what is required upfront. Allen briefed the Board on the group's recommendations, saying they are moving into implementation of these recommendations and development of proposals for next spring. The report from the group was distributed in the written agenda materials provided to the Board.

8. Navigability Update.

A written memo was provided to the Board with an updated schedule of proceeding through the navigability studies.

9. Legislative Update.

A written memo was provided to the Board to read at a later date updating them on legislative issues pertaining to the Department of State Lands.

The meeting was adjourned at 11:00 am.

Theodore R. Kulongoski, Governor

Ann Hanus, Director