

The State Land Board met in regular session on June 10, 1997 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97310.

Present were:

John Kitzhaber	Governor
Phil Keisling	Secretary of State
Jim Hill	State Treasurer

Assistants

Paula Burgess  
Rollie Wisbrock  
Rick Hanson

Staff

Paul Cleary  
John Lilly  
Steve Purchase  
Gary Van Horn  
Jenifer Robison  
Gail Lowry  
Jeff Kroft  
Steve Moser

Dept. of Justice

Bill Cook

Governor Kitzhaber called the meeting to order at 9:09 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 Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310 (phone: (503) 378-3805).

***Rulemaking***

Request for authorization to initiate rulemaking to revise the waterway lease rate for residential non-commercial privately-owned docks on state-owned submerged and submersible land, and implement a "freeze" on other waterway lease rentals extending through June 30, 1999, or until such time that revised waterway leasing rules are adopted by the Land Board (whichever occurs first).

Director Cleary stressed that this item is a request to begin the rulemaking process-the first step. A request for adoption of rules will come only after the public review process. He said two items are being proposed at this point-a reduction in private residential dock rates from \$588 to \$250 per year and a proposed freeze on other lease rentals for a two-year period or until the comprehensive rule revision has been completed on the waterway leasing program, whichever comes first.

Cleary said a minimum of six public hearings and workshops will be held and a 70-day public comment period will be opened. He will meet today after the Land Board meeting with those interested parties in attendance to determine the best locations and dates for the public hearing/workshops. He stressed the agency's commitment to an open-public process, saying individuals should critically review the proposals and challenge the underlying assumptions.

Cleary said the rules currently in place have been criticized by many and are not working. A Waterway Leasing Task Force was created to help define the problems and identify options and alternatives.

Bill Montgomery, who has houseboat moorage in the Portland Rowing Club, said he believes the Division is in a "relentless and expensive push for a combined land rate based tax with the major motivation being to increase personnel and pay for overhead of the agency." He said the flat rate proposal would require no additional personnel or overhead costs.

Montgomery presented a chart comparing the different proposed rate structures and resulting lease rates for various users. He noted the Winmar Jantzen Beach lease would go from nearly \$8,000 to nearly \$99,000 under a six percent of adjacent land value lease rate approach.

He said the Task Force was flawed since it was composed of a majority of government representatives paid to be there who would vote for expanding government bureaucracy by voting for the combined land based value. He said the second flaw he noted was that the facilitator led the group much like a civics class with many graphic summaries, pre-printed and strategically posted before task force members had a chance to air their views. Montgomery felt the facilitator was trying to tell members what they should be thinking. The third flaw, according to Montgomery, was that the Task Force's conclusions were for the most part not a balanced representation of the members' input. He noted the report didn't include any written testimony provided at the meetings.

Montgomery commented that DSL hasn't used restraint in the past. He asked why the agency should be trusted to do so in the future with the leeway that is hidden in the combined land rate value proposal to charge from one to six percent based on different uses. He then asked why the upland value of land should have anything to do with the rental rate for the water. Montgomery suggested a flat rate generating total collections of \$900,000 per year be charged from the leasing of submerged and submersible lands, since this is the amount generated by the current waterway leasing program. He said with the current trend, he sees expansion of the Division and probably considerable cost in resulting litigation.

Mel Pittmon, representing Columbia River Yachting Association and Rose City Yacht Club, discussed his concerns over the Task Force being dismissed with

several unresolved issues, such as the waterway leasing inventory, the updates for the Attorney General opinions, and the lease rate formulas. He said the Task Force was dumped suddenly without notice.

Pittmon said a questionnaire mailed by the Division to 630 people had a slanted set of examples, not revealing the extent of potential lease rate escalation. He said the Division has made no effort in recognizing its stakeholders' recommendations for a fair, equitable, easy to administer flat rate for leases.

Pittmon reiterated what Montgomery said about using a sliding scale of one to six percent of upland value as being like a "blank check for the Division to use."

He asked the Board to direct Cleary to continue the Task Force and seek some compromise with the stakeholders/leaseholders regarding the lease rate structure.

Governor Kitzhaber asked Cleary to address the issues raised. Cleary said many of the comments involve the more comprehensive leasing system and rate revisions that will be proposed next fall following the ongoing public review of the Task Force report and development of the statistical abstract the Board requested at the last meeting. Cleary said the one area of Task Force consensus was the need to address the inequities in the private dock rates. The Division's proposal is to dramatically reduce the private dock rates and put a freeze on other lease rates and combine the public hearing process on those interim proposals with workshops on the broader rule and rate revision effort.

Cleary said the agency is expanding beyond the Task Force for broad public input at this stage and reaching out to the interest groups directly and to all the lessees. He said a questionnaire was sent to over 600 entities along with the report. Cleary explained that an attempt was made in the materials sent to show examples of how the different rate formulas might look under different scenarios. In response to Mr. Pittmon, he said there was no intention of misleading people in this exercise, and the scenarios were for illustration purposes only and did not reflect real world situations.

Cleary said everyone knows the current leasing system needs comprehensive revisions. He discussed the proposal to reduce the leasing fee for residential non-commercial privately-owned docks and place a freeze on current rental rates for existing lessees until the new rules are in effect or until June 30, 1999, whichever occurs first. He said the freeze will be an incentive for the job to be done quickly, since this will cost the Division about \$30,000 in lost lease revenues per year.

Cheri Sprando, Waterfront Owners and Operators, said she is a past Task Force member and owns a marina on the Multnomah Channel. She said she was surprised that the Task Force was going to be "shelved."

Sprando reported that a Division employee called to ask what her rates were and how many boat slips she has. She said he failed to ask what the vacancy rate on her marina has been. She noted that he was taking his survey information from a 7-year old Alder Creek Project on Sauvie's Island and should have been taking his facts from current land appraisal information. She added that he also did not take other factors into consideration such as the lack of salmon fishing causing a slump in the economy, poor weather conditions, dredge costs, etc. She said the inventory must be done completely, not piecemeal, and added that the stakeholders and people who make their living from the waterways need to be the ones involved in determining a fair lease rate. She believes the flat rate system would be based on justifiable information and would be fair and easy to administer.

Sprando said she is glad for the freeze on lease rates, but noted some of the highest paying lessees are being charged too much money and their rates are being frozen in an inequitable state. She said there needs to be some fairness there.

Secretary of State Keisling moved approval of the item to initiate the public rulemaking process. State Treasurer Hill seconded the motion and the approval was unanimous. Governor Kitzhaber also asked that the record reflect that Sprando's concerns will be raised during the rulemaking process.

### **Consent Agenda**

**Easement** Request by City of Eugene for an easement for a bicycle/pedestrian bridge over the Willamette River.

**Scenic Waterway** Request for approval of a scenic waterway permit to be issued to U.S. Forest Service, Malheur National Forest, to restore an existing bridge structure and roadway within the Middle Fork John Day River State Scenic Waterway.

**Scenic Waterway** Request for approval of various scenic waterway permits for recreational placer mining activities located within state scenic waterways.

**Scenic Waterway** Request for approval of a scenic waterway permit to be issued to the Wasco County Soil and Water Conservation District for erosion control within the Deschutes River State Scenic Waterway.

**Minutes** Request for approval of the State Land Board minutes from April 8, 1997 meeting.

Director Cleary briefly reviewed the items on the Consent Agenda with the Board adding that they have been reviewed by other agencies and there have been no objections.

State Treasurer Hill moved the Consent Agenda be approved. Secretary of State Keisling seconded the motion and the approval was unanimous.

### **Informational Agenda**

***Navigability***            Status report on navigability study requests on the Sandy River, John Day River and North Santiam River.

Director Cleary reported on the status of these three navigability study requests, saying the agency is farthest along in the initial public notice/scoping process with the Sandy River request. He said a summary of comments received to date regarding the Sandy River request was included with the Board's written materials. The agency is refining the affected landowner mailing list, in case the Board initiates the study and a subsequent notification is needed.

The John Day request is also in the public comment period which ends June 27. The North Santiam request, which covers 13 miles, was just recently filed and the public notice process and initial comment period will begin soon.

Kathy Amundson, Sandy River property owner, discussed the 1970 and 1972 Oregon Submerged and Submersible Lands Biennial Reports developed by an advisory committee as a result of House Joint Resolution 40 enacted by the Oregon Legislative Assembly in 1967. She said the committee put together 14 legislative proposals for the Land Board to present to the Legislature dealing with submerged and submersible lands issues. In 1973, the Legislature gave the Division of State Lands the task of determining which rivers were navigable. Amundson said the Sandy was considered navigable up to River Mile 4 based on survey meandering. She reported that a cadastral survey done in 1855 determined the Sandy River was not navigable. She said, after spending this amount of time and tax dollars, there is no reason to do more research on the Sandy, when it was determined prior to statehood to be non-navigable.

Amundson said when federal and state agencies were working to get wild and scenic designation on the middle portion of the Sandy River, they contacted everyone but the group that would be affected the most-the adjacent property owners. For this reason, as well as noticing increasing users on the river that were being hostile, she lobbied the state and Clackamas County to contact all the property owners to let them know what was happening. With a mailing list supplied in 1992 by Clackamas County she helped arrange a meeting of property owners.

Amundson said at this point, 20 percent of those in Clackamas County still have not been notified about potential navigability hearings. She requested that the notification process begin again before any hearings are held.

Amundson reviewed a handout that she provided to the Board (The Organic and Other General Laws of Oregon - 1843-1872). She believes this proves the land under the river was given to the settlers by the US Government about the time of statehood, with the provision that the State of Oregon not interfere with what the US Government had given.

John Colburn, from the Conservation Committee of the Oregon Council of the Federation of Fly Fishers and also speaking on behalf of the Coalition of River Recreation Rights Users, said the clouded situation regarding rights and responsibilities of river users and river property owners will not be cleared in our lifetime by the expensive and time consuming navigability study process mandated by House Bill 2697. He suggested that a law similar to Montana's Stream Access Law would define those rights and responsibilities and remove many arguments and obstacles against the determination of navigability on Oregon's rivers.

Colburn said the arguments of the landowners regarding trespass, littering, and vandalism are specious. He stated that these crimes are illegal anywhere. He said we wouldn't think of closing off streets and highways because crimes occur there.

Colburn reiterated that a public easement to use the rivers, such as the Montana Stream Access Law, would quiet most of the navigability studies.

**Legislation**                      Status report on the Division of State Lands' budget and other legislation.

Director Cleary said that our budget and the related bill converting South Slough Reserve to a Common School Fund asset, as well as all the Division-sponsored bills have passed both houses and are signed or awaiting signature.

He reviewed the status of other bills that the agency is following on issues such as recreational placer mining, essential salmonid habitat, navigability, etc.

**Flood Relief** Port of Nehalem appeal of FEMA denial of disaster assistance for dredging sediment from the Nehalem River.

Director Cleary explained that several representatives from the Port of Nehalem were present to request that the Board inject itself into an appeal of the Federal Emergency Management Agency's (FEMA) denial of \$800,000 for assistance to dredge sediment related to the February 1996 flood. One of the three reasons given for FEMA's denial was that the State of Oregon is the primary responsible agency for restoring the channel due to tidal ownership of the bed and bank of the river.

Cleary said a meeting has been scheduled immediately after the Board meeting today to explore the FEMA denial and discuss the Port's options.

Dale Stockton, Vice-President of the Port of Nehalem, introduced the parties present with him – Sue Cameron, Tillamook County Commissioner; Jim Goble, Manager of the Nehalem Bay Wastewater Agency; Jack Thayer, farm owner and president of the Sunset Drainage District; Don Moris, civil engineer from the Bureau of Reclamation assigned to FEMA; Vernon Scovell, lifelong resident of the area; and Port Commissioner Stan Jud, also a lifelong resident, farmer, landowner and trucker.

Stockton said the State of Oregon owns the bed of the Nehalem River and the flooding of February 1996 has elevated the riverbed to a point where it causes more frequent flooding of adjacent lands, downtown Nehalem, US Highway 101, the sewage mixing lagoons and treatment plant and diked farmlands.

He said the flood-induced shoaled areas of the Nehalem River and Bay channels must be dredged soon to prevent a monumental and costly disaster in the area when heavy rainfall occurs.

Stockton discussed the two appeals they made to FEMA after their denial of the requested funds. He shared the report by Jerry Dove on his meeting with President Clinton, saying the President promised there would be immediate aid without bureaucratic red tape. He requested Governor Kitzhaber appeal to the President to ensure the funding will be forthcoming.

Stockton said with FEMA funding the Corps should be able to complete the investigative work and dredging this year before the winter rains begin.

He asked again that the Board make the appropriate appeal to FEMA for the disaster assistance needed.

Sue Cameron said the Board of County Commissioners endorses the Port of Nehalem Bay's request and is willing to work with the Land Board in any way. She reviewed the devastating effects of the flooding and the discussed the steps they need to take to recover and to prevent continued flooding and devastation to the economy.

Jim Goble, who manages the sewage treatment plant for the area, said that at the height of the flood in February 1996, the treatment plant was under three feet of water and the lagoons were topped over. He said the station in downtown Nehalem lost power, which meant the majority of the treatment system was out. Up to 600,000 gallons of sewage came out of the manholes into downtown Nehalem. Goble said it took a month to get the sewage treatment process back to near normal. Again in January 1997, another flooding occurred and access to the plant was completely shut down.

He said it is obvious to everyone that changes have taken place in the river flow that allow the tidelands to be inundated much more rapidly than before. He said it is imperative to the health of the community that the river be dredged.

Jack Thayer said his farm was covered with as much as 12 feet of water and the levy disappeared. He stood waist deep in water with 350 cows. He described how he and those with him had to be rescued by helicopter from the barn after being stranded for over 12 hours. Hundreds of dead cows were found the next day.

Thayer summarized the community actions that took place to restore some of the damage that occurred. He said Don Moris, the FEMA assigned engineer, said the river needed dredging to prevent future flooding. Thayer said that prediction has already come true, since they have experienced flooding several times since then. He asked the Board to do what they could to help them be able to dredge the river to prevent future disasters.

Don Moris, registered civil engineer with the Bureau of Reclamation and the federal inspector for the area on this flood, said one big problem for the area was that maintenance dredging had not happened on the Nehalem for 24 years or longer and major bridges have been built and highway construction has occurred. Moris said the bottom part of the river has infilled and has turned into a virtual dam. He said since 1990 there have been four major floods, and the problem is not going to go away.

He said currently without a flood coming down the river, just with a very minor rainfall the town and Highway 101 can go underwater. This, he said, is a very

unacceptable risk to life and property. He has laid out in his proposal the areas that could be dredged to be most effective and what could be done to the levees, but he stressed that any work done to the levees is wasted until some dredging of the river is done.

Vern Scovell, dredge operator and long time resident of the area, said the whole river is drastically changed – the river bottom has raised. He said at low tide now, the Nehalem River above the farmlands is running just like a creek, and the fish don't have protection from predators like they previously did.

Scovell said the Port needs the Board's help in dealing with the FEMA appeal, but also in getting assistance through the permitting process.

Stan Jud said this is a serious condition. He said the area is not asking for flood relief - they have basically recovered from the flood. He said they are asking for help to prevent future problems. He asked that the Board and the Division of State Lands be the sponsoring agency to help them, since their appeals have been turned down twice.

A video of the flood taken by two teenage boys over the course of ten weeks. was presented to the Board.

Governor Kitzhaber said that representatives from the Division, the Port and Oregon Emergency Management will get together after the meeting. He said a better understanding of the FEMA denial and the options is needed, and that the Board was willing to assist where possible. He thanked the group for their presentation.

Governor Kitzhaber adjourned the meeting at 10:48 am.

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John A. Kitzhaber, Governor

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Paul R. Cleary, Director