

The State Land Board met in regular session on October 12, 1999 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97301-1279.

Present were:

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

<u>Assistants</u>	<u>Staff</u>	<u>Dept. of Justice</u>
Paula Burgess	Paul Cleary	Bill Cook
Rick Hanson	John Lilly	
Rollie Wisbrock	Steve Purchase	
	Gary Van Horn	
	Jenifer Robison	
	Gail Lowry	

Governor Kitzhaber called the meeting to order at 10:05 a.m. 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 97301-1279 (phone: (503) 378-3805).

CSF Review of the Common School Fund distribution levels and policies.

Director Cleary reviewed the legislative funding package for schools for the upcoming 1999-01 biennium that assumed an increase in Common School Fund distributions of \$50 million. Cleary said the Board agreed to consider increasing distributions, with the caveat that a long-term policy and not a specific budget target drive the decision.

He reviewed the current Fund value and the market activity for the year to date. He said the Fund would distribute \$35 million under the revised distribution policy in the first fiscal year of the biennium, based on 1998 calendar year growth, but commented he is unsure that the Fund would meet an 11 percent growth based on this calendar year, unless the stock market has a turn around. If the 11 percent growth was not met, the distribution level would be less than the \$35 million, since it self adjusts with the growth of the Fund.

Cleary reviewed the proposed distribution policy, along with the charts and written information provided to the Board. He explained how the distributions as a percent of Fund Market Value have declined over the years because of growth in the Fund. He said distributions haven't consciously been cut back, they were allowed to float for a time, and then were fixed at \$10 million in 1997 to reverse the downward trend, with five percent annual increases thereafter.

Other charts in the materials showed what the distributions would have been during the period of 1989 to 1998, had the sample distribution policy been applied during that period, and the potential effect on the value of the Fund.

Cleary said under the proposed policy the distributions would be increased, with a reduced rate of growth in the Fund. He added that the proposed policy should ensure a consistent Fund value on an inflation-protected basis, though the Fund won't be growing as rapidly.

Cleary recommended the Board adopt the revised Fund policy for the FY 1999-2001 biennium, to become effective with the distribution calculated in December and paid in January. He added to the recommendation that the policy should be reviewed on a regular basis with the annual review of the CSF investment performance.

In answer to questions by Governor Kitzhaber and Secretary Keisling, Cleary said, if approved, this policy would be in effect for two years, and then reconsidered in the fall of 2001.

Secretary of State Keisling moved the Board adopt the revised CSF distribution policy for FY 1999-2001, as outlined in the August 19, 1999 agenda item, to become effective with the next scheduled distribution in January 2000 and to be reviewed on a regular basis in conjunction with the annual review of CSF investment allocations and performance. State Treasurer Hill seconded the item.

Secretary of State Keisling expressed his reluctance over this issue. He said the Legislature failed to achieve a decent target for school funding and completely avoided the issue of the long-term fiscal stability of educational funding in the state. He had expressed his desire for discussions to occur regarding changing the kicker law to allow some of that money to be placed in a rainy day fund. He said discussions didn't take place with the Legislature and they referred the kicker to voters for incorporation in the Oregon Constitution.

Secretary Keisling said there is merit in approving this new distribution policy today, but added that he hopes future Land Boards will be very cognizant of the fact that they aren't the only player in this.

He said that the Fund is at its high level today due to leadership of Governor Roberts and the Board who made a conscious decision in the early 90s to grow the Fund. He said the Fund is going to be diminished in value by increasing distributions. He suggested consideration be given to redirecting this money into capital construction (for long-term investments that last), rather than it being used for operating costs, as it is currently. Keisling said this would take a legislative change, but shouldn't require a constitutional change.

He added that he will vote affirmatively, since he believes the decision is a good thing, but remarked that continued new and creative thinking needs to happen, to improve the situation. The approval was unanimous.

Administrative Rules Request for adoption of final administrative rules governing the granting of easements for the placement of fiber optic and other cables on state-owned submerged and submersible land in the Territorial Sea.

Director Cleary said the objectives of these administrative rules are to protect the public trust values, conserve the living marine and other seabed resources and avoid or reduce conflicts with other ocean users and industries. He added that early notice and involvement of the stakeholders in cable route selection is key to meeting these objectives.

A number of good suggestions came from both the industry and the fishermen, Cleary said. He believes the needed balance has been struck. Where conflicts cannot be avoided by routing, burial techniques should be used whenever bottom conditions allow to minimize potential conflicts. Cleary commented that positive working relationships have been developing between the fishermen and the cable industry.

Cleary said written materials with further rule amendments were made available to the Board to address last minute comments from industry and fishermen. These include elimination of references to the US Coast Pilot and standards of prudent seamanship and allowing applications for non-controversial projects such as additional cables along existing routes to be handled in less than 180 days. Applications for new projects would still be required to be received early enough by the Division to allow 180 days for processing. He explained that the Board would make the final decision on these types of easements, since they are significant actions. This processing time would be used to develop the information the Board would need to assist them in making the right decision.

Scott McMullen, commercial fisherman from Astoria and chairman of the Oregon Fishermen's Undersea Cable Committee, said he became involved a year and a half ago when he contacted Senator Dukes and Representative Thompson regarding his concerns over the loss of more fishing grounds due to new cable installations and warnings to fishermen of severe consequences for not staying away from those cable installations. They recommended McMullen contact the Division, who encouraged dialogue between the cable owners and the fishing industry. This led to several agreements between fishermen and cable industries, as well as the creation of the Oregon Fishermen's Undersea Cable Committee and the Bandon Submarine Cable Council.

McMullen said fishermen enjoy a close, cooperative relationship with both WCI Cable and AT&T, but they recognize the need for the state's authority to be clear and recommend acceptance of the rules.

State Representative Terry Thompson said undersea cable policies all over the world are starting to be changed, reflecting the way the cable companies are working together collaboratively with the Oregon fishermen. He expressed his appreciation for everyone involved, stating that this is important, since the oceans of the world are going to be wrapped in these undersea cables in the near future.

Governor Kitzhaber thanked Representative Thompson and Scott McMullen for their leadership and involvement.

Chuck Best, representing WCI Cable, complimented Cleary on his responsiveness in resolving his client's concerns over the application processing and project initiation timeframes. He said they are happy with the proposed rules.

Paul Shorb, AT&T, said he appreciated the way the process was handled. He felt their concerns were heard, and that the rules will be acceptable, as long as they are applied in a reasonable way. He believes the rules will aid in timely decision-making and predictability.

Director Cleary reviewed the history of the statutory prohibition against fees for these easements. He said other states do receive consideration payments for easements such as fiber optic cables in the range of fifty thousand to several hundred thousand dollars per mile. He stated this issue deserves continued examination, since easements make exclusive use of a particular segment of state-owned land, not allowing other cables to be placed in the same area.

State Treasurer Hill moved the proposed rules be adopted, including the various addenda to the rules as provided to the Board. Secretary of State Keisling seconded the motion and the approval was unanimous.

Consent Agenda

Easement Request by Oregon Department of Transportation for a bridge easement to cross Davis Slough over state-owned submerged lands and a tributary to the Coos Bay in Coos County.

Easement Request by Oregon Department of Transportation for a bridge easement to cross Haynes Inlet Slough over state-owned submerged lands and a tributary to the Coos Bay in Coos County.

NHAC Request for approval of the addition of one site owned by the Oregon Parks and Recreation Department to the Oregon Register of Natural Heritage Resources; and the addition of a tract to a Nature Conservancy site already listed on the Register.

Administrative Rules Request for initiation of process to amend/peel administrative rules regarding the export of unprocessed logs from common school forest lands.

Minutes Request for approval of the August 19, 1999 State Land Board meeting minutes.

Director Cleary briefly reviewed the items on the Consent Agenda. Secretary of State Keisling moved the Consent Agenda be approved and State Treasurer Hill seconded the motion. The approval was unanimous.

Informational Agenda

Status Report on Waterway Improvement Inventory.

In conjunction with this report, Director Cleary discussed the implementation and review schedule for the new waterway leasing rules adopted in June.

He said groundtruthing has taken place for the inventory on ten different waterway segments, with eight additional ones scheduled by the end of the year. This includes aerial photography, as well as site visits. About 2,200 structures have been identified; half are under lease, registration or are exempt by law. Ninety percent of the remainder are private docks or other structures that qualify for registration. Cleary added that the inventory is resulting in new registrations, new leases, updating old leases and the development of a computerized database. He said staff will update the Board on the progress of the inventory at every other Board meeting.

Cleary reported that extensive staff training has taken place as a result of the new waterway leasing administrative rule changes. The rules are being used to bring unauthorized uses into compliance. One change that has caused some confusion is with the extension of upland leases. Previously, these leases were only charged on the effective use area, such as building footprint. Many had lease boundaries much larger than the effective use area that were not being calculated in the annual rental of the lease. A flat rate rental notice has been sent to these lessees reflecting their entire lease area. Many may want to reduce the size of their lease to reflect just the effective use area.

Staff is working with local governments (especially in Clatsop and Multnomah Counties) to address unauthorized uses such as structures in existence prior to the local comprehensive plans, that

aren't consistent with those plans. Cleary said these structures should be brought into conformance or need grand fathered by the local planning authorities to accommodate them. The Division is prohibited by law from authorizing structures or activities inconsistent with the local comprehensive plans.

Cleary said a more detailed report will be provided at the December Land Board meeting, then an 18-month report will be provided later.

Bill Montgomery and Bill Babeckos (for Jay McCaulley) presented written and oral testimony to the Board expressing their concerns that the Division of State Lands is out of touch with conditions on the waterway. The complete written testimony is available from the Division.

Governor Kitzhaber said the rules have been in place for about three months. There is a mandatory review period for these rules, which will provide an opportunity for modifications. He said these testimonies will be entered into the record.

Bill Montgomery asked Governor Kitzhaber what he thought about a lessee review committee. The Governor responded that he would be open to the suggestion. Cleary said that at 18 months there will be a formal review of the rules with direct lessee involvement. He said that would include surveys, as well as a reopening of the technical advisory committee/public interest group that was previously used.

Status Report on Wilsonville Tract.

Director Cleary said Metro has renewed their interest in acquiring 230 acres of the Wilsonville Tract. Public agency and local political subdivision notices have been prepared. Circulation of these will begin following the Land Board meeting. Cleary added that an appraisal is underway that should be completed in November. A request will be brought back before the Board at the December or the February Land Board meeting with a recommendation as to whether or not to proceed with offering the land for sale. If the land were sold to Metro or another public entity, a reversionary clause would be included in the deal requiring the land be used for public purposes, or else revert back to the Trust.

Status Report on North Tongue Point.

Director Cleary said this property is also being evaluated for potential sale. A surplus property notice has been prepared and circulation will begin following the Board meeting. The appraisal is to be completed by mid-November. An update will be provided at the December Land Board meeting. Cleary reviewed the interest in the property to date.

Director Cleary introduced Nancy Pustis, the new manager of the Eastern Oregon office. Pustis previously worked at the US Forest Service where she had substantial experience in rangeland management programs.

This was Secretary of State Phil Keisling's last meeting with the State Land Board in this position. Governor Kitzhaber said Keisling will be missed, commenting that he has been an extraordinarily responsible member of the Board, exercising thoughtful consideration of the Board's fiduciary responsibilities, while balancing the various interests that come before it. Staff of the Division presented Secretary Keisling with a map of the State of Oregon highlighting state land ownership interests.

Governor Kitzhaber adjourned the meeting at 11:22 a.m.

John A. Kitzhaber, Governor

Paul R. Cleary, Director