

The State Land Board met in regular session on August 1, 2000 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97301-1279.

Present were:

John A. Kitzhaber	Governor
Bill Bradbury	Secretary of State
Jim Hill	State Treasurer

<u>Assistants</u>	<u>Staff</u>	<u>Dept. of Justice</u>
Paula Burgess	Steve Purchase	Bill Cook
Paddy McGuire	John Lilly	
	Gary Van Horn	
	Jenifer Robison	
	Gail Lowry	

Governor Kitzhaber called the meeting to order at 10:12 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, Suite 100, Salem, Oregon 97301-1279 (phone: (503) 378-3805).

Action Agenda

1. Request for State Land Board approval of the Oregon Department of Forestry's proposed 2001-2003 Common School Fund budget.

Acting Director Steve Purchase introduced this item for approval of the Department of Forestry's 2001-2003 Common School Fund budget of \$11.04 million. Purchase said this budget is based on a \$41.8 million revenue projection for timber harvest and represents a 3.7 percent increase in administrative costs from the 1999-01 budget. He said the written agenda materials list ten expected results for the biennium.

Purchase said all of the issues from the previous Secretary of State's audit have been addressed, with the exception of the revision to the Common School Fund Land Management Agreement. He added that this is currently being revised. He introduced Mike Bordelon, State Forest Program Director, and Jim Young, Elliott State Forest Manager, both from the Department of Forestry.

Bordelon discussed the reasons for the proposed budget increases including: the development and implementation of the watershed assessment in Northwest Oregon; two capital construction projects (one at the headquarters' office in Salem, and a new building at Tillamook); investments and internal auditing to enhance performance management, personnel management, and information technology; enhancement of agency communication, information and outreach programs (including the Oregon Plan for Salmon and Watersheds). Bordelon said since the Common School Fund lands are a small percentage of the entire forests, the costs are figured proportionately to the entire package.

He said that during the 2001-03 biennium there would be a focus on revising the Elliott HCP and implementing the Northwest Forest Management Plan and HCP. Increased investments will be made in watershed assessments, monitoring and research as we implement the plans. Bordelon also addressed a significant forest health problem in the coast range of Oregon on both Board of Forestry and Common School Fund lands--the Swiss needle cast, a disease which, he said, will require aggressive action.

Bordelon pointed out that the budget is detailed in the written materials under Appendix A.

Secretary of State Bradbury expressed his concerns over Common School Fund monies being used to help fund Forestry's capital construction. Bordelon said this has been a practice in the past, but added that the issue can be considered during the review of the Management Agreement.

Purchase said the two agencies could explore the possibility of the Fund either sharing in the equity of those buildings or improvements, if they are ever sold. Bradbury said he would encourage a review of this.

Secretary of State Bradbury moved the budget be approved for submittal to the Department of Administrative Services. State Treasurer Hill seconded the motion and the approval was unanimous.

2. Request for State Land Board approval for the Oregon Department of Forestry to revise the current Habitat Conservation Plan (HCP) for the Elliott State Forest with a goal of developing a comprehensive, multi-species HCP to include coho salmon and other species of concern, and revised strategies for the marbled murrelet.

Acting Director Steve Purchase explained that the USFWS approved an HCP for the Elliott State Forest in 1995 with a 60-year Incidental Take Permit for the spotted owl. At the same time, they also approved a six-year Incidental Take Permit for marbled murrelet, which will expire in 2001. During the interim, there has been a listing for coho. Purchase said the Board of Forestry would like to revisit the Elliott HCP to develop a multi-species habitat conservation plan to continue to address the spotted owl and murrelets, and to address coho as well. He asked staff from the Department of Forestry to give an overview of this issue.

Mike Bordelon said it was Forestry's intention to use investments in research to revise the murrelet HCP. He added that with the listing of the coho, and other species on the Elliott possibly at risk for future listing, a multi-species HCP would be the best alternative for management certainty. He said they could complete the HCP revision in 2003. This will leave a two-year gap in the current murrelet Incidental Take Permit (between 2001 when the permit expires and 2003 when the new HCP will be done). During that period, any new timber sales will need to be surveyed for murrelets. Bordelon said the cost of the HCP revision process is estimated to be about \$60,000.

Bordelon discussed the public involvement process that Forestry will pursue during the HCP revision and the periodic briefings they will have with the Land Board and their Assistants during the process.

Secretary of State Bradbury asked Bordelon if Forestry had a sense yet of what further reductions in harvest may occur on the Elliott with an HCP that includes coho. Bordelon said there will be some impact, but added that at this point, he could not predict what the result would be. He said Forestry would be exploring a variety of options of how this could be handled and bringing these options back to the Board to review.

State Treasurer Hill asked whether other states have used the multi-species HCP. Bordelon confirmed that there are. He reviewed a number of companies that are also using the multi-species HCP approach and added that they are looking for long-term certainty relative to the federal ESA that the multi-species HCP can provide. Bordelon commented that the more species you add to the list, the more potential constraints and encumbrances go along with that, and the higher the cost associated with it.

Secretary of State Bradbury moved the item be approved. State Treasurer Hill seconded the motion and the approval was unanimous. Bradbury said he is a strong supporter of this, adding that it makes sense for long-term management of this forest to have a multi-species HCP.

Purchase thanked Forestry for their work on this project and congratulated Bordelon for his promotion to Northwest Regional Manager for the Department of Forestry.

3. Request for adoption of final administrative rules governing the granting of easements and temporary use permits on state-owned trust and non-trust land (exclusive of that within the Territorial Sea).

Acting Director Steve Purchase said the Board approved administrative rules for the granting of easements across the submerged and submersible lands within the Territorial Sea during their meeting in October 1999. After completion of those rules, he said the agency began working on administrative rules for easements and temporary use permits across state-owned trust and non-trust lands, excluding the Territorial Sea. The proposed rules and other information were posted on the website. To allow for wide public involvement, the agency held four public meetings and sent a bi-monthly newsletter to 3,200 people with information about the rulemaking effort.

Purchase reviewed the major provisions of the proposed rules. He said the agency brought the rules to the Board in June, but delayed action due to concerns from some utility and fiber optic companies. Purchase said those concerns have been addressed and the agency is ready to proceed with final adoption.

Dianne Orr, Project Manager for Williams Communications, said her company is in the process of building a long-haul fiber optic system between Portland and Seattle. Though she appreciates the assignability that is allowed in the easement rules, she expressed concern about the "one cable, one easement" provision, meaning that payment must be made for each cable that is put through a conduit, though the conduit is laid one time and there is little impact with adding additional cable. Orr said this separates communications carriers from other utilities and causes them to pay higher than fair market value. She discussed the differences between the provision of these rules and obtaining easements from other states or private landowners. She also contrasted this with easements for above-ground power poles.

Secretary of State Hill asked whether these easements and temporary use permits could be sold by her company on the open market for profit. Orr confirmed that they could be assigned and her company would profit.

Governor Kitzhaber explained that the unused capacity that Orr's company would be selling (or assigning) is not based on the value of the land, but the value of that asset, and the land is necessary to add that market value. Orr replied that most states have given them the right of eminent domain to build this sort of system, but Oregon wants a piece of their business enterprise, rather than treating them like an electric or other utility company. To that, Governor Kitzhaber remarked that the potential of fiber optics is many times greater than a telephone line.

Secretary of State Bradbury asked Purchase to comment on the difference between electric companies paying for one easement when there may be cable television, electricity and phone lines hanging from the utility poles. Purchase said companies using power lines let the agency know up front what will be associated with the tower and they would pay up front for the full easement value.

Secretary of State Bradbury made the point that a company can choose to pay for the entire bundle of cables, or they can pay for each individual one as they rent it. Purchase agreed that the company makes the choice. Purchase also described the issues involved with easements over trust and non-trust lands. Orr said an easement should be defined as a specific area of land that is encumbered.

Mark Simonson, from Verizon Northwest, Inc. (previously GTE Northwest, Inc.), said that to promote competition, they are required by law to allow competitive access providers into their conduit system at the historical depreciated value of the conduit systems at cost.

Simonson expressed concerns about very old easement records that their company would need to research to determine which easements are on trust land. He said this could be a very difficult task, especially since they have changed hands over the years. He asked the agency to grandfather the existing easements and require applications for all new easements.

Regarding the one cable, one easement situation, he said that each time they use the conduit system they built, they will be required to have another easement, which is different from private parties.

Simonson said the new guidelines on facilities modification are not clear. He said his company would not like to have to "police" any new users as they install cable in their conduit to ensure these new companies have easements from the state. Secretary of State Bradbury asked how the Division would know that additional cable has been placed in a conduit. Simonson replied that his company makes an assumption that any new business has the permits that are required, and they sign an agreement with them to that effect.

Purchase said the agency could address the policing issue by requiring an easement up front for all potential cables that could be put in place. This would relieve the operator and the Division from having to police a given easement area.

Purchase also responded to the concern that much work would be required to research many older easements to determine whether they are on trust or non-trust lands. He said if the companies will make the records available, the Division could research.

Simonson also commented that the normal way of charging for an easement is by charging for the land the easement is on, rather than the potential. Purchase reiterated that the state is required to maximize revenue on its trust lands. He added that for non-trust lands, outside an incorporated city, there is no charge for the easement.

Sandy Flicker, Executive Director of the Oregon Rural Electric Cooperative Association, also spoke for Jack Heaston, General Manager of Harney Electric Cooperative in Eastern Oregon. She said that their issue is grandfathering of existing unrecorded easements. She said Harney Electric has a longstanding practice of not recording easements. Many of these date back to the time Harney Electric was first created, crossing private lands and were done through verbal agreements to minimize costs. When the state acquired private lands by exchanges, it assumed the obligations of the previous landowners who had granted permission for the electric company to construct power lines.

Flicker reminded the Board that rural electric cooperatives are private, not-for-profit utilities. Their company serves an average of fewer than six customers a mile, and minimizing costs is of the utmost importance to them. She asked the Board to give consideration to them regarding this.

She said the Division staff wants to know the location of all the easements in the state. Their company is willing to provide any information, but she said verbal agreements are difficult to track over time. She added that grandfathering existing easements would help them minimize costs.

Purchase said one of the issues addressed by the rules is honoring valid existing easements. He said these easements would show up on a title report and the agency would honor the terms and conditions of the easement until it is expired. He said these would need to be reviewed on a case-by-case basis. He added that the agency would allow companies having this issue to come to the Division with full disclosure of where those easement uses may be, and put that into a single application with one fee. We will work with them to issue an easement to try to keep their costs down.

Purchase said the easement fee is 100 percent of the fair market value of the land, or \$250, or a base level for a compatible comparative fee structure. In addition, a \$250 administrative fee is also charged.

Scott McMullen, Chairman of the Oregon Fishermen's Cable Committee relayed concerns from representatives of the telecom industry about paying 100 percent of the fair market value for an easement, and then

having to pay 100 percent again and again any time they add additional cables. He encouraged the Board to show the telecommunications industry that Oregon is a favorable place for them to do business. He suggested the Board consider a reduction of the 100 percent fair market value for each additional cable to 50 percent.

Secretary of State Bradbury asked how these rules compare to those for easements through the Territorial Sea. Purchase addressed this saying that there is an administrative fee, but there is no charge for easements across the Territorial Sea, just as there is no charge for easements for non-trust lands outside of an incorporated city.

State Treasurer Hill moved that the Board adopt the rules. Secretary of State Bradbury seconded the motion. Governor Kitzhaber asked that the record reflect that the Board would like the agency to work on a case-by-case basis with situations such as Flicker brought forth.

Governor Kitzhaber commented that he respected the opinion of the other two individuals who testified. He noted that the situation here is different from easements across other lands, since it is the Board's fiduciary responsibility to maximize revenue to the state from lands that provide income for the Common School Fund.

State Treasurer Hill commented that this decision also represents how technology has evolved over time. He said the Board's fiduciary responsibility to the Fund must reflect those changes.

The Board moved the item be approved. Purchase thanked Jeff Kroft of the Division for his leadership in overseeing the public input and assisting in the development of these rules.

4. Request for adoption of regularized procedures, criteria, and policy directives for hiring a Director for the Division of State Lands as required by ORS 192.660(1)(a)(D).

Acting Director Steve Purchase said these procedures, criteria, and policy directives for hiring a Director for the Division of State Lands had been circulated for public comment and have received no comment. He recommended the Board approve them. Governor Kitzhaber moved the Board approve. State Treasurer Hill seconded the motion and the approval was unanimous.

5. Request for approval of a temporary administrative rule allowing authorized representatives to appear in a contested case hearing with the Division of State Lands on removal-fill permit issues.

Acting Director Steve Purchase explained that this temporary rule would allow a party in a contested case hearing regarding the issuance or denial of a removal-fill permit to be represented by an authorized agent. He said the agency is recommending approval of the temporary rule and requesting permission to go forward with permanent rulemaking on the issue.

Secretary of State Bradbury moved the item be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

6. Request for approval of the minutes of the State Land Board meetings of June 6, 2000 and July 6, 2000.

Secretary of State Bradbury moved the minutes be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

Informational Agenda

7. Status report on New Carissa wreckage.

Acting Director Steve Purchase said the agency has been working with the Responsible Party and met with them on June 15 to understand the difficulties they are having and to assist with their efforts for removal of the wreck. Purchase said the contractors are doing geophysical testing around the vessel for stability of the sands. He said seaward and shoreward options for removal are being explored.

Purchase said the nine-member New Carissa review committee appointed by the Governor in April 1999 has completed their report and have a number of recommendations, which have been included in the agency's informational item.

Purchase commented that the agency would be meeting with the Board of Maritime Pilots and the Coast Guard to discuss the issue of anchoring within the Three Mile Territorial Sea.

8. Status report on pending legislation regarding Steens Mountain in Eastern Oregon.

Acting Director Steve Purchase provided an overview of the pending federal legislation introduced by Congressmen Walden and Blumenauer entitled the Steens Mountain Wilderness Act. This bill would allow the federal government to enter into an outright purchase or exchange of the 430 acres of State Land Board land and about 15,000 acres of mineral rights associated with this property.

Purchase reported that the agency is working closely with Peter Green from the Governor's Office on this. Purchase stressed his desire for the agency to be included in the membership of the advisory council that will review this. He will bring an update on this issue back to the Board at its October meeting.

Secretary of State Bradbury commented that, if this legislation doesn't move through Congress, President Clinton intends to designate this land as a national monument. Bradbury asked what the difference in management would be with this proposal compared with the President's dedication. Purchase replied that he had seen the proposed federal legislation on the Steens Mountain Act, but has not yet seen the proposed wilderness designation, so he couldn't respond. He said the agency would review this issue and bring it back to the Board in October.

9. Status report on where the Natural Heritage Program should reside.

Acting Director Steve Purchase said the agency met with the legislative oversight committee on Stream Restoration and Species Recovery on July 24 and discussed the alternatives for a new location for the Natural Heritage Program, including the Division of State Lands, Oregon State University, and the Oregon Watershed Enhancement Board. The agency will return to the oversight committee on August 14 and will request they authorize the release of the additional \$241,580 funding (should correctly read \$261,580) needs for that Program. If that is approved, the item will be brought to the September Emergency Board. Purchase said the agency would work with The Nature Conservancy and the Heritage Program for exit strategies.

Secretary of State Bradbury said he believes OSU could be a very natural home for the Program if they are willing to assume the entire Program and work with the existing staff. Purchase called the Board's attention to a letter from OSU President Paul Risser stressing their interest in assuming the Program.

The meeting was adjourned at 11:34 a.m.

John A. Kitzhaber
Governor

Stephen J. Purchase
Acting Director