

The State Land Board met in regular session on February 5, 2002 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
Randall Edwards	State Treasurer

<u>Assistants</u>	<u>Staff</u>	<u>Dept. of Justice</u>
Louise Solliday	Ann Hanus	Bill Cook
Paddy McGuire	John Lilly	J. Kevin Shuba
Inga Deckert	Steve Purchase	
	Jeannette Holman	
	Gail Lowry	

The Governor called the meeting to order at 10:05 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 St. NE, Suite 100, Salem, Oregon 97301-1279, (phone: (503) 378-3805).

- 1. Request for Land Board adoption of the findings and conclusions contained in the Final Sandy River Navigability Report, assertion of a state claim to the bed and banks of the Sandy River from River Mile 0.0 (at the confluence of the Sandy River with the Columbia River) to RM 37.5 (the point of confluence of the Salmon River with the Sandy River), and adoption of the declaration of title navigability of the Sandy River.**

Director Ann Hanus introduced this item requesting adoption of the Final Sandy River Navigability Report, assertion of the state's claim to the bed and banks of the Sandy River from River Mile 0.0 to River Mile 37.5; and adoption of the declaration of title navigability of the Sandy River.

Hanus said House Bill 2697 passed in 1995 prescribed an 18-step process to determine title navigability of a waterway. She said the agency has been through a long process, and is on the final few steps, which call for action to be taken by the Land Board.

After considerable research and public comment, Hanus said the Division recommends the Board declare the Sandy River to be navigable for title purposes.

Secretary of State Bradbury said this issue has been tough and divisive. Though it was difficult for him to deal with in the Legislature, Bradbury commented that he has found it a more difficult issue to deal with as a member of the Board, since the Board cannot find a middle ground of consensus, but must clearly decide whether or not a river is navigable.

Bradbury said he would make a motion to declare navigability of the Sandy River and to assert title, but he said this should begin a process of working together with the property owners along the Sandy River to try to solve some of the legitimate management concerns they have expressed. He said he will ask the Division to draft a legislative concept to encourage the Legislature to bring a statewide solution to the increasing demands on Oregon's waterways by working with the stakeholders to bring about a management approach to this issue.

Secretary Bradbury moved the Land Board:

- Adopt the findings and conclusions contained in the Final Sandy River Navigability Report, pursuant to OAR 141-121-0040 and in so doing;
- Assert a state claim of ownership to the beds and banks of the Sandy River below the line of ordinary high water from River mile 0.0 to 37.5;
- Adopt the declaration of title navigability of the Sandy River from River Mile 0.0 to 37.5;
- Instruct the Division of State Lands' staff to explore ways that the public, stakeholders and appropriate local, state and federal agencies can best address and resolve the public use management concerns of upland owners and river users as expressed during the navigability study. The Division is directed to periodically report to the Land Board on this matter; and

- Develop for the Board's consideration a legislative concept for the 2003 session that will clarify and make certain:
 - a. the limits of the rights of the public to the use of the beds and banks of Oregon's waterways that are not declared navigable or where public ownership is not yet determined;
 - b. the full extent of the rights of upland property owners to protect their property along waterways not declared navigable or where public ownership is not yet determined; and
 - c. the process the State of Oregon shall use to efficiently make future navigability declarations.

In addition, Bradbury strongly urged the Legislature to pass legislation to address the issue on a statewide basis.

Governor Kitzhaber seconded the motion.

State Treasurer Edwards offered an amendment to consider adoption of the findings, but to delay the assertion of title while working for up to six months with the property owners, river users and appropriate state, local and federal agencies to develop a management plan for use of the river. Edwards said legislation should be the long-term goal of the process.

Governor Kitzhaber asked whether the Board could adopt the findings and conclusion that the river is navigable, but not declare it navigable. Assistant Attorney General Bill Cook cited ORS 274.406 and OAR 141-121-0403, saying that when the Land Board adopts the report, it should state the nature and extent of the state ownership at the same time. He added that he did not think the statute and rule would allow the Treasurer's motion.

Governor Kitzhaber said the statute was passed in the 1995 Legislature in order to give the Board a process to follow for navigability declarations, which they have done. He agreed with the Secretary of State that the Board does not have the discretion of crafting a consensus, but must make an up or down decision on navigability. He said a great deal of time and money has gone into the process, as well as extensive public input. He added that the Legislature in 1999 had an opportunity to address this through the floatage easement bill, which got bottled up in committee and was never passed.

Governor Kitzhaber said the criteria used by the federal courts in making a determination have been applied in this case and he is satisfied, based on those criteria, that this area is navigable. He added that it would be a disservice for the Board to go through the process for six years and not be willing to make a decision on this.

State Treasurer Edwards said the ability to determine a waterway is navigable and to assert state ownership to the bed and banks of the waterway has an enormous power and influence on the state and its citizens and should be used sparingly. He said today's decision does not bring closure on what will happen with this river--there will be a challenge to this that will continue the process. He added that the length of time this will take is uncertain. Edwards said the reason for his motion to suggest a break in the process was to get the parties working with DSL to determine how we could use this as a case study for legislation that is needed. He said this would allow a decision clearly on whether or not this can go forward. He confirmed that there is justification for a navigability determination, but voiced his concerns over the potential liabilities and costs of managing the river. He reiterated that the long-term solution should be legislative.

Secretary Bradbury said after exploring the issue his conclusion is that the Board's choice is to simply decide whether or not the river is navigable. When he explored other options such as declaration without asserting title, he said the legal advice was clear that the Board could not do that. He concluded by saying he believes the river is navigable.

There was no second for the motion presented by State Treasurer Edwards.

Edwards said he would vote against the motion presented by Bradbury, although he believes the staff determined the river is navigable. He said there is a difference in how he wants to approach this and the Board would be positioned better if they can get legislation passed.

Governor Kitzhaber stated that he believes making this determination creates the incentive for the legislature to seriously begin to address navigability.

Governor Kitzhaber and Secretary Bradbury both voted in favor of the motion. Treasurer Edwards voted against it. The motion was approved.

2. Request for adoption of the final administrative rules governing the granting of leases and permits for special uses on state-owned Trust and Non-Trust Land. Special uses include, but are not limited to, using state-owned upland for agriculture; communications facilities; wind farms; industrial, business and commercial purposes; sporting and other events; residences and recreational cabins; outfitting and guiding services; and motion picture filming and set construction.

Director Hanus introduced this item saying these rules provide a more uniform and clear guidance for developing leases and permits for these uses. Two public hearings have been held, the agency has worked with the constituents and research has been conducted on fair market value. Hanus noted that an amendment was added to the draft rules distributed with the agenda materials to clarify an exemption for communications facilities on Non-Trust Land. That amendment reads as follows:

OAR 141-125-0160(4): "Communications facilities located on Non-Trust Land outside of the designated limits of a city are exempt from the mandatory compensation payments specified in OAR 141-125-0160(1)(d) and (2) pursuant to the provisions of ORS 758.010(1). However, the owners of such facilities shall apply for and obtain a lease from the Division."

Hanus recommended adoption of the rules, including the amendment. State Treasurer Edwards moved the Board adopt these rules, including the amendment. Governor Kitzhaber seconded the motion and the approval was unanimous.

3. Request for approval to appear before the April 2002 Legislative Emergency Board for expenditure limitation and position authority for the South Slough National Estuarine Research Reserve for the second year of the 2001-03 biennium. This appearance at the Emergency Board is at the direction of the 2001 Legislature in the form of special budget packages supporting a budget note related to program accountability.

Director Hanus explained that with the Board's approval the agency would be requesting \$733,000 in Federal Funds and \$566,885 in Other Funds from the Emergency Board to cover the second year of the South Slough budget, requesting expenditure authorization for a small increase in Federal Funds grant, and requesting expenditure authority to use money from the Gustafson estate to purchase a road right-of-way within the Reserve for \$13,000. Secretary of State Bradbury moved the request be approved. State Treasurer Edwards seconded the motion and the approval was unanimous.

4. Request for authorization to appear before the Emergency Board in April to request additional expenditure limitation to cover the costs of 1) additional workload and expenses resulting from implementation of House Bill 2129; and 2) implementing changes in the Trust Property program resulting from an internal review and the Secretary of State audit.

Director Hanus said the agency is still determining whether they should go before the Emergency Board for this issue. Since there will not be a meeting prior to the Emergency Board, Hanus said the agency needs authority in case they do go before the Emergency Board.

Governor Kitzhaber moved the Board approve the item. State Treasurer Edwards seconded the motion and the approval was unanimous.

Director Hanus recognized Jeannette Holman, Silvia Tillotson, Cyndi Wickham and Monte Turner from the Division for their role in making major changes and improvements in the efficiency and effectiveness in the Trust Property Program.

5. Request for State Land Board approval of a project proposal to conduct independent, third-party Forest Stewardship Council and Sustainable Forestry Initiative certification assessments on 127,000 acres of state-managed forestland and for the State of Oregon to conduct reverse assessments, or critiques, on the two assessment processes.

Director Hanus introduced Dave Morman and Ross Holloway from the Department of Forestry to answer questions from the Board.

Hanus said this is a proposal for third party Forest Stewardship Council and Sustainable Forestry Initiative certification assessments on 127,000 acres of state-managed forestland on the Sun Pass Forest and on the Elliott State Forest. The second part of the proposal would be for the State of Oregon to conduct reverse assessments or critiques on these two assessment processes.

Hanus said the funds for this project would be provided from a foundation through the Pinchot Institute. Hanus disclosed that she is a member of the Board of the Pinchot Institute, but said they will ensure there is no conflict of interests with this issue.

Secretary of State Bradbury asked about the two different sets of sustainability standards. David Morman, Director of the Forest Resources Planning Program at the Department of Forestry, said the Sustainable Forestry Initiative and the Forest Stewardship Council are the two dominant systems being applied in the United States out of about 40 certification systems being used internationally. He characterized the Sustainable Forestry Initiative process as an outcome-based set of standards providing some flexibility for how standards are met on the ground.

Morman said the Forest Stewardship Council's standards tend to be more prescriptive. Currently they are developing Pacific Coast region standards that are being circulated for public review and comment.

Morman said during the process we might find things we like and do not like about both of these systems. He said the purpose for the process is to determine if either system provides benefits for state forests to be certified under them. In addition, the process should

provide information to the forestry community as to whether either of these systems are credible systems that we should use.

Secretary of State Bradbury commended Forestry for this effort. He moved the project be approved. State Treasurer Edwards seconded the motion and the approval was unanimous.

Secretary of State Bradbury asked how long the process would take. Morman replied that the first prerequisite is gaining the private foundation funding. He hopes they will be on the ground as early as this summer, with approximately six months for the certifiers to produce their reports. The critique of their systems would follow that process. He said they would try to complete the entire process in one year.

6. Request for authorization to initiate rulemaking to revise the administrative rules on removals and fills in Essential Salmonid Habitat and to amend the administrative rules for state scenic waterways.

Director Hanus introduced this item saying two bills (Senate Bill 302 and Senate Bill 606) require that our rules conform to these statutory changes. These amendments conform the rules to the statutes.

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

7. Request for approval of the minutes of the State Land Board meeting for December 11, 2001.

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

8. Briefing on removal-fill streamlining progress.

Director Hanus stated that unless the Board had questions, they could review the written briefing provided on this item.

9. Other.

Director Hanus reported that last year's costs for the Bureau of Land Management's work on putting out fires on our state-owned land would be \$93,000 for 8,000 acres. She stated this was much better than the previous year's costs of \$135,000 for 158 acres, and she attributed this to the negotiation skills of Steve Purchase, Assistant Director for Field Operations.

Steve Purchase and Nancy Pustis, regional manager for the Bend office, are working to get agreement with the Bureau of Land Management on a contract for fire protection for our state-owned land.

Governor Kitzhaber adjourned the regular meeting to convene the executive session.

John A. Kitzhaber
Governor

Ann Hanus
Director