

The State Land Board met in regular session on June 11, 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 10:00 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 Division of State Lands, 775 Summer St. NE, Suite 100, Salem, Oregon 97301-1279, (phone: (503) 378-3805, ext. 224).

Action Agenda

1. Request for approval of the Division of State Lands' proposed 2003-2005 Common School Fund budget.

Director Ann Hanus reviewed the budget package with the Board saying that the increase to the budget would be 12.8 percent (Common School Fund) and 14.7 percent (legislatively approved). She said this would generate revenues of between \$65-70 million for the Common School Fund.

Chuck Bennett, Confederation of Oregon School Administrators, said his organization supports the agency budget, particularly as it pertains to additional staff that would add to revenue production.

Secretary of State Bradbury moved the Board approve the agency budget. State Treasurer Edwards seconded the motion.

Secretary of State Bradbury commented on the agency's efforts to improve performance in the Unclaimed Property program. He also offered his support of the South Slough program and said overall he feels good about the budget.

The budget was approved by the Board for submission to the Department of Administrative Services.

2. Request for approval of the Oregon Department of Forestry's proposed 2003-2005 Common School Fund budget.

Director Hanus introduced this item by explaining that Forestry is under contract to the Land Board to manage our common school forest lands. This budget proposal is for \$12.2 million, up 13.7 percent. Hanus said the increase is due to additional positions needed for development of the habitat conservation plan, for harvest-related activities, additional resources to invest in forest stands to enhance productivity, watershed health, monitoring and recreation. Revenues from the common school forest lands are projected to be \$26.6 million. The agency recommends approval of the budget.

State Treasurer Edwards asked why Forestry's expenses are nearly 50 percent of the revenues. Hanus said the resources needed to do the habitat conservation plan are expensive. She added that, once the plan is complete and the issue with the marbled murrelet is resolved, she anticipates a higher harvest level in the future and therefore higher revenues. She believes this to be a temporary dip. If it is not temporary, she said a closer look at expenses would be taken in future biennia.

State Treasurer Edwards said we must keep a long-term perspective on the Fund, managing our costs. He agreed that the plan is an investment now for hopefully a higher harvest level in the future. He agreed there needs to be a close watch of the expenses to revenue ratio.

He moved the budget be approved for submission to the Department of Administrative Services. Secretary of State Bradbury seconded the motion and it was unanimous.

3. Request for approval of amendments to removal-fill permit rules, including general authorizations.

Director Hanus said this is the first major revision of the removal-fill administrative rules in 16 years. She commended John Lilly, Eric Metz, Steve Purchase, Lori Warner, Nancy Pustis, and Janet Morlan, as well as other staff, for all their work.

Hanus said the goals in revising the rules were to incorporate new legislation; improve consistency, timeliness and clarity; spell out application requirements; ensure environmental protections are maintained; and improve permit review standards. She reviewed the extensive public involvement that took place.

Hanus outlined some of the main concerns that were raised with the rules and the changes needed to implement Senate Bill 529.

Some amendments were proposed since the original rule draft was sent to the Board. Hanus said most of the changes were housekeeping in nature, except for an amendment to revise the language regarding standing. Written materials were made available on these proposed changes.

Many of those testifying at the Land Board meeting provided written comments to the Board.

Senator Rick Metsger asked whether it would be valuable to wait until the next Land Board meeting for the Board to approve these adoptions. He said there were issues brought forth from the May 22 draft of the rules which some contended would create unintended consequences. Senator Metsger introduced Brendan McCarthy from Legislative Counsel to discuss the July 1 deadline in SB 529. Metsger said adoption of these rules might not have to take place prior to that deadline.

Governor Kitzhaber asked whether the Board could administratively ignore a deadline set by the legislature.

Brendan McCarthy, Legislative Counsel, said the deadline in Senate Bill 529 applies only to when the amendments to ORS 196.825 will go into effect, but not when the Board must adopt administrative rules. He said not having the rules adopted might present difficulties for the

agency in determining standards and criteria for assessing an application.

Governor Kitzhaber said the Board would listen carefully to the upcoming testimony and take this advice into consideration.

Brent Owens discussed several issues he has with the proposed rules. Mr. Owens complained about the staff not returning phone calls or letters.

Robert Kerivan discussed the need for an agricultural exemption within the administrative rules. He asked that the Board not approve the rules as written.

Jerry Hubbard voiced his concerns over the need for a contested case process in the rules.

Tom Ruedy asked the adoption of the rules be delayed until there is more opportunity for exploration of the technical aspects. Ruedy also had concerns regarding a contested case hearing proposal.

Tim Acker, owner of Applied Technology Wetlands and Forestry Consultants in Albany, said the rules are not yet ready for use in the field. He asked that further work go into them prior to adoption.

Phil Scoles, soil and water scientist and wetland consultant, reviewed his concerns with the Board and asked them to defer adoption of the rules.

Jay McCaulley, speaking for Oregonians in Action, asked the Board not to adopt the rules, saying the rules do not adequately implement the legislative mandates and do not help to protect Oregon's resources.

Allison Rhea, private wetland consultant, shared her concerns with the rules and the amendments.

Harlan Levy, staff attorney for Oregon Association of Realtors and representing the Oregon Building Industry Association, asked the Board to defer adoption of the rules at least until the October meeting. He believes ORS 196.692 is self-executing and does not require the agency to adopt rules.

Mel Stewart asked the Board to amend the rules to include language from a statute regarding compensatory mitigation.

Liz Frenkel representing the League of Women Voters, shared her concerns regarding the issue of standing and whether the League would be unable to request a contested case hearing under the proposed language.

Nick Coffey, hydrogeologist, said the rules need further work and should not be adopted at this time.

Pete Test, Oregon Farm Bureau, shared his concerns regarding the rules as they dealt with the definition of maintenance and the need for an agricultural exemption. He asked the rulemaking period be extended prior to approval.

Mari Margill, Oregon Chapter of the Sierra Club, shared concerns regarding persons with a non-property interest being unable to request a contested case hearing. Margill noted the Sierra Club also adopts the following written comments on the draft February 2002 DSL rules: April 4, 2002 comments from Liz Frenkel and Tyson Smith; and the U.S. Fish & Wildlife Service comments from April 13, 2002.

Lyn Mattei, environmental and law attorney, said she represents herself today as a Technical Advisory Committee (TAC) member. She said the TAC is much less responsive to the protection and conservation of wetlands. She added that there have been essentially no resource agencies represented on the committee for the past year since it reconvened and that there is no TAC consensus on these rules.

Mattei said her views are basically the same as the Sierra Club in regards to the contested case standing provision. She asked that the Board work to change this provision.

Rich Angstrom, Oregon Concrete Aggregate Producers Association, said the agency has done an outstanding job of holding public meetings around the state. He said these rules went from general to specific. He said he still has some concerns with the rules. He suggested that the Board could delay the process to rebuild a comfort level, or they could adopt the rules now and open them up at some point to do fine-tuning.

Doug Terra, Oregon Shores Conservation Coalition, said he is opposed to adoption of the rules on the issue of the right to contested case hearings.

Governor Kitzhaber reviewed the three main concerns over the rules: the issue of standing regarding contested case hearings, the issue of small projects, and a number of technical issues as to how the rules would work on the ground.

Secretary of State Bradbury moved the Land Board recommend to the Director that she consider and attempt to address the following issues while continuing to develop the rules governing removal and fill: 1) standing; 2) a number of technical issues that were raised today; and 3) impact on small projects. Bradbury also asked that the Director report progress on development of these rules to the Land Board and continue to work with the Technical Advisory Committee through the period of rule adoption and beyond.

State Treasurer Edwards seconded the motion and the approval was unanimous.

State Treasurer Edwards commented that we need to know how people are being impacted in terms of costs as we implement these rules.

Governor Kitzhaber said this is a major rewrite of the rules and is a work in process. He said issues will come up and we need to provide opportunity for comment from practitioners in the field as we get closer to the mark.

The motion was approved unanimously.

4. Request for approval of amendments to waterway leasing rules.

Director Hanus said when the Board approved a major overhaul of the waterway leasing rules, they agreed to revisit the rules in three years. Hanus said the agency has held five public hearings and conducted a survey of waterway lessees.

She reviewed the major revisions to the rules being brought forth today, saying the agency recommends the Board adopt the revisions,

including the amendment made at ODFW's request for compliance with the Endangered Species Act.

Jay McCaulley said the Division was to create a formal group within the three-year period, which they have not done. He said they have not addressed the recommendations of the Waterway Leasing Task Force or the Asset Management Plan. He urged these things to happen prior to adoption of the rule amendments.

John Murray, owner of a marine service facility, said his industry is in sad shape. He shared his concerns regarding the changes in the rules and the effect on his business.

Chuck Bennett, Confederation of Oregon School Administrators, said they support the fee increase provided in the rules. He reminded the Board that the beneficiaries of the Common School Fund are the school children. He said the Board must maximize fair market value on the leases and believes the fee increase in the rules does this.

State Treasurer Edwards moved the Board approve the rules, including the amendment requested by Oregon Department of Fish and Wildlife. Secretary of State Bradbury seconded the motion.

Governor Kitzhaber acknowledged the concerns of those who testified. He said there was lot of time spent on these rules and the public comment opportunities. He said the rules need to continue to be reviewed on a regular basis.

The motion was approved by the Board unanimously.

Consent Agenda

- 5.a. Request for approval to appear before the June 2002 Legislative Emergency Board for retroactive approval to apply for a U.S. Fish and Wildlife Service grant to pursue development of a Habitat Conservation Plan for the White City area in Jackson County.**
- b. Request for authority to initiate rulemaking to amend rules governing the granting of easements and temporary use permits on Trust and Non-Trust Land.**

- c. Request for authority to initiate rulemaking process to repeal existing administrative rules relating to Wilsonville Tract Use Regulations.**
- d. Request by Central Electric Cooperative, Inc. to acquire a permanent power line easement across state-owned lands located in Deschutes County.**
- e. Request by the City of Bend to acquire a permanent road easement across state-owned lands located in Deschutes County.**
- f. Request for approval of April 9, 2002, State Land Board minutes.**
- g. Request to grant a Major Exception to the Lower Willamette River Management Plan (LWRMP) for a non-river dependent activity (wind tunnel) as applied for by Freightliner LLC.**

Director Hanus briefly reviewed the items on the Consent Agenda. State Treasurer Edwards moved the Board approve the items. Secretary of State Bradbury seconded the motion and without further discussion the Board unanimously approved the Consent Agenda.

Informational Agenda

6. Update on Oregon's forest certification assessment project efforts.

The Board had no discussion regarding this item.

7. Presentation to Geoff Fowler.

The Board recognized the work of Geoff Fowler for his role as a representative of the telecommunications company and for his part in helping Oregon become one of the world's major landing points for trans-Pacific fiber optic cables and a hub of the global fiber optic cable telecommunications system.

8. Other.

Director Ann Hanus discussed the recently signed fire agreement with the Bureau of Land Management for their protection of our common school forest lands. She recognized Steve Purchase and Nancy Pustis of the Division for their outstanding work on this agreement.

Governor Kitzhaber adjourned the meeting.

Governor John A. Kitzhaber, M.D.

Ann Hanus, Director