

The State Land Board met in regular session on April 8, 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
Betsy Parry

Dept. of Justice

Bill Cook

Governor Kitzhaber called the meeting to order at 9:13 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).

Common School Fund Annual review of the Common School Fund (CSF) investment policy and performance.

Director Cleary introduced Dan Smith and Bill Unverzagt from the State Treasurer's Office. Dan Smith gave the Board an overview of the asset allocation for the Common School Fund at the end of 1996. He said the account was invested approximately 35 percent in bonds, 54 percent in equities (through an S&P 500 Index Fund), and 11 percent cash. Smith reported the returns for the year were very good—at 23.1 percent (following a 37 percent return in 1995).

Smith said with the Board's approval of revised investment and distribution policies at the December 1996 Land Board meeting, the Treasurer's Office began drawing down the cash balance of the account at the rate of \$7 million per month and over a five month period will have invested \$35 million in an international equity portfolio. He said the plan for the account at the end of June 1997 is to have 35 percent bonds, 54 percent domestic equities, eight percent international equities, and about three percent cash, as measured by market value.

Smith described a bill in the Legislature that would remove the 50 percent statutory limitation on equity holdings, as measured by purchased cost.

Bill Unverzagt from the Treasurer's Office reported on the bond portion of the investment, saying bonds struggled all year. He said even with the bad market last year, there were \$2.4 million of capital gains.

Unverzagt said the quality of bonds in the portfolio is extremely high, with bond maturity averaging 5.8 years, which is very short term. Though they have been negative on the long-term bond market, Unverzagt said as interest rates climb, the bond income should increase next year. He said investments will generate more income this year, if bonds do as he predicts they will.

Director Cleary voiced his appreciation of Smith and Unverzagt in their implementing the Board's policy changes approved in December. He said distributions to schools should be up from \$9.1 million to \$10 million this calendar year, with subsequent five percent adjustments to be made annually to offset inflation and enrollment growth.

Rules Request for approval of new administrative rules for identifying wetlands of statewide significance, called "outstanding state wetlands."

Director Cleary explained these rules implement the 1995 legislation requiring the Division to establish criteria and procedures for identifying outstanding state wetlands for use in land use planning outside urban areas. The Board had previously adopted rules for identifying locally significant wetlands within urban growth boundaries.

Cleary said the agency will be working with a number of state and federal agencies and interest groups in identifying outstanding state wetlands. Prior to a designation, notice will be provided to local governments, affected landowners, land managers, and other interested parties. A public hearing and opportunity for comment will be provided in the area of the wetland.

A letter was distributed from the Association of Oregon County Planning Directors, who worked with the Division's technical advisory group on the rules. They expressed their appreciation of the positive approach the Division took in the rulemaking process, saying that the Division was very responsive in addressing their comments.

Steve Pfeifer, vice-chairman of the Land Conservation and Development Commission, spoke on behalf of the Commission in support of the rules. Pfeifer said that after wetlands of statewide significance are identified, then the Commission will need to develop rules and work with local governments to protect those wetlands through mechanisms that may exceed the wetlands protection available elsewhere in the state. He reiterated that the Commission is very supportive of this, since it was part of their Goal 5 review and revision process.

State Treasurer Hill moved adoption of the rules for identifying outstanding wetlands of statewide significance. Secretary of State Keisling seconded the motion and the approval was unanimous.

Director Cleary commended the work of Betsy Parry, who worked as lead staff person on the development of the rules. Cleary said that, as a limited-duration employee, Parry would be leaving soon, and he thanked her for her help on the rules. Governor Kitzhaber agreed, expressing gratitude for her good services.

Consent Agenda

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

Rules Request for authorization to initiate rulemaking to revise the administrative rules on removals and fills in essential salmonid habitat.

Minutes Request for approval of the February 11, 1997 State Land Board minutes.

Waterways Presentation of Waterway Leasing Task Force Report.

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

Informational Agenda

Navigability Status report of two study requests received for the Sandy River and the John Day River from the Association of Northwest Steelheaders.

Director Cleary said affected landowner and general public notice was sent regarding the Sandy River navigability study request. He said the comment period had been extended to April 25, and suggestions are being requested on ways to resolve problems between waterway users and landowners without using the navigability determination hammer. One area about which we've received a number of comments and concerns is Camp Namanu, belonging to the Camp Fire Girls. These commenters are concerned that a declaration of navigability for the Sandy River with public use of the bed and banks could endanger the safety of young campers. Cleary said the issue will be brought back before the Board in June with a summary of all the comments received and suggestions for possibly resolving some of the concerns.

Director Cleary also discussed the John Day River navigability request, saying it is being circulated for landowner and public review with a similar request for suggestions for resolving waterway use conflicts without resorting to a navigability study.

Real Estate Status report on property management, sales, exchanges, and planning activities.

Director Cleary discussed property management sales, exchanges and planning activities. He said one of the major land sales being negotiated is the sale of 45 acres along the Columbia River at Dibblee Point to the Port of St. Helens for industrial development purposes. A potential sale of a four-acre site in West Linn to the City for a park development is also in the process.

Rules Status report on triennial review of the Division of State Lands' administrative rules.

Director Cleary said 600 notices were mailed giving opportunity for comment on all the agency's rules. No comments or requests for rule revisions were received.

Legislation Status report on legislation affecting the Division of State Lands.

Director Cleary reported that most of the bills introduced by the Division have passed through both chambers at the legislature. He said Senate Bill 207 was amended to direct the Division to pursue methods to streamline administratively and also deletes the current July 1, 1997 deadline for assumption of the Federal Corps of Engineers 404 program.

Cleary said the agency budget has been through the Ways and Means Committee and the agency is awaiting consideration of a bill dealing with the South Slough Estuarine Reserve, making the Reserve an asset of the Common School Fund, and substituting Common School Fund revenues for the remainder of the General Fund support for Reserve operations (approximately \$187,000 a biennium) and for construction of the new Reserve lab at the University of Oregon's Institute of Marine Biology (\$250,000 one-time expenditure).

Cleary discussed a bill that provides for the formation of a joint legislative-executive committee with three members appointed by the President of the Senate, three members appointed by the speaker of the House, and three members by the State Land Board to be charged with reviewing navigability study requests, and advising the Board of whether or not to initiate a study in response to requests. The committee would also examine navigability and public use related issues and concerns, review current and past legislative proposals, review how other states deal with the issue and prepare legislative concepts for the 1999 session.

Governor Kitzhaber reminded those in the audience that the Board would give first priority to those wanting to speak regarding items on the agenda for which the Board will be taking action. If time allows, testimony will be allowed for issues that will not be up for Board action.

Waterways Presentation of the Waterway Leasing Task Force report.

Director Cleary introduced Jim Rapp, facilitator for the Task Force, and recognized members of the Task Force in the audience, thanking them for their service.

Rapp said the Task Force did a good job and invested a lot of time in the meetings which were held around the state. He said they grappled with a lot of issues, and though they didn't come to consensus on all the issues, they made positive progress.

One basic principle agreed upon was the desire for fairness and equity in the program. They also discussed the various waterway uses and how they should be classified. The standard categories that had been previously used (e.g., private dock, marina/moorage, commercial) were kept.

Rapp went on to discuss other areas of consensus among the Task Force members as well as areas where they didn't find a resolution. One area of consensus was that there should be as few exemptions in the waterway leasing program as possible. They recommended that all single-family personal docks be brought uniformly into the program (a 1972 Attorney General Opinion raises questions about the ability to do that; additional analysis has been requested on the issue).

Rapp said the Task Force members felt they needed more background information on the extent of the exemption for wharves. This exemption was left on the table.

Task Force members agreed that the Division of State Lands should be given the resources and time to do a comprehensive inventory of all the state's waterway uses. This would help in the development of a fair and equitable program, with everyone paying for a lease that should be paying under applicable statutes and rules.

The Task Force determined that public recreational uses should be registered and perhaps paying for the cost of that registration, but should not be part of a lease rate program.

They favored staging of any changes to the lease rates, so the incremental economic impact on individual users would not be too great.

The Task Force discussed incorporating natural resource values into the program and they determined the current interagency review process is sufficient to ensure the natural resource values are adequately protected.

Governor Kitzhaber thanked Rapp and the Task Force members for the time and effort towards the Task Force.

Cheri Sprando, President of the Waterfront Owners and Operators of Oregon, said the report by the Task Force represents a summary of what was said during the five meetings, but doesn't contain conclusions about waterway leasing formulas and rates—which was to be the goal for the Task Force. She said the primary consensus of the group was a fair, equitable, consistent, easily administratable and enforceable waterway leasing program. She said this wasn't possible with the information they were supplied.

Sprando said the Task Force was made up of 18 people, one half being public employees, which she said had little to no experience in the industry or the resource.

She said discussions centered around two different rate concepts. Conclusions weren't possible, she commented, since the basic information needed to assess the effects of the outcome of the policies was never supplied. She said the State has no comprehensive inventory nor does it have a full grasp on the interrelationship between past and present Attorney General Opinions dealing with Oregon's waterways.

She expressed disappointment that much time and energy was spent by the Task Force members and the tax dollars that were spent on the part of the state without an outcome of a viable lease rate structure. She asked the Board to allow the Task Force to finish the job after the inventory is complete and the Attorney General opinions concerning the waterways are compiled.

Mel Pittmon, Rose City Yacht Club, provided charts for the Land Board to show how the various proposed rate schedules would impact the various uses. He was against defining lease rates based on location and upland land values, but preferred rather to use the flat rate formula. He agreed with the comments made by Cheri Sprando.

Secretary of State Keisling asked Pittmon how many boats moor at the Rose City Yacht Club and what the per boat cost of the lease would be. Pittmon responded there are 160 slips, with each paying \$15 toward the annual lease payment, though he said this is only part of the overall expenses. Pittmon said the bill for a boat owner at the Club for all the services is \$340 quarterly, which includes other dues and expenses, such as the cost of having to dredge annually due to the flooding situation. He said there are thousands of dollars that go into the operation of the moorage.

Governor Kitzhaber asked Director Cleary about the inventory of the waterways. Cleary said the agency is soliciting proposals for conducting inventories. He said pilot studies should be done to determine the best way to inventory structures on different types of waterways. Cleary agreed that it was necessary to get a handle on all the users of the waterways. He added that the agency is moving forward to remove the state coverage insurance requirements from private docks, since the indemnification clause coupled with the landowner's recreation liability limitation statute would protect the state's interests.

Cleary said rulemaking is planned for the next six months to deal with reducing private residential dock lease rentals. He added that staff would be working with the Attorney General's Office to review the lease exemption issue.

Jay McCaulley, owner of Marine Environment and Development and legislative assistant to Representative Fahey, said he worked closely with the Task Force members. He said that the agency needs to get a handle on the policy issues that affect the rate structures. McCaulley said an inventory of the waterways, as well as the Attorney General opinions, court decisions and other policy issues affecting the rate structure needs to be done.

McCaulley said the Division is in a unique situation with having both regulatory and proprietary functions over the lands. He said there needs to be a clear distinction between the two functions. He stressed the importance of stakeholders' input in the process. He urged the Board to allow the Task Force to continue its work of coming up with a rate structure.

Bill Babeckos said he and a number of "river folks" got together and asked Bill Montgomery to give their views of the Task Force's process. Montgomery could not attend, so Babeckos introduced Arlin Walker, writer and marine historian, to present Montgomery's testimony for them.

Walker, relaying Montgomery's testimony, said the appointees on the Task Force were hand picked to reflect a governmental or adjacent lands valuation basis and the river types (that he stated the Division couldn't avoid appointing) favored a fixed rate water acreage basis.

Walker said that the community of boaters, yacht clubs, boat moorages, houseboats, boat sales, and related activities are a major economic force in total, but individually are mostly shoestring operations. He feels that government people and the educational sector believe they are a "cornucopia of unlimited funds."

Montgomery stated that only five of the 18 task force members submitted written exit interviews, and those who did expressed "specific and general concern about some of the conclusions in the Report."

Montgomery proposed the State Land Board continue the Task Force and add six river representatives (two houseboaters, two moorage representatives, and two boat sales broker representatives), as well as any of the current members who still wish to participate. He also suggested that the agenda be set.

He said items of focus for the Task Force for a six month period should be:
A) A complete inventory of navigable waterways, nontrust submerged and submersible lands, including exemptions and exceptions. (He said this should be done in-house without consultants.) B) Thorough and insightful discussion on whether wharves should be included and why and how. C) After running the actual tax/fees/permits on the existing data base, attention to correcting any excesses at the top or the bottom end of any proposed fee schedule should be

considered. D) An overall equitable and fair plan agreed to by the augmented Task Force by group consensus should then be forwarded to the Board for consideration.

Jon Englund, owner of Englund Marine Supply in Astoria and member of the Task Force, expressed his opinion that the extension of upland uses (the rate category that charges lessees six percent of the upland value) is unfair. For his lease in downtown Astoria, 1.4 acres is under the moorage marina rate, which is \$572 for the first percentage. The other 1,800 square feet is under the six percent commercial category and he is charged \$9,000 per year for this. He contrasted this to a marina in Jantzen Beach with 22 acres and 175 houseboats paying \$7,900. He commented that as the assessed value goes up for tax purposes, the lease rate rises as well.

Bill Sanborn, Small Yacht Sailing Club of Oregon and member of the Task Force, said he initially believed the value of submerged land should be related to the location. He's since changed his opinion and believes that all submerged lands have the same value statewide—but the riparian lands have a greater value because of their location relating to water. He said he and the boating community support the flat rate model (charging for the use of the submerged lands on a fixed rate basis regardless of location).

Cy Green, member of the Task Force, spoke in favor of the combined land value model, and said it should be applied so it is revenue neutral to the state. He said it could be revenue fair and neutral if percentages charged for extensions of upland use were lowered only to five percent (rather than four percent as in the Task Force report) and marinas and moorages were set at three percent (instead of two).

Green said the flat rate model purports to be revenue neutral, but would more than triple the log raft rates.

He said the combined land value model recognizes the locational value difference and the flat rate model does not. The combined land value model sets submerged land lease rates based on the assessed value of the upland, which Green believes to be fair and objective in most cases.

Green said all parties in the Task Force agreed that all docks should be subject to lease; many are exempted if they are less than 1,000 square feet and were installed prior to September 1991.

He said the private dock owners pay the highest per square foot rate in the state. One of the reasons is that, regardless of their dock size, they are required to pay the one-acre minimum lease fee. For a 360 square foot dock, Green said his wife pays \$572 per year. If she were being charged by the extension of upland rate, he said she would be paying \$54 per year. The proposal under the

combined land value model would be to charge a \$100 per year license fee to docks under one acre.

Green said the flat model doesn't provide for any inflation adjustment, whereas the combined land value model does rise as assessed values rise.

Green added that both models recommend 1) a fair time table for phasing in new rates up and down where substantial changes occur; 2) limited and fixed escalation of rates within a lease term during which the leaseholder must amortize his leasehold improvement; and 3) that legal determination be made of navigability of all potentially navigable rivers and lakes in order to bring under lease all similarly situated properties in the state.

Richard Olsen, houseboat owner, said he is under the flat rate for marinas and moorages, so he is charged for a full acre at \$672. He believes this to be unfair, since the average assessed valuation per acre of upland in his area is \$700.

Secretary of State Keisling commented that Olsen is paying 10 to 12 times what other houseboaters are being assessed by marina owners for rent to the state per year for a place to put their houseboats in some Portland area marinas (as referenced in earlier testimony by Jon Englund).

John Davis, private dock owner on the upper Willamette, said he attended all but the first of the Task Force meetings, though not as a Task Force member. He said the Task Force did not have a representative from the public at large that owns a currently exempt private dock. He believes the Task Force represented participants who all had a commercial interest.

He said the current exemption for owners of small docks (less than 1,000 square feet) in place prior to 1991 is fair and equitable to the private individual. He said those with private docks placed after 1991 are being unfairly charged the commercial rate (if their docks are greater than 200 square feet). He commented that he would like their rates reduced to a fair and equitable rate.

He stated that the inclusion of the private exempt dock owner into the lease fee structure is inappropriate and would result in legal action.

Governor Kitzhaber said the Board would do their best to address the frustrations that individuals expressed. He said there are conflicting views on how to deal with these issues, so the final solution will not please everyone.

Director Cleary summarized by saying that the agency is acting on private residential dock state insurance coverage requirements and said they would return to the Board in June to initiate rulemaking on private residential dock rates to reduce those rates as recommended by the Task Force.

He said staff would work both in-house and soliciting proposals for the suggested waterway use inventory. He reported the Attorney General's Office is working on a review of the lease exemptions.

Cleary said the agency will be developing statistical information and case studies on individual rate situations. He said the Task Force Report will be circulated for broad public review and comment. When the agency returns to the Board in June, they will provide a summary of those comments.

Navigability

Kathy Amundson, Sandy River property owner, reported that 50 percent of the Sandy River is owned by a public entity. One such piece of land, a 180-acre parcel, has about one mile of river frontage, bordering on both sides of the river and is owned by the Oregon Department of Fish and Wildlife (ODFW). She said the parcel's road leading down to the river was closed due to disrepair about 20 years ago. A small parking lot was located at the top of the hill (limiting handicap access).

In July 1991, Amundson contacted Bob Mahem, Regional Supervisor of the ODFW about opening the road and providing parking close to the river, including handicap accessible parking. The response was that the road should remain closed due to concerns over poaching, out-of-control parties, keggers, fire danger from all night stays, vandalism, littering, and danger to the fish hatchery. She asked how the state could justify closing public properties and shifting the burden to private property owners to keep river beds and banks open to the public.

She suggested the Division's 1983 navigability report should be used as a guide. She said if the Sandy River is not found navigable, the fishermen can still fish; floaters can still float; and the salmon and steelhead will have a little better change of surviving. Amundson provided hand outs to the Board and requested they read them.

Larry Beaver, Association of Northwest Steelheaders and spokesman for the Coalition of River Users, said they desire to continue with the navigability study process until a better solution is reached to guarantee their rights to the use of Oregon's waterways. He discussed a number of legislative bills regarding navigability that are currently before the Legislature, including HB 2898 by Representative Josi calling for the establishment of a joint legislative-executive

committee to study the issues of conflict between waterfront owners and recreational users and submit a report to the legislative assembly for legislation during the next session.

He said an expanded floatage easement giving user rights to the bed and banks of waterways with reasonable restrictions (somewhat like the Montana streamside access law) would be an acceptable compromise for most parties on both sides of the issue. The alternative is years of extensive navigability studies.

He asked the riverfront property owners to join with them in supporting the concept of a joint legislative-executive committee on an equal representation basis. He asked the Board to use their influence in this as well.

Governor Kitzhaber adjourned the meeting at 11:10 am.

John A. Kitzhaber, Governor

Paul R. Cleary, Director