

The State Land Board met in regular session on June 8, 1999 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97310.

Present were:

John A. Kitzhaber    Governor

Phil Keisling        Secretary of State

Assistants

Paula Burgess

Rick Hanson

Mary Anne Gest

Staff

Paul Cleary

John Lilly

Steve Purchase

Gary Van Horn

Gail Lowry

Dept. of Justice

Bill Cook

Roger Alfred

Governor Kitzhaber called the meeting to order at 10:13 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).

Governor Kitzhaber welcomed Representative Al King to the meeting, then asked Director Paul Cleary to introduce the item on Common School Fund (CSF) distributions and policies.

**CSF**                    Annual review of the CSF investment policy and performance, and discussion of alternative distribution policies.

Director Cleary stated the current market value of the Fund at the end of May was approximately \$750 million. Under the existing policy, this year's distribution would be \$11.5 million, and \$23 million for the upcoming biennium, which is about 1½ percent of the current Fund value.

Cleary explained that a request has been made to increase distributions by \$40 million for the biennium (bringing the distribution level to about a 4.2 percent level). He said this could be done by harvesting prior year equity dividends as well as those for the upcoming biennium, and deducting the Forestry contract and other land management expenses from statutory revenues prior to deposit rather than bond earnings. He said this would allow for some growth in real Fund value as long as revenues and investment returns hold at their recent levels.

Cleary discussed the projections based on scenarios of what would happen at these distribution levels with the worst case of the market over the last thirty year period (as previously requested by the Board). He said the worst five-year return was a 1.85 percent annual loss. The worst ten-year period was a 2.94 percent annual growth. He said under most likely scenarios that distributions could be maintained and Fund growth would occur until up to a four to five percent distribution level. He said these are policies that need to be discussed on a longer term basis, particularly as legal advice is received from the Department of Justice on CSF distributions and expenditures.

Representative Al King said House Joint Resolution 83, passed by the House, authorizes a five percent distribution of funds from the CSF for K-12 education for the 1999-2001 biennium. He added that the Ways and Means Subcommittee on Natural Resources passed the Division's budget authorizing up to \$71 million distributions from the CSF. He encouraged the Board to raise the distribution level from the Fund consistent with each previous five-year investment performance average. He encouraged the Board, however, not to make the decision today, saying they should wait to see what kind of budget the Legislature sends to the Governor. He commended the current and past Land Boards and the Division for their stewardship of the CSF.

Secretary of State Keisling said the case has been made that the CSF distributions could be increased. He agreed, though, with Representative King that the Board should wait on this decision until the Legislature has made their budget decisions. He said it is ironic and irresponsible that the Ways and Means would pass a budget contemplating the Board substantially increase the CSF distribution now, while they are proposing cutting taxes by hundreds of millions of dollars that will directly affect future K-12 education funding.

Governor Kitzhaber also agreed with this, saying the Board should communicate their willingness to legislative leadership to consider a change in distribution as part of the overall K-12 funding solution. He said perhaps the Board would reconvene in an emergency session close to the end of the session to make a determination in light of the other resources that have been brought to the table.

Secretary of State Keisling added that if and when distributions are increased, he would like it to be part of a longer term policy decision, not driven by a particular budget number. Governor Kitzhaber agreed and asked Representative King to return when the Board continues this discussion.

Administrative Rules	Request for final approval of amendments to the rules governing the management and leasing of state-owned submerged and submersible land.
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Director Cleary introduced this item by recognizing the efforts of a number of waterway lessees who attended thirty public meetings, hearings and workshops trying to reach agreement on the rule revisions. Though there was not complete consensus, he said a reasonable proposal was crafted that fairly and equitably addresses concerns about the current program.

Cleary said changes from the original rules include combining floating homes into the marina moorage classification and rate; grouping working waterfront structures into a single marine-use classification; reducing the rates for marine and non-marine upland extension uses; offering locally assessed value and percent of slip rental income options to adjust for local economic conditions; using statewide cap flat rates; and fixing the annual increases at three percent to provide certainty over a fifteen year lease term. He added that administrative rule revisions include the Division sharing in the cost of leasehold surveys and property appraisals to resolve boundary and assessed valuation disputes; fixing leases at fifteen year terms renewable for subsequent terms; adding an independent mediator or facilitator option to informally resolve disputes; and requiring a structured review of the program with lessee participation and survey with a six-month status report, then an eighteen-month formal evaluation.

He said that setting rates has been difficult; comparisons aren't available within the state, since the state for the most case is the only landowner. He quoted prices for waterfront uses in other states, and for leases such as parking a car. He said the agency has used the best information available to develop a rate.

Cleary noted that though some individual lessees will experience a doubling of rates, this is due to the extremely low rates in the past where volume discounts were given for the more acreage leased.

The only remaining area of major disagreement is on the maximum per square foot charge for marina/moorages and log rafts. Cleary said the rate was originally proposed at two cents per square foot for marina/moorages with log rafts at one cent per square foot. Lessees made a request to reduce these rates to 1½ cents for marina/moorages and ¾ cent for log rafts. Cleary suggested they split the difference at 1¾ cents and 7/8 cent, with a floor of \$250.

Cleary said if the Board chooses less than two cents per square foot, he is not comfortable with locking in the rates for 15 years. With a rate set at less than two cent, he suggested the Board consider a shorter time period to allow for rental review and redetermination.

During the initial waterway rule review process, it was anticipated that the agency would be generating additional revenue under the new rules, which would allow for some new initiatives. With the 1 ½ cent model, though, revenue would be the same as currently. With the 1 ¾ cent proposal, only \$40,000 of additional revenue would be generated, which would not be sufficient for launching any new investment or improvement initiatives.

Director Cleary reviewed the charts and the written materials provided the Board.

Tom McGinnis, manager of Jantzen Beach Moorage, asked the Board to review and adopt the new alternative model that was developed the day prior to this meeting (1½ cents), saying this is equitable for large leaseholders.

Bill Montgomery, Portland Rowing Club, said he believes the rates are good and equitable, though it will more than double his rate. He disagrees with the proposed administrative rules, especially the method of charging and expressed concern about the Division's accountability to the Board, Legislature and the taxpayer.

Montgomery requested the Board read and consider proposed House Bill 2979, which would prevent the Division from diverting school and fish recovery moneys to their own needs, primarily their own pay. He asked the Board not to approve the administrative rules as they stand today, but instead to incorporate the "spirit and the letter" of HB 2979 into the rules.

Governor Kitzhaber stated the Board needs to move on these rules. He said they could later review them to determine whether changes need to be made, such as the issues of administration and accountability.

Governor Kitzhaber said that he believes there are good people working at the Division, and said he doesn't believe their primary objective is to enhance their pay. He said one of the problems state government is currently experiencing is losing talented staff to the private sector, since there is more money to be made there.

Jay McCaulley, from North Jantzen Street in Portland, said he feels that after a number of years some progress has been made, but added that there are some fundamental flaws in the program. He said the rate portion of the rules takes a small step toward equity and offers relief to some classes in some parts of the state, but it needs further honing.

He said he supports this if it is considered an interim step toward honing the rules. He said he hopes he can work with the agency to help hone the rules, the rates and the program areas that need a major overhaul. McCaulley suggested a working group to formally continue this process and to report directly to the Board and represent the interests of lessees statewide.

Governor Kitzhaber asked what specific areas of these rules should be focused on by a work group. McCaulley outlined the following: more accurately determining rates; rights and responsibilities of the landlord (the Division) and the tenants; public trust contributions; and the results of the inventory. He said the rules don't adequately reflect these issues.

Mel Pittmon, representing Rose City Yacht Club and the Columbia River Yachting Association, said he thinks some of the rate inequities have been resolved in some of the classifications. He discussed the new alternative model being proposed, saying the net revenue available under this proposal, would be nearly the same as previously anticipated. He asked the Board to seriously consider this model.

Pittmon also discussed the need for completing the on-the-ground portion of the waterway inventory to identify leasable sites that are not currently, but should be, under lease.

Pittmon said he still has reservations regarding the floating dock rental going from \$588 for the first acre down to \$20 a year for private docks abutting homesites worth between \$300,000 to a million dollars.

He asked the Board to consider the contributions made by the private moorages on the river, such as site dredging which many must do on an annual basis to keep the sites operable. He said there is no provision for these additional expenses, but their rates are more than doubling.

Governor Kitzhaber asked Director Cleary to respond to Pittmon's remarks regarding the resources available under the different scenarios and the new alternative of 1½ cents versus the two cents alternative.

Cleary compared current revenue with the freeze in place with the proposed new models of 1½, 1¾, and 2 cents, saying it's a difference of only about \$80,000 at the high end.

Cleary said that he would like a six-month status report on this program implementation due to the new approaches being proposed, to ensure that they are working. He would like to use the technical advisory public interest committee for that initial six-month review. At eighteen months, a formal evaluation with a lessee survey could be done after actually implementing the program and determining how things are working. He said if methods of determining rates are going to be reviewed, he suggested not locking those rates in for long periods of time, and said perhaps a three-year period would be sufficient, rather than 15, so there aren't contracts out there that are locked in.

Governor Kitzhaber said that this is a "work in progress" and that when the agency has the inventory and other information, they will have a better idea on how to structure rates. He asked McCaulley what he thought about shorter time periods on the lease rates, revisiting this once better data has been developed. McCaulley agreed with this.

Secretary of State Keisling asked McCaulley to clarify that he was willing to forgo the 15-year lease and go with the three-year term in order to get a formal group working now to reexamine the rate structure.

Governor Kitzhaber added that if a different method of determining rates is developed, rates can't be changed if they are locked in for 15 years. Director Cleary said that a lease term of 15 years could be used, with a three-year rental redetermination. He said that rates would be locked in for three years at which time they would be reopened with a default that if the Board decides not to change rates, they would continue at the three percent escalation.

McCaulley said he had some "heartburn" regarding the fifteen-year lease. He said he would like the renewal functions in the program to be based on the riparian preference right. With the passage of the Act, he said the legislature saw to it that the riparian owner has some definite say in what goes in front of their riparian property. He would like wording in the proposal to allow for perpetuation, based on riparian preference rights. He said until the program has

been honed, it doesn't make sense to have a 15- or 30-year lease, just the riparian preference right. He finished by saying the program needs to continue to be honed, lessees need to have their riparian rights and privileges continued, and the details need to be worked out in the process.

Director Cleary said in the renewability provision the riparian preference right is specifically referenced. As long as the lessee is still in good standing, with no violation of the law and remains a preference right holder, the lease is automatically renewed.

Pittmon said it would be unsatisfactory to him to have a short-term lease, since he has a 25-year mortgage and lenders want a lease to cover the length of the mortgage, or a redetermination clause that gives the ability to renew the lease long enough to cover the length of the instrument.

Jan Hamer, owner of River's Bend Marina and board member of the Waterfront Organization of Oregon, thanked Director Cleary, John Lilly and staff for doing a superb job of trying to keep their customers happy for the past three to four years.

He said they support the new alternative model for 1½ cents. He believes most marinas would choose the flat rate approach at 1½ cents, because they feel most comfortable with this, though most of their leases will double. He recommended going with the new alternative model and having a phase-in plan of two to three years to help with that increase.

Hamer said he polled all the major lenders in the metro area and those that will loan on marina/moorages want to see a 20-25 year amortization. He said if you have a base lease of 15 years, you need the flexibility to be able to add the years to it to match the lender, or you can't get a loan.

Governor Kitzhaber asked Director Cleary to discuss the phase-in proposal and the issue of relationship between the length of the lease and mortgages. Regarding the phase-in, Cleary said for those operators who have fixed their rentals and need a year to notify tenants, the Division would split the first year's annual payment, so they could pay the first half in the beginning of the year and half six months later. This would allow time to notify tenants that their rates are increasing. He also committed to working with lenders to explain the lease renewal preference provisions.

Hamer responded that it would be better to have more phase in. He said this proposal could pose a problem with increasing the rentals for boatslips, since tenants may go elsewhere. Cleary said each marina/moorage in any given market area will be faced with close to the same rate. He said it shouldn't create a substantial burden on lessees and should not affect competition in the market.

Secretary of State Keisling asked what Hamer charged for a boat slip. Hamer responded he charged \$250 for a 17' x 65' slip. Keisling responded that at current rates the state is getting \$12-15 per year. Hamer said his improvements included sewer, water and garbage and use of laundry and restrooms.

Secretary of State Keisling said the difference of the new alternative model and the modified (1½ -2 cents) would only mean around \$60 a year for Hamer's tenants. He added that he didn't believe tenants would move to another marina/moorage if a small increase was passed along to them. He compared these costs to parking in downtown Portland where individuals are paying \$1-\$1.50 per square foot per month, instead of two cents. Hamer concluded by saying the rate is a good deal in this state. But, he added that the industry is built around the current rate structure, so you must view this versus the increase.

Secretary of State Keisling said the rates have been frozen for the past five years. He said with the real estate market going "gangbusters," the state's waterway revenues are in the same place they were years ago. Cleary agreed saying they are the same as in 1993-94.

Jon Englund, Astoria leaseholder, said it's been a hard battle over the past four years. He said he is one of the "piling dwellers," who has been paying 60 percent of the total revenue (those on the City of Astoria's and Newport's waterfront).

He said the waterfront piling people support the new alternative, which he said was accomplished with the help and support of their friends in the metropolitan area, which he appreciated.

He said under the new alternative the six percent are still paying 49 percent of the bill. He said they accept this, but feel that it can be better. He said they will watch the inventory and the gross revenues as new properties are placed under lease, to hopefully get some relief for them. He said that their rates are tied currently to the upland value, which means the county assessor can set their fees.

Englund said through some monumental disagreements, they have created friendships and again thanked the Portland metropolitan area for their assistance in this process.

Secretary of State Keisling asked what alternative Englund would choose. Englund said they had no choice but to choose 35 cents.

Bill Babeckos made the point that there are profit and non-profit marinas. He said the for profit marinas can't really pass along the cost increases, but instead must absorb them themselves. He said the marketplace is not economically healthy.

Director Cleary reviewed the options proposed: the new alternative model (1½ cents for floating homes and marina/moorages, ¾ cent for log raft), five percent upland value or slip rental income; and the modified alternative model (1¾ for floating homes and marina/moorages, 7/8 cent for log raft), five percent upland value or slip rental income. Because the latter proposal was changed from two cents, Cleary stressed the need for not locking in the rates for more than three years.

Cleary said they would work with lenders during the 18-month period to explain to them the assured renewability provisions. He added that at the six-month status report time, the Board can determine if it is necessary to appoint a formal advisory committee. He discussed the phase-in period allowed for those who would like to split the first year's rental increase.

Cleary summarized by saying the net result of these rules will be a standard lease, improved equity between small and large, urban and rural, seasonal and year round marinas, and reduced rates for fish processors and extensions of uplands.

Secretary of State Keisling asked if the expectations of various people about how staff will be spending their time is clearly understood. Director Cleary said they need to get their feet wet in this new program, do a six-month implementation and then a status check at that time to determine whether a formal review and evaluation for the 18-month period is needed.

Secretary of State Keisling moved the adoption of the staff recommendation (modified alternative model) with the change to 1¾ cent and a three-year redetermination, saying he was tempted to go with the 2 cent rate, in context with what other states are charging. He said one of the reasons the market is overbuilt may be because the rates are so reasonable. He added that the Legislature will have the final word on this. They may decide in the future that even two cents is far too little to be charged.

Governor Kitzhaber seconded the motion, saying he came to the meeting prepared also to support the two cent proposal. He said with data available in the future, he'd be willing, if necessary, to appoint a committee to assist in determining methodology. The motion was approved.

### **Consent Agenda**

**Administrative Rules** Request for authorization for the Division to file a temporary rule concerning a General Authorization for Minimal Disturbance Activities (less than one cubic yard) in Essential Indigenous Anadromous Salmonid Habitat and to initiate permanent rulemaking.

**NHAC** Request for approval of the addition of Snag Boat Bend near Peoria on the Willamette River to the Oregon Register of Natural Heritage Resources.

**Minutes** Request for approval of minutes of the April 6, 1999 State Land Board meeting.

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

### **Informational Agenda**

**Fiber Optics** Fiber Optic Cable Easements Rulemaking Notice.

**Salmon** Salmon Plan Measures Prioritization.

**Legislation** Legislative Update.

Director Cleary briefly discussed the above informational items.

### **Cresmont**

One additional item not on the agenda that was discussed was North Tongue Point and the Cresmont lease. Director Cleary said proposals had been advanced regarding ship dismantling and recycling. He said the possibility had generated considerable community interest and concern, but at this time there is no longer an active proposal. Cleary said it is time for a new community dialogue to be held on the future of Tongue Point to identify economically viable, environmentally sound,

and community acceptable uses for the site. He said they will discuss with the Economic Development Department the possibility of using their community forum to ensure that the support of the community is behind any proposals.

Governor Kitzhaber asked that a discussion of the waterway administrative rules implementation take place at the October Land Board meeting.

The meeting was adjourned at 11:37 am.

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John A. Kitzhaber, Governor

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Paul R. Cleary, Director