

The State Land Board met in regular session on December 16, 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>
Peter Green	Ann Hanus	J. Kevin Shuba
Paddy McGuire	John Lilly	
Inga Deckert	Steve Purchase	
	Jeannette Holman	
	Gail Lowry	

The Governor called the meeting to order at 9:00 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 Street NE, Suite 100, Salem, Oregon 97301-1279, (phone: (503) 378-3805, ext. 224).

Presentation regarding New Carissa.

Director Ann Hanus introduced the legal team that represented the Land Board on the New Carissa lawsuit. She also noted the work of Steve Purchase and Jeff Kroft of the Division of State Lands. She said the tireless and passionate efforts of this team were effective in the Board prevailing in the lawsuit and winning \$25 million in damages, which will provide the funding for removal of the shipwreck.

Governor Kitzhaber called this an extraordinary moment and an enormously important chapter in Oregon's history. He said a lot of people deserve credit here, saying that the legal team did a remarkable job. He also commended the work of Director Ann Hanus, as well as the agency's previous director, Paul Cleary (who he said was here when the ship went down). The Governor also thanked the other members of the Board and their assistants. He said there was no wavering that this ship had to go. He commented that this is an important precedent about the integrity of

our beach bill, of our land use planning goals and about something that is invaluable and a cherished part of Oregon's legacy. He emphasized that the significance of this event will probably not be completely recognized for a decade or two, and stated that he was proud to be a part of it.

4.a. Request for approval to appear before the Legislative Emergency Board to obtain an increase in 2001-2003 Other Funds expenditure limitation to cover expenses for the New Carissa lawsuit.

Director Hanus said the Board would also take this item out of the regular order of the agenda, dealing with a request to appear before the January meeting of the Emergency Board to obtain an increase in the current biennium's Other Funds expenditure to cover expenses for the New Carissa lawsuit.

Secretary of State Bradbury moved the Board approve the request. Governor Kitzhaber seconded the motion and it was approved.

Anchoring in the Territorial Sea.

Secretary of State Bradbury commented that he had wanted to propose a resolution that would be a strong recommendation of the Board that ships not anchor in the Territorial Sea off Oregon's coast. He said he would not bring it to the Board today, since the ports had concerns about a total prohibition (which he stated his proposal would not be). He asked that the staff of the Division work with affected parties and bring back to the Board a policy, which would say, "Don't drop anchor in the Territorial Sea unless there is an emergency." Director Hanus agreed to bring the issue back before the Board during one of the next two meetings.

Presentation to Governor Kitzhaber.

This was Governor Kitzhaber's final meeting as chair of the Land Board. Director Hanus recognized the Governor for his leadership on the Board for the past eight years, in dealing with various different issues from grazing leases to navigability to the New Carissa and more. Hanus commented that she was never more proud as an Oregonian than when she witnessed the Governor on the stand at the New Carissa trial, revealing his passion and deep love for the state.

Hanus presented Governor Kitzhaber with a personal screen saver with pictures and sound effects reminiscent of the New Carissa. He was also

presented with a framed and matted map of the State of Oregon that had been signed by the staff of the Division of State Lands.

Secretary of State Bradbury and State Treasurer Edwards also presented gifts to the Governor. Governor Kitzhaber thanked the other Board members and the Division's staff for their support over the past eight years and for their contribution to a great legacy for the state.

Action Agenda

1. Request for approval to distribute the \$17.7 million legislatively directed special distribution to the kindergarten-12th grade public schools in conjunction with the regularly scheduled December distribution.

Director Hanus explained that the Third Special Session of the Legislature directed the Division to distribute the accumulated statutory revenues as an additional distribution to the schools. Hanus told the Board that the agency has been able to accumulate \$25 million in cash, predominantly from unclaimed property money that has been collected. She said by using this cash balance, the agency would be able to avoid incurring a loss to the Common School Fund. Since this is a deviation from the regular distribution policy of the Land Board, the agency requested approval from the Board to proceed.

Secretary of State Bradbury moved the Board approve the request. The motion was approved.

2. Request for approval for final administrative rules governing the granting of easements on Trust and Non-Trust Land.

Director Hanus said this item is a request for approval of final administrative rules regarding the granting of easements on Trust and Non-Trust lands to address three concerns related to temporary use permits; easements for pipes and pumps crossing state-owned land for withdrawal of water and the number of easements required for fiber optic cables and associated conduits. Two public hearings were held. In response to public comment, a number of changes were made to these rules.

Mark Simonson from Verizon Northwest, summarized comments made in a letter by David Mielke of Verizon. He stated that Verizon believes the proposed rules and associated fee violates the state and federal law and

should not be adopted. He said the fees exceed the fair market value of the land encumbered, since the easement holder will have to pay each time the easement is renewed. They believe the fees constitute an unlawful taking under the U.S. Constitution. He also stated they feel the Telecommunications Act of 1996 would be violated by these rules.

Simonson said these rules would impact the timely provisioning of services mandated by the Oregon Public Utilities Commission. He added that the rules are discriminatory to telecommunication providers requiring them to pay a separate easement fee each time they go into an existing easement with cable. He contrasted this with the electric utilities, which are not charged each time they place multiple circuits on a pole under a single easement.

Simonson added that the rules and fees are contrary to the state and federal objectives of providing an environment that allows for provisioning of telecommunications and broadband services to all residents of the state at affordable prices without additional burdensome fees. He said these rules and fees would discourage investment in the state and associated economic growth.

Governor Kitzhaber asked that counsel comment on Simonson's testimony. J. Kevin Shuba, Assistant Attorney General, said one important distinction to be considered is that the Board is acting as a manager of public lands in its proprietary capacity in this case, rather than in a regulatory capacity. He said the Board has the authority to grant easements and these rules are a way for the agency to determine how much a user of the land will pay. Shuba also referred to a case where the court of appeals upheld the City of Eugene imposing franchise fees against AT&T. Hanus added that these issues were discussed in depth two years ago at a Board meeting.

The Governor asked Shuba whether a different standard is being applied to the telecommunications industry as opposed to the power industry. Shuba responded that the industries are different, since the cable industry uses conduit and inner ducts and subleases these inner ducts to others. He said the two industries function differently.

Simonson said that under the existing easements they themselves must pay again for any additional cables they add. He said these are non-exclusive easements, so anyone else could use them and under existing telecommunication rules Verizon could not deny them access.

Hanus emphasized that when granting easements across trust land the Board has an obligation to maximize the revenue to the Common School Fund. She said the rules were constructed to operate like a private business to ensure the best return to the Fund.

Governor Kitzhaber recommended the staff of the Division to prepare a issue paper and that the Board have a discussion at the next meeting with the new Governor regarding the easement policy and the perceived differences in treatment of the industries. He said policies should be consistent and equitable.

Hanus explained how the amendments to the proposed rules outlined on the errata sheet would impact the rules. Secretary of State Bradbury moved adoption of the rules including the amendments on the errata sheet. He added that the Division staff should do a comparison of the easement policy related to power utilities and telecommunications utilities and bring this information before the Board. Governor Kitzhaber seconded the motion and the approval was unanimous.

3. Request for adoption of new rules and amendment of existing rules governing the unclaimed property and estates programs.

Director Hanus said this is an overhaul of the rules of the Trust Property Section to reflect changes stemming from the Secretary of State's audit and the agency's review, as well as bringing the rules into conformance with the statutes. Hanus reported there had been two public hearings held on the rules and an advisory committee met to review them. Hanus recognized Jeannette Holman, Assistant Director for Finance and Administration, who drafted the rules.

Paul Thalhofer from the Oregon Auctioneer's Association said the Association opposes LC 625 and any rules that may be in line with this legislative concept. He said historically in Oregon unclaimed property has been sold at public auction through an auctioneer hired under a personal services contract. His association believes that process should continue. They believe an auctioneer is able to create the interest and receive the best price for the property. This, he said, cannot be done in an electronic format, which requires staff time to manage the system. Thalhofer made suggestions as to how he thought these public auctions could be improved.

State Treasurer Edwards joined the Land Board meeting at that point and Governor Kitzhaber had to leave for another meeting. The Governor turned the meeting over to Secretary of State Bradbury to chair.

Director Hanus stated that the changes in LC 625, as well as some of the changes in the rules, were from the Secretary of State audit recommending the agency have the ability to choose the best method of public sale for items in order to maximize the revenue to the Common School Fund. She added this is especially important when the items for sale are from escheated estates. Hanus said the agency will probably use auctioneers for most property, but wants the option of determining the best method to use. She added that getting appraisals for items was another recommendation from the audit, especially with jewelry and coins, to estimate of the value of an item prior to going to auction.

Jeannette Holman, Assistant Director for Finance and Administration, said in response to the auctioneer's concerns, the draft rules were changed so that the agency would be required to use a public auction or sale for unclaimed properties items. In estates a number of methods of disposition could be used, though most often this is also done by auction. If an immediate sale is required, or if property is part of an estate sale, there are different ways to handle the estate provisions. She said these provisions are spelled out in the draft administrative rules.

Hanus said the language in the rules and the legislative concept would allow us the flexibility for maximum return on the estates portion, since this is part of our constitutional trust. She added that this is in concert with the audit recommendations.

Thalhofer said he was not aware the rule had been amended. He said to the extent that it preserves the public oral auction, the Association would be in favor of it. He said they would oppose a silent auction.

Holman said the rule requires a public sale (as does the statute), which could be a silent sale, but not likely unless it was in conjunction with an estate, or was deemed the best method for disposal.

Shuba said estates are often managed as a discreet entity and sales often occur in conjunction with the lot because there is an accounting that is required by the court. He said this is different than unclaimed property, which gets reported, is accumulated then sold.

Thalhofer said his association would like the word "oral" to be inserted to preclude silent auctions. Both Secretary of State Bradbury and State Treasurer Edwards said LC 625 would be debated in the legislature. They would like as much flexibility in the rules as possible to maximize the return to the Common School Fund.

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

Consent Agenda

- b. Request for authorization to pre-session file 2003 legislative proposals.**
- c. Request for approval of the October 8, 2002 State Land Board minutes.**

State Treasurer Edwards moved the remaining items on the Consent Agenda be approved. Secretary of State Bradbury seconded the motion and the approval was unanimous.

Informational Agenda

5. Analysis of the Common School Fund asset distribution.

State Treasurer Edwards said he asked the Frank Russell Company, advisor to the Oregon Investment Council, to do an analysis of the asset allocation of the Common School Fund to look at potential policy changes around managing the money to help provide stability. Edwards said he would like to grow the Fund, add more stability and raise the distribution over time.

Edwards introduced Mike Mueller, Interim Director of Investments for the State Treasury. Mueller introduced Greg Nordquist from the Frank Russell Company who helped prepare the study.

Mueller said they had two goals in reviewing the asset allocations and looking at alternative distribution policies – to look at the possibility of increasing the distributions and to reduce the volatility of the distributions to the schools.

Nordquist gave an overview of how his office prepared the Asset Allocation Study. He reviewed different spending policies to show what impact they have on the goals of the Fund. He said the study was done primarily to select the asset mix of debt to equity ratio the Board will be investing in the Fund and to select the best spending policy. Nordquist said his company began looking at the Board's policy regarding investments for the Common School Fund beginning in 2000. He described their financial model that runs 20,000 simulations across ten years, taking into consideration market returns, assigning various spending policies and calculating the results.

Nordquist said in reviewing a number of different scenarios with the investments, they considered a three-year look at the investments, rather than a one-year growth, in order to smooth out volatility. They also added a floor to the spending. If the spending in one year was \$10,000, the budget couldn't be cut more than 5-15 percent. He said this also helps provide stability. He reviewed the conservative, moderate and more aggressive scenarios of investment with the Fund.

In summary, Nordquist said there is no compelling reason from this analysis to change the total equity allocation for long-term maximization of growth of the Fund. He added that within the equity portion, increasing the allocation to international equity moderately increases the expected return and payout.

He said a four percent fixed rate with smoothing improves the spending amount and narrows the spending range, but there is a slight reduction in the real wealth of the Fund.

Treasurer Edwards said the Board should wait before making any decisions and have a discussion with the new Governor regarding the investment and spending policy. He said part of the strategy had been to grow the corpus of the Fund. The debate currently is whether the corpus is an adequate size and the question of preserving wealth versus spending. It is currently being viewed as a rainy day fund.

Edwards added that the Board needs to step back to establish what is in the best interest of the Fund by taking the information provided today, and determining what might need changed. He said it would be helpful to have input from the school community and find out where the legal constraints are in the debate.

Hanus offered to talk to some education beneficiaries to get their opinions.

Secretary of State Bradbury also indicated his desire for Director Hanus to learn the desires of the education community. He said the Board must get a clear picture from the Department of Justice and review this with our new Governor.

6. Status report on the removal-fill rules and streamlining progress.

Director Hanus said the agency followed up on the areas the Land Board requested be addressed on the removal-fill rules. She said the hearings were reopened and new rules were signed and will be effective January 15, 2003. She added that the rules make it easier for people to apply for a permit and to determine the status of their permit online. The agency is providing workshops and trainings for consultants, staff and the public on these rules.

7. Status report on navigability.

State Treasurer Edwards said he is encouraged with the navigability workgroup meetings. He said there has been fruitful dialogue with interested parties looking at the potential for a legislative fix or alternative. He thanked Inga Deckert for orchestrating those meetings.

Director Hanus said a memorandum was provided the Board showing the rivers for which study requests have been made and when the agency plans to come before the Board with those requests, initiating action and completing studies.

Since State Treasurer Edwards was not present at the beginning of the meeting, he asked that the record state that he would have voted in favor of action items 1 and 2 on the agenda today (pertaining to approval for the distribution to the schools and approval of rulemaking regarding easements on Trust and Non-Trust lands).

Secretary of State Bradbury adjourned the meeting at 11:05 a.m.

Secretary of State Bill Bradbury

Ann Hanus, Director