

The State Land Board met in regular session on February 8, 2000 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
Jim Hill	State Treasurer

<u>Assistants</u>	<u>Staff</u>	<u>Dept. of Justice</u>
Paula Burgess	Paul Cleary	Bill Cook
Paddy McGuire	John Lilly	
Rollie Wisbrock	Steve Purchase	
	Gary Van Horn	
	Gail Lowry	

Governor Kitzhaber called the meeting to order at 10:06 a.m. 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).

Action Agenda

- 1. Request by MFS Globenet for a Territorial Sea statutory easement for the "Southern Cross" oceanic fiber optic communication cable corridor landing at Nedonna Beach, near Rockaway.**

Director Cleary said this cable would land at Nedonna Beach near Rockaway, using existing beach conduits and facilities constructed as part of the 1999 Alaska Northstar cable landing. He said once developed, this will be the world's largest capacity cable network, linking the South Pacific with the United States.

He reported that the applicant and fishermen reached agreement on the cable routing, the snag liability waiver, a gear replacement fund, a 24-hour toll-free hotline, and a committee expense fund patterned after the previous Alaska Northstar agreement, which is becoming an industry standard in Oregon.

A public hearing was held in Tillamook and no adverse comments were received.

Cleary said the project applicant has committed to working with the local community to develop opportunities for them to access the fiber optic cable network.

MFS Globenet is offering \$250,000 for the state's agreement not to impose future easement fees for 20 years, regardless of potential changes in the law or rule, via deletion of the "consideration recovery/prevaling law" clause and insertion of language documenting the agreement in the grant of easement.

Cleary outlined the three major concerns that were expressed during the fiber optic rulemaking: 1) minimizing impacts and reducing conflicts with other ocean users; 2) working with communities along the coast on community access to fiber optic networks, and 3) recognizing the value of the rights-of-way the state is granting. Because of MFS Globenet's willingness to address these needs, Cleary said the application was able to be processed quickly.

Cleary recommended the Board approve the territorial sea easement for the Southern Cross fiber optic cable under the terms and conditions specified.

Scott McMullen, Chairman of Oregon Fishermen's Undersea Cable Committee, said the Committee fully supports this easement and permit. He called this project historic, saying this is the first time the cable industry has worked directly with the fishermen in selecting a cable route. Governor Kitzhaber expressed his appreciation for McMullen and his group for the success of the project.

Geoff Fowler, WCI Cable, thanked the Board and the agency for allowing the application and the process to move forward as quickly as it did. He expressed his respect for the work of the Division of State Lands.

He discussed the request by Director Cleary for involving the local community and helping develop access for them to the worldwide networks. Fowler said several meetings have occurred in preparation for this, with more scheduled. He promised to keep Director Cleary informed of progress on this effort.

Secretary Bill Bradbury moved the Board approve the territorial sea cable easement. State Treasurer Hill seconded the motion and the approval was unanimous.

New Carissa Update

Director Cleary updated the Board on the status of the New Carissa and plans for removal of the stern section. He made it clear that the position of the state is that this is an unauthorized trespass and needs to be removed in a manner that is safe and environmentally sound. He reported that a meeting was scheduled on February 25 with the representatives of the responsible party and the salvors to report on their experiences last summer and their assessment of alternatives for the next season. Cleary said the outcome of that meeting would be reported to the Board, the community and the BLM, who manages the North Spit area.

Governor John Kitzhaber said his position and that of his administration is that the stern should be removed from the beach. He said the burden of proof is on the responsible party to demonstrate why it is not feasible to remove the stern, or that any other option should be considered.

2. Request to amend in part and repeal in part administrative rules regarding the export of unprocessed timber from common school forest lands and other Land Board managed lands.

Director Cleary said this item would involve repealing 1983 administrative rules relating to the export of processed timber from common school forest lands and other Land Board lands. These rules don't conform to a 1989 state constitutional amendment or a 1990 federal law change, which made the 1983 rules moot.

Cleary said the proposal as drafted would link the Division's rules to some recently amended Department of Forestry rules, and add a requirement to review and reaffirm that linkage on any subsequent Forestry rule revisions. This would allow companies that export softwood logs from private land to bid on state hardwood timber for domestic processing under certain conditions. The direct export of unprocessed hardwood or softwood logs from state land would still be prohibited, as well as bidding on state softwood for private land softwood exporters.

Cleary said some concerns have been raised by interested parties on the proposed action. He suggested that the rules that were moot could be repealed and the Board could hear testimony today and defer action on substitute rule language until a later date to allow for a detailed discussion with those who have concerns.

Liz Frenkel said her concerns were with the new rule language, rather than the repeal of the rules. She stressed the Board's fiduciary/conservation responsibility and said it should be absolutely clear in the rules that the authority of the Board takes precedence over any contract or Department of Forestry rule or whatever else.

Danielle Matthews asked several questions about the proposed repeal and rule amendments, which were answered by Director Cleary and Marty Graham of the Department of Forestry. Graham offered to send Matthews a list with definitions of "processed timber" to assist in her understanding of the industry terminology.

Governor Kitzhaber said it is clear that the rules that are inconsistent with the Constitution need to be repealed. Regarding the replacement language for new rules, he believes the concern is whether this opens the door to substitution of state timber for private timber exports. He added that he believes it would not change the status quo.

Secretary of State Bradbury said he would like to explore the issue further before adopting a specific policy relating to applying different standards for exporting hardwoods than for softwoods. He agreed that the rules that are inconsistent need to be repealed, but added that the Board can adopt different rules than Forestry for common school forest lands. He would like the ability to review the options.

Director Cleary said the agency could defer action on adopting substitute rules and meet with Forestry to review the management agreement entered into in December 1993. He suggested some of the language in that agreement could be placed in the rules to address Frenkel's concerns.

Cleary added that they should also discuss with Forestry the merits and administrative issues that may be related, such as the pros and cons of having different rules than Forestry, where the Board's lands are intermingled with Forestry's. The results of these discussions will be brought back to the Board in April.

Secretary of State Bradbury moved the Board repeal OAR 141-015 in its entirety and defer action on replacement language, returning to the Board with the issue in April. State Treasurer Hill seconded the motion. Governor Kitzhaber noted that he is fine with deferring this to April, although he added that he's not particularly bothered by the current language as proposed. Approval of the motion was unanimous.

Consent Agenda

3.a. Request for authorization to initiate rulemaking relating to communication site leasing.

Director Cleary said the agency currently has no administrative rules governing communication site leases. He explained the high demand for cell phones and pagers is creating a demand for telecommunication towers and facility sites, so this is an explosive growth area.

The Division's lease charges are currently considerably lower than what the private sector landowners are receiving for site rentals. Cleary said this is a request to initiate rulemaking to allow the agency to process these leases in an administratively efficient and businesslike manner.

b. Request for approval of December 14, 1999 State Land Board meeting minutes.

Secretary Bradbury moved the Consent Agenda be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

Informational Agenda

4. Status report on North Tongue Point activities.

Director Cleary reported that a public forum was held in Astoria on January 25. The consensus was that the site is a “diamond in the rough” that deserves some polishing to generate high quality, family-wage jobs. There wasn’t consensus on how that should happen – whether the site should be offered for sale, the existing lease arrangement continued, or renegotiation and a longer lease considered.

Cresmont, partnering with Washington Marine Group, wants to acquire the site for rail barging, layberthing, and ship dismantling. The Port of Astoria has partnered with Clearwater Environmental and is also interested in acquiring the site.

Cleary said Cresmont is in the sixth year of the first ten-year lease. They have two options to renew for additional ten-year terms, if they are in good standing and performing under the lease. He added that they have a default issue in terms of being in arrears on property taxes. Notice has been given them to cure that default before February 23 and they have agreed to that.

No action was requested of the Board at the meeting today. Cleary said at the April 18 meeting of the Board they will discuss whether to continue the lease as it is, revise it to a long-term lease, or offer the land for sale.

Cleary said advice from the Department of Justice indicates that if the Board should decide to sell the property, the statutory preference for first right of refusal would go to state agencies and local political subdivisions. He added that Cresmont has made an offer to purchase the property for \$3.5 million. An appraisal was conducted for the property placing the value between \$3.1–3.3 million. Cleary said staff needs to complete their review of the appraisal. He added that by the time the review is complete, it is possible that the opinion of value from the appraisal may be increased to as much as \$4 million.

Cleary said Cresmont needs to cure their tax default. Then, to test the seriousness of both offers, he would ask Cresmont to deposit into escrow \$350,000 (ten percent of their offer). The Port would then have 15 days to make a like deposit. If the Port makes the deposit, and the Board decides to sell, the Port would be the purchaser, if they were willing to do all the performance required to complete the purchase.

If the Port doesn't make their deposit, and the Board has chosen to sell the property, the agency would then advertise for a minimum of three weeks and accept bids from private parties. Cresmont would have the right to meet the high bid from other private parties in accordance with their lease.

5. Status report on navigability issues and navigability study requests.

Director Cleary reviewed the current situation in regards to navigability issues, saying there are eight different navigability study requests on hold pending legislative action. He reported that a lawsuit filed on the John Day River against the Land Board and a private landowner has an initial court hearing on February 22.

Cleary suggested that the agency host a workshop with interest groups in the next 45 days to review alternatives – whether to do individual navigability studies or one omnibus study, whether to work on a legislative “floatage easement,” or whether to wait for the outcome of the John Day River lawsuit. He said staff would report in April on the workshop.

6. Preliminary legislative concepts for 2001 Legislative Session.

Cleary reviewed the legislative concepts being proposed for the 2001 session. He said the agency would be sharing these concepts with stakeholders and interested parties. He said the agency has until December for the Land Board to give approval on those concepts that will go forward. He said they will continue to work on these and report to the Board on a regular basis.

Interim South Slough Manager

The Board recognized the work of Rick Hayes as Interim Manager for the South Slough National Estuarine Research Reserve. Hayes, who came from the Corps of Engineers, stepped into the position while Mike Graybill, the permanent manager, was working domestically and overseas on a career development. Cleary said Hayes had to deal with the grounding of the New Carissa just three days after he took over the position, but did an outstanding job. The Board presented Hayes with a certificate of appreciation.

Public Testimony

Governor Kitzhaber noted that three individuals wanted to testify on issues not on the action agenda. He proposed in the future that the Board limit testimony to those items on the action agenda, with testimony allowed for those items that are on the informational agenda only as time allows.

Gary Benson, co-president of the Association of Northwest Steelheaders, testified on navigability and stressed that his group is interested in bringing clarity to the process. He said some of their folks have been cited for trespass, but added that most district attorneys of the state are not prosecuting such cases, unless there is clear evidence of trespass on private uplands. He added that they don't particularly like the navigability study process, but noted that it is their only available option for dealing with the issues at this time. He said they filed their John Day River lawsuit out of frustration.

Benson said the Steelheaders helped craft a bill during the last legislative session (SB 832) that they believed was a fair compromise; but the bill died in committee. He said they want the Land Board to know that they are certainly willing to participate in the process that the Board proposes in order to bring clarity to this issue.

Governor Kitzhaber said he has sympathy for the Steelheader's position. His biggest concern is that if the navigability issue goes to court on a case-by-case basis, the landowners will end up on the short end of the stick. He said it's in everyone's interest to work together to craft either a floatage easement or another alternative to solve this issue.

Governor Kitzhaber said Bill Montgomery and Bill Babeckos were requesting to testify on waterway leasing. He also noted that Jay McCauley had provided written testimony for the Board on the same issue. Governor Kitzhaber said five minutes remained during the meeting for both Montgomery and Babeckos to testify.

Bill Montgomery said his concern regarding waterway leasing was with method, rather than waterway lease rates. He recommended a water acre tax on waterway leases.

He said he doesn't share the confidence expressed by the Governor during the October Land Board meeting regarding the competence of the Division of State Lands. He called for an executive or legislative commission to investigate the agency.

With the Governor's new restrictions on testimony, Montgomery expressed concerns as to how they could address further questions.

Director Cleary said a six-month report was given in December on how the rules have been implemented. He added that a public workshop was also held at the end of January that Montgomery and Babeckos were unable to attend, where the agency reviewed what is occurring with the inventory. A formal 18-month evaluation will be presented to the Board in December 2000 that will include a survey of lessees.

Governor Kitzhaber said he believes the Board has been extremely fair to provide ample opportunity for testimony whenever the Board takes action. He reminded Montgomery that there is a remote possibility that the Board won't agree with his position. He again assured him that before any further action is taken on revising or adopting new rules, ample opportunity will be provided for testimony.

Governor Kitzhaber apologized that he had to leave for another meeting. He adjourned the meeting at 11:05 am.

John A. Kitzhaber, Governor

Paul R. Cleary, Director