Britney Mendel

Quick takes

School construction puts hours at risk in Pendleton

I've always liked the idea of year round school. Two weeks off for Christmas, four weeks off for the summer, maybe a week off for Thanksgiving and the week off for Easter. That way there can just be regular eight hour school day with good lunches and good recesses. I think everybody would win.

— Kristina Ream

I don't have children in school, however, if it comes to it, I hope all parents will unite and fight to keep their lunch and recess time. I already think a full day of kindergarten is a lot to ask of some kids.

— Betty Little

I'm sure all my teacher friends will hate me for asking this, but why they can't extend the year by a few days at the end of the year?

—Alice Gilson Hepburn

Wind farm proposed

We got these things shut down in Union County and I suggest Umatilla County does the same. What a farce windmills are.

— Logan Jones

Are these two wind farms going to be built to benefit Idaho and California like the others? Because Oregonians have been watching our natural resources being plundered to benefit other states when we could definitely benefit from them ourselves.

— Steve Barclay

One of the great lessons of the Twitter age is that much can be summed up in just a few words. Here are some of this week's takes. Tweet yours @Tim_Trainor or email editor@eastoregonian.com, and keep them to 140 characters.

Another big win for salmon

By PAUL VANDEVELDER
Writers on the Range

In the Pacific Northwest, treaties with Native Americans — signed in bad faith more than 150 years ago — continue to haunt the federal courts and state governments. Most were made to justify land grabs by newly arriving settlers, and what was guaranteed to the tribes must have seemed inconsequential.

Washington's first territorial governor, Isaac Stevens, negotiated a bundle of these treaties in the 1850s and 1860s, baldly promising state legislators that he would "extinguish, as quickly as possible, the Indians' claims to their traditional lands so that settlers could be given legal title."

The governor's duplicitous treaties eventually led to war with the Nez Perce, the Umatilla and the Yakama tribes. Most of his other treaties with tribes on Puget Sound sparked legal battles that have tied up federal courts for more than a century.

Then, this June, the 9th Circuit Court of Appeals added yet another loss to Washington state's nearly perfect record of defeats, which began in 1905, with a case challenging the Yakama Tribe's treaty right to hunt, gather and fish in "all of their usual and accustomed places."

As Matthew Love and Carly Summers explained in the July 2016 National Law Review, this new decision grew out of litigation that began in the 1970s. Back then, Washington's attorney general (and future U.S. senator) Slade Gorton challenged the tribes' fishing rights, with hopes of extinguishing them forever.

The lawsuit also sought to clarify three issues stemming from the original treaty with Gov. Stevens: Did the tribes have a guaranteed right to a percentage of the annual commercial catch; should hatchery-bred fish be included in that percentage; and do treaty rights implicitly safeguard the environment so that the tribe's right to fish in "all the usual and accustomed places" is protected?

The first question was answered in the now-famous 1974 Boldt Decision. Judge George Boldt wrote that the Stevens treaties guaranteed tribes half of the commercial salmon catch. As for the second question, that guarantee had to include hatchery-bred salmon.

> Gov. Stevens' duplicitous treaties eventually led to war with the tribes.

The third question about protected places has been bandied back and forth since 1985. The court originally rejected placing the burden of what it called "environmental servitude" on the shoulders of the state. Nevertheless, the same court added a crucial caveat. It ruled that the burden for environmental protection of salmon runs might well fall on the state's shoulders in the future if environmental degradation threatened a sustainable fishery.

By 2007, much had changed in the rivers and streams of the region, and nearly all species of salmon were endangered. At the request of the tribes, the 9th Circuit clarified its earlier caveat by ruling that the state of Washington was responsible for the protection of salmon streams — including their passage through road culverts. The court explained that the Stevens treaties imposed "a duty upon the state to refrain from building and operating culverts under state-maintained roads that hinder fish passage and thereby diminish the number of fish that would otherwise be available for tribal harvest."

As the financial burden for removing those culverts could run into hundreds of millions of dollars, the state challenged that decision. But in June the 9th Circuit told Washington, in effect: Tough luck. It said that after the Boldt Decision, the state should have taken appropriate measures to remedy treaty violations before salmon became endangered.

Moreover, the court said that the tribes' right to sustain themselves by fishing in their "usual and accustomed places" was long-settled law protected by Article VI, clause 2 of the U.S. Constitution, making the Stevens treaties "the supreme law of the land." That, combined with the Endangered Species Act passed by Congress in 1973, obligates the state to replace or repair any culverts that make it difficult or impossible for salmon to move freely to their spawning grounds.

Gov. Steven's zeal to extinguish Indian title to lands they had owned since time immemorial has resulted in a bonanza for lawyers, decades of legal headaches for the state, and no end of frustration for the tribes. But in 2016, all of this legal logrolling begs an even more daunting question: How will future courts tell the difference between culverts that stop endangered species from reaching their breeding grounds, and dams that do the very same thing?

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Grim outlook for PERS

The (Eugene) Register-Guard

Actuaries for the Public Employees Retirement System paint a grim picture of the next half-dozen years: State and local governments will have to increase their contributions to the pension system by an amount equal to about 4 percent of total payroll costs next year, and again in 2019, and again in 2021. Those increases will absorb most or all of the money otherwise available for pay raises for current employees, or for improved public services. PERS is squeezing everything, testing the Legislature's ability to act.

In the current biennium, according to PERS, payroll costs for all governments enrolled in the pension system — school districts, cities, counties and state agencies — totaled $19 billion. An additional $2 billion will be contributed to PERS. In 2017-19, payroll costs will rise an estimated 7 percent, while PERS contributions will climb 44 percent to $2.9 billion.

Here's another way to put it: Over the next two years, state and local governments will spend an additional $1.3 billion on everything that counts as payroll: teachers in the classroom, cops on the beat, nurses in the clinic, and for any raises or benefit enhancements these people receive. In that same period, those same governments will pay an additional $885 million to cover pension obligations. Of all the additional resources available to government during the next biennium, 41 percent will go to PERS.

It gets worse: By 2021-23, governments' aggregate PERS contributions will be $4.5 billion, more than double the $2 billion for the current two-year budget period.

Even contributions at that level won't be enough to cover the pension system's unfunded liability of $21.8 billion. PERS currently has enough assets to cover only 71 percent of its future obligations. The shortfall must be made up by the system's only two sources of funds — income from investments or the taxpayers.

John Thomas of Eugene, a benefits consultant who is chairman of the PERS board, told *The (Portland) Oregonian* that no one should expect a Wall Street miracle. "This is not a situational problem that is going to go away if returns spike a bit," he said. "It's a systemic problem. ... Everything is predicated on a linear 7.5 percent investment return, and that has not been sustainable."

The annualized rate of return on PERS's invested funds over the past 10 years has been 5.9 percent, and was only 2.1 percent last year.

The pension system's insatiable appetite is often cast as a contest between the interests of public employees and everyone else, but that is less the case each year. PERS's heaviest obligations are owed to public employees hired before 1996, when the Legislature began reducing pension entitlements. Currently, nearly 1,200 PERS retirees receive pensions of more than $100,000 a year, and more than 23,000 receive more in retirement than they were paid in salary while working — almost all of these are pre-1996 hires. Increasingly, public employees who are on the job today are seeing their wage growth slowed and working conditions worsened to maintain pension benefits for those who came before.

> Current public employees pay the political price of PERS costs. Retired teachers and deputies aren't affected — those in the classroom or on patrol today are.

Current public employees also pay the political price of PERS costs. Any proposal for a tax increase is reflexively criticized as raising money that will be swallowed by PERS, which makes it harder for governments at all levels to persuade voters to provide funds for anything from reduced class sizes to sheriff's patrols. Retired teachers and deputies aren't affected — those in the classroom or on patrol today are.

The Legislature has repeatedly attempted to rein in the cost of PERS, but its scope of action is limited. In a series of decisions, the courts have held that PERS benefits can't be changed retroactively without violating contract rights. Republicans in the Legislature criticize the state's Democratic leaders for failing to lighten the PERS burden — but in fact members of both parties have tried, sometimes at political expense, to change the system, only to encounter a legal brick wall.

But legislative Republicans offer a list of ideas they say have not been tried, such as capping the final salary on which pension benefits are calculated, shifting further toward a defined-contribution type of pension plan, and ending the practice of including unused vacation and sick leave to inflate the basis on which benefits are paid.

Some of the Republicans' proposals seem vulnerable to the same legal challenges that have scuttled earlier attempts to lighten the burden of pension costs. But both economic and political gains could come from pursuing another round of reforms.

Any changes that stand up in court would reduce PERS's unfunded liability, and therefore its cost to the taxpayers. And Oregonians' resentment could be cooled from a boil to a simmer if they see that lawmakers have exhausted all possible cost savings.

State and local governments' purpose is to provide vital services to all Oregonians — but rising pension costs feed the cynical belief that their real purpose is to provide well-upholstered retirement to a privileged class. Lawmakers need to do all they can to weaken the basis for that belief, which is well-established already but will grow stronger in the years to come.