

# Oregon



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## DIVISION OF STATE LANDS

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The Oregon State Land Board met in regular session on April 9, 1996 in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon 97310.

Present were:

John Kitzhaber	Governor
Phil Keisling	Secretary of State
Jim Hill	State Treasurer

STATE LAND BOARD

JOHN A. KITZHABER  
Governor

PHIL KEISLING  
Secretary of State

JIM HILL  
State Treasurer

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775 Summer Street NE  
Salem, OR 97310-1337  
(503) 378-3805  
FAX (503) 378-4844  
TTY (503) 378-4615

Assistants

Paula Burgess  
Cynthia Griffin  
Rollie Wisbrock

Staff

Paul Cleary  
John Lilly  
Steve Purchase  
Gary Van Horn  
Jenifer Robison  
Gail Lowry  
agency staff

Dept. of Justice

Bill Cook

Governor Kitzhaber called the meeting to order at 9:05 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 N.E., Salem, Oregon 97310 (phone: (503) 378-3805).

Common School  
Fund

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

Director Cleary said the written materials presented to the Board on this item show the changes made to the Common School Fund investment policy since 1992. Cleary said an Attorney General Opinion (which was attached as Appendix B to the written materials) indicates that the ultimate statutory authority for the investments rests with the Oregon Investment Council, but he added that the Board should enunciate their policies, so the Council can consider them when developing the investment allocation.

Cleary said since 1992 the Board's policy has shifted the investment mix from predominantly bonds to a target of 50 percent equities, 45 percent bonds, and 5 percent cash. Bond investments have been held level at approximately \$160 million to generate distributable income and the capital gains and dividends from equity investments have been reinvested to grow the principal of the Fund.

Cleary reviewed the charts attached to the written materials showing the performance and other factors of the Fund. He said the very long-range goal is for the Fund to generate five percent of the annual school expenses. (The highest the Fund has generated over the past 25 years has been 0.7 percent.) Cleary said this is a function of the investment mix, and the performance of the Fund as well as cost increases in education.

The 1992 Board policies were based on an investment analysis done by Wilshire and Associates, a consultant to the Oregon Investment Council. Cleary said Wilshire recommended the investment allocation mix to allow the Fund to grow at a higher rate of return (since equities historically out perform bonds), to provide a better hedge against inflation, to improve diversification, and to provide an appropriate risk balance relative to the Board's long- and short-term risks.

Governor Kitzhaber asked Cleary how long he anticipated the Fund would take to reach the five percent goal, considering the Fund's present performance and the increase in per-pupil education costs. Cleary said that during their study in 1992, Wilshire estimated it could take up to a century to reach that goal, unless current distributions were terminated and all the money put to work in the savings account. In this case, they felt it could take around 40 years. Governor Kitzhaber commented that he was skeptical that the goal of five percent or even one percent would be reached over time, if the per-pupil expenditures continue to rise at the current rates. He said he brought the issue up because the Fund is not that significant an element in school finance and to reference back to the grazing discussions and the constitutional/fiduciary responsibility of the Board.

Dan Smith, Director of the Investment Division at the State Treasurer's Office, reported on the condition of the market in general in 1995, saying it was good year with the total return for the Common School Fund being in the mid-20 percent range.

He said the Investment Council has requested an update of the asset allocation study done by Wilshire in 1992. He noted that part of the study would be to determine how long it would take to get to the five percent contribution goal, if distributions were discontinued (or whether the goal is even feasible with the continued rise in education costs).

Smith said all of the Fund's equity assets are in an S&P Index Fund managed by BZW (successor firm to Wells Fargo). He noted at the end of 1994, the cost versus market comparison showed an unrealized gain to that account of about \$20 million. Due to the market activity in 1995, he reported the account has grown to \$70 million in unrealized gains.

Bill Unverzagt, Senior Investment Officer at State Treasury, reported that 1995 was a spectacular year in the market. He reported that \$159 million was invested in bonds, which grew to \$170 million, and are generating about \$11.8 million in current income. Unverzagt reviewed the bond portfolio. He said they traded \$45 million in bonds in 1995 and generated \$1.3 million in profits. He discussed the cash portfolio. Secretary of State Keisling asked why the cash transfer to investment is not increased. Unverzagt replied that the cash level is only \$5 million above the 5 percent allocation target mark. He said prior to taking any action, the Council would like to review the pending Wilshire Study on whether to continue adding to equities or put the money into bonds. He said that holding extra cash worked well during the time that the stock market and the bonds got "clobbered." Keisling said the Board should consider asking the Legislature to allow more flexibility regarding the equity investments, since we are limited in part due to the statutory language restricting the equity investment allocation.

Smith added that the State Treasurer's Office is considering taking a concept to the Legislature to do away with the statutory limitations that also exist for the PERS Fund. He said he believes this would affect the Common School Fund as well.

Cleary said it's important for everyone to understand that whether the money is distributed or placed into the savings account, the money is all going to schools. He said that last year the distribution was \$9.3 million, but the savings account increased around \$30 million, showing that the Fund is really contributing more than just the distributions. He said the Board needs to be able to show the Legislature what the tradeoffs are in terms of increasing investments in interest

earning securities versus putting more money into the equities that historically seem to outperform the fixed income investments.

Cleary said that after the last distribution in January and after meeting expenditures, \$10 million was identified as being available for investment. This triggered the question of how this money should be invested and a request for the update of the Wilshire Study. The other consideration is whether the Board's 1992 asset allocation policies are based on market value or purchase cost. He said until the Study is done, the recommendation is to retain the unexpended funds in short-term investments.

Cleary recommended that the Board consider a revised asset allocation policy at the August meeting (after the July distributions, when it will be clear what unexpended funds may be available and the Wilshire Study update is completed). He said if the Board adopts the revised allocation policy, it could then be forwarded to the Oregon Investment Council for their review and adoption. The other recommendation the agency brought forward was a request for an update of the 1992 Wilshire Study and to have the Board approve retaining the unexpended funds in short-term investments until the time that the Study is complete and adopted.

State Treasurer Hill moved the Board approve these recommendations. Secretary of State Keisling seconded the motion and the approval was unanimous.

Administrative Rules	Request for approval of proposed temporary rules for regulating recreational placer mining in essential salmonid habitat areas.
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Director Cleary said that prior to 1993, the essential indigenous anadromous salmonid habitat areas were treated like all other waters of the state in that all fill or removal of less than 50 cubic yards was exempt from the permitting process. In 1993, the Legislature amended the statute asking the Division to work with the Oregon Department of Fish and Wildlife (ODFW) to study these areas, designate the essential habitat areas, and require all removal-fill activities in the essential habitat areas to go through a permitting process, including recreational placer mining activities. Cleary said the goal now is to help applicants to understand the process and recognize the salmon habitat and restoration needs.

Cleary said the agency developed draft temporary administrative rules and distributed them for public input. Comments were received from the ODFW, the Department of Environmental Quality (DEQ), the Oregon Independent Miners Association, Joyce Cohen from the Northwest Power Planning Council, Oregon Trout, and Liz Frenkel. Cleary said those comments were very useful. He said it became clear that the resource needed protecting, but at the

same time the needs and schedules of the recreational miners needed to be accommodated. He said a general authorization approach was developed to facilitate the application process and educate operators on avoiding and minimizing impacts. Information will be gathered via the applications, monitoring and year-end reporting so a permanent regulatory approach can be designed, since the temporary rulemaking will only be in effect for 180 days.

Cleary said the "emergency" requiring the temporary rulemaking is one of protecting the essential habitat in a way that doesn't overwhelm staff resources currently focused on flood recovery and the usual increase in work due to the spring season.

Another emergency situation was the need for creating an approach that would accommodate the schedules and operating realities of the miners, recognizing that they are being regulated in this area for the first time.

Cleary said the general authorization does require an application. These will be reviewed for eligibility and potential resource impacts. Those that don't meet the standards will require an individual removal-fill permit.

The proposed rules were revised in response to public comment, Cleary said, including changing the maximum amount of disturbance allowed under the authorization from 50 cubic yards down to 25 cubic yards, emphasizing application screening for individual and cumulative impacts, and retaining the right to modify or revoke authorizations to address results from the ongoing monitoring.

Another suggestion made by the Oregon Independent Miners and included in the updated draft of the rules is the provision for notifying the applicant of approval, denial or modification within 15 days of receiving the application.

Cleary clarified that in the essential habitat areas, any disturbance over 25 cubic yards requires an individual permit. (It is believed that the average miner disturbs between 12 to 16 cubic yards of material per activity.) In other waters, activities disturbing over 50 cubic yards require an individual permit. The recreational mining general authorization applies to disturbance activities of less than 25 cubic yards. If materials are actually being removed, then the regular essential habitat rules apply. These allow a general authorization for removal of five cubic yards or less. When more than five cubic yards are being removed, it requires an individual permit. Recreational placer miners don't generally remove gravel, but disturb and redistribute it.

Some other standardized operating conditions added to the draft temporary rules are that the activity will not impede

recreational boating, it will be restricted to the hours of 8:00 am to 6:00 pm (when within 500 feet of a designated campground or residence), and will not occur within a marked or posted swimming area. Cleary said they felt these conditions were important as a good neighbor policy.

Cleary said the application allows for multiple locations on one application, and there won't be a fee involved for the application process.

Cleary reported that additional staff will be dedicated to monitoring these mining activities. He said that the rules will be in effect for 180 days, through this operating season. After that, the agency will determine whether it is a good approach to use for a permanent rulemaking.

Sue Hallett, representing Oregon Independent Miners, said her organization has worked for a year and a half to arrive at administrative rules that will both protect the essential habitat and be user friendly. She said they agree with most of the draft temporary rules, except on two points. She expressed her concerns regarding possible increases in the designated habitat areas during the 1997 Legislative Session from 20 percent of waterways to perhaps 80 percent. She said her points of disagreement would be even more of a concern if this expansion were to occur.

Hallett requested that the rules be changed back to reflect the maximum disturbance be 50 cubic yards, rather than 25, at least throughout this mining season. She said the change limiting it to 25 cubic yards occurred late in the rulemaking process. She said individual general authorizations could be modified if there were a problem. Also, after the mining season, she felt this issue could be renegotiated, if it is determined there is a need for a change.

She said the additional "good neighbor" conditions added to the rules have nothing to do with protecting the environment, but are really regulating one use over the other. She feels these conditions should be applicable only in the scenic waterways.

Governor Kitzhaber asked Cleary how the change in the rules from 50 cubic yards to 25 cubic yards was made. Cleary said that prior to the 1993 Legislative Session, any activity that disturbed less than 50 cubic yards was exempt from the removal-fill permit process. In the essential salmonid habitat areas, the 1993 Legislature said that any disturbing, removal or fill in these essential areas must go through the permitting program. Cleary said the question was whether to put those with less than 50 cubic yards through an individual permit or to do a general authorization approach, which would allow those activities meeting the qualifying conditions to not be required to go through the entire review process. After submitting the

proposed temporary rules, comments were received stressing that the Legislature wanted the level of review to be heightened in these essential habitat areas. Cleary said the need to distinguish these specially designated streams from other waters of the state became clear. He said information indicated the miners' normal activities disturb between 12-16 cubic yards. It was decided that if the maximum level of disturbance was adjusted to 25 cubic yards, 80 percent of the recreational mining activities could probably be processed under the general authorization, with the remainder requiring individual permits.

Hallett confirmed a question by the Governor that one of her main concerns is that the Legislature will expand the application of the essential habitat to more like 80 percent of the stream areas and it will be difficult to live with these rules as they are proposed today. She asked that the proposed rules return to the 50 cubic yard provision, saying she feels the miners will be much more willing to work with the agency in this process.

Governor Kitzhaber asked whether Section 8 within the rules would allow the agency to modify general authorizations after they are issued if there is a need. Cleary confirmed that they could. He stated again that by lowering the maximum disturbance to 25 cubic yards, and allowing general authorizations for these, he feels most recreational mining activities will be found to fall under that category. He said this will allow most of the agency's work to be concentrated on the larger activities that don't fall under the general authorization. Cleary said that the 180-day temporary rule period will allow the agency to determine whether the longer-term program will need to be redesigned.

Governor Kitzhaber said he agreed with removing the special "good neighbor" conditions from the rules, since they are not focused on fish habitat. He added that these conditions would be in the best interest of the miners, though, so they wouldn't have an angry group complaining to the Legislature trying to regulate them. Hallett said that the miners, under the 1872 Mining Law, have more right to be in the waters than any other multiple use group. She said it seems that miners are always the first group being asked to compromise their rights on behalf of other users.

Secretary of State Keisling asked Hallett if she would like to see a provision added to the rules stating that, if the percentage of the essential habitat area expands beyond 20 percent, then these rules are no longer in effect and the rules need revisited. Hallett responded by saying she would rather the special conditions not be included since it is always harder to take something out, once it has been added to the text of the rules.

Mel Schmidt asked the Board how they would like being required to have to list in advance every stream where they planned to fish when registering for a fishing license for the season. He compared this to placer mining, saying he is unsure at this time of the locations where he may want to do placer mining this year. Schmidt also commented that he had seen nothing written in the fishing synopsis regarding the essential fish habitat. He also mentioned that the "catch and release" method of fishing which is used has been reported to have a 50-80 percent mortality rate. He said if the Oregon Department of Fish and Wildlife are as concerned about the fish populations as they claim to be, they should cut back on some of this.

Secretary of State Keisling asked whether a miner would be fined if he initially reported six streams that he intended to do mining on, then later reported that he didn't work those streams but worked eight others.

Cleary said they would prefer the miners list the locations where they will be operating, but added that the agency is going to be in an education mode, rather than an enforcement mode during this summer. He said there is room on the application for eight streams to be listed, but applicants could add additional sites on a sheet of paper.

Patricia Snow, Oregon Department of Fish and Wildlife, said they support the proposed temporary rules. She said they support the reduction to 25 cubic yards, since they were concerned originally about cumulative impacts and protecting essential spawning and rearing habitat.

Snow agreed that the good neighbor conditions placed on the placer miners in the rules are not biological criteria, but said her agency felt they would help minimize conflicts with other user groups.

All three Land Board members agreed that they would rather return to the original proposed rule language that restricts the special user conflict conditions to scenic waterways only.

Governor Kitzhaber said he supports maintaining the maximum of 25 cubic yards for disturbances allowed under the general authorizations. He said his concern is primarily on the coastal streams, where attempts are being made to develop a restoration plan that will prevent a federal listing of the Coho salmon as an endangered species. He said if this occurs, these regulations will pale in significance.

He agreed that Hallett's concern regarding these rules possibly being expanded to apply to the rest of the state is valid. He committed to bring any proposed legislation dealing with an expansion of the 20 percent essential habitat areas to the Board, to provide an opportunity to discuss the issue outside the regular legislative process.

Secretary of State Keisling and State Treasurer Hill both agreed. Keisling reiterated the commitment of the Division to expedite permit applications, saying he will keep a close eye on this.

The amended temporary rule was approved by the Board with the plan to review at the end of the year.

Cleary expressed his appreciation to Hallett and the Oregon Independent Miners and other interest groups for working with the Division. He also stated that if there is an expansion above the 20 percent of waterways, that the issue would be revisited.

#### Consent Agenda

- Scenic Waterway Request for approval of scenic waterway emergency removal-fill permits issued to Oregon Department of Parks and Recreation, Burlington Northern/Santa Fe Railroad, Dave Johnson, and Buck Coe for flood recovery work adjacent to the Deschutes and John Day Rivers.
- Scenic Waterway Request for approval of a scenic waterway permit for a minor road construction project, in and along Highway 138, for the Oregon Department of Transportation in an unnamed perennial stream tributary within the scenic waterway corridor of the North Umpqua River.
- NHAC Request by the Natural Heritage Advisory Council for State Land Board approval of the addition of a tract to a site listed on the Oregon Register of Natural Heritage Resources.
- Emergency Board Request to appear before the Legislative Emergency Board for a federal grant fund expenditure limitation increase of approximately \$510,000 and authorization for continuance of two limited duration positions to assist with implementation of Oregon's Wetland Management Program.
- Land Sale Request for approval of the sale of land located near Prineville, in Crook County to the Oregon Youth Authority for construction of a juvenile correctional facility.
- Minutes Request for approval of minutes of the State Land Board meeting of February 13, 1996.

Director Cleary reviewed the items on the Consent Agenda with the Land Board. He noted a change in the minutes on page 4, where the name "Clark Balfour" should have read, "Jim Desmond." This was corrected on the version of the minutes presented to the Governor for signature. The Consent Agenda was approved.

### Informational

404 Assumption Status report on evaluation of options for potential state assumption of the federal Section 404 regulatory permitting program.

Director Cleary said a staff recommendation on assumption of the federal Section 404 program will be prepared for the June Land Board meeting. He reported that five workshops were held to receive comments.

Cleary said the preliminary recommendation is for the Division to assume the 404 program, as well as apply for a statewide program general permit to handle federal navigable waters. This would allow a "one-stop shopping" approach to the permitting process in Oregon. Detailed information regarding additional staff requirements and costs will be presented to the Land Board in June.

Asset Management Plan Status report on Asset Management Plan implementation.

Director Cleary said three primary efforts were identified for this year: 1) the waterway task force; 2) developing our land sale and exchange program; and 3) the forest management costs evaluation and performance studies.

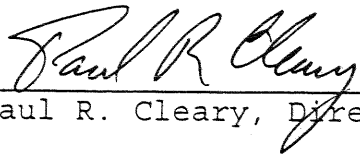
Legislation Preliminary legislative concepts for 1997.


Director Cleary said this list will be refined in order to prepare for a submittal to the Department of Administrative Services (DAS) on April 15.

Cleary said some placeholder legislation is being submitted to prepare for legislative changes that may not be fully developed in time for the DAS' deadline, such as changes that may be necessary as a result of the 404 assumption effort, lessons learned from flood recovery, issues from the navigability hearings, or as a result of the coastal Coho salmon restoration initiative.

Governor Kitzhaber thanked Director Cleary and the Division staff for their "exemplary" job of working with a host of constituents and for keeping them engaged. State Treasurer Hill and Secretary of State Keisling agreed.

The meeting was adjourned at 10:53 am.

  
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Paul R. Cleary, Director

  
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John A. Kitzhaber, Governor