

DIVISION OF  
STATE LANDS

STATE LAND BOARD

BARBARA ROBERTS  
Governor

PHIL KEISLING  
Secretary of State

ANTHONY MEEKER  
State Treasurer

The Oregon State Land Board met in regular session on June 9, 1992, at 10:00 a.m. in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon, 97310.

Present were:

Barbara Roberts	Governor
Phil Keisling	Secretary of State
Tony Meeker	State Treasurer

<u>Assistants</u>	<u>Dept. of Justice</u>	<u>Staff</u>
Anne W. Squier Nina Johnson Steve Smith	Bill Cook	Janet Neuman Gary Gustafson Earle Johnson Gary Van Horn Steve Purchase agency staff

The meeting was called to order by Governor Roberts. 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: 378-3805).

**Land Acquisition** Request to authorize the Division of State Lands to acquire 256 acres of state surplus property near Dammasch State Hospital outside Wilsonville in Clackamas County as an asset of the Common School Fund.



Director Neuman presented this item, explaining that the Division received authorization from the Board previously to pursue negotiations with General Services for the purchase of the Dammasch property. She stated the Division is now ready to recommend purchase of the property. Director Neuman explained that most of the land is already under an agricultural lease producing \$14,000 of income per year. A filbert orchard on the property has the potential to generate another \$2,000 per year.

The property contains a small area used as a sewage-disposal plant by Dammasch State Hospital and a small landfill area. The Division is requesting strict documentation that there are no hazardous waste problems on the property and that any decommissioning of the sewer plant will be the responsibility of Dammasch State Hospital, not the Division of State Lands. The Division is recommending that these two conditions accompany the offer to purchase.

There is a small portion of wetlands on site as well as timbered areas with an appraised timber value of approximately \$500,000. Because it is uncertain whether the timber could be logged due to environmental concerns, the value of the timber was not considered in the Division's cost-benefit calculations.

Director Neuman told the Board the Division could acquire the property for reimbursement of the administrative costs involved to General Services--approximately \$60,000. The market value of the property in its current form is about \$1.2 million. With the current income stream, Director Neuman stated the property could pay for itself in about four years, and thereafter have a substantial rate of return.

Greg Carter from the Wilsonville City Council told the Board that the Council had approved the transfer of the property to the Division of State Lands with the provision that, if the Division should no longer be in control of the land or offer to sell or dispose of the property, it would revert back to General Services, so it could be offered to governmental entities on a priority basis.

Responding to a question by Treasurer Meeker, Mr. Carter answered that the property is outside the urban growth boundary. He said the City decided it was more to their benefit that the Division go through a management study to decide which options are the best, rather than just taking the first option available, which was the golf course proposal.

Treasurer Meeker asked if the Council received any testimony regarding the timber on the property.

Mr. Carter indicated testimony had been received and that there would likely be opposition to cutting the timber, since it is reportedly old growth. Treasurer Meeker said that the timber was therefore of no value, if it couldn't be harvested.

Secretary of State Keisling asked whether it would be acceptable to the City of Wilsonville if the Land Board would allow them first right to purchase the property, rather than having it revert back to General Services, if the Board could do so. Mr. Carter said they would be elated with that provision. Mr. Carter also said that he thought Metro and the county would have the same preferential status with General Services as the city.

Charlotte LeHan, a city counselor from Wilsonville, said she is involved with Friends of Goal 5, a group active in trying to protect the Dammasch property. She stated she felt it would be unfortunate if the state were to lose this parcel, which is so close to the metropolitan area and has so many significant natural features. Her group supports the transfer of the property to the Division, and would like to see a public planning process for discussion of the options available for the use and protection of the land.

Richard Devlin, member of the Metro Council and Chair of the Metropolitan Greenspaces Policy Advisory Committee, read a portion of a letter from the Committee urging General Services to sell or transfer the property to the Division and recommending the Division develop a management plan which would maintain the site in its natural setting. He stated the property is a unique resource, that can't be duplicated anyplace else in the region. He said its loss to the metropolitan region would be a major impact. He feels the primary purpose of providing basic school support could be balanced with preservation of the site.

Jim O'Connell, Life Science teacher at Wood Middle School adjacent to the Dammasch property, brought a group of his students to the Board meeting to discuss the educational significance of the site.

Student Dmitry White shared some of the history of Arrowhead Creek and the surrounding watershed.

Student Ben Bruenderman showed how the land provides a sanctuary for wildlife. He said if developed, changes would destroy the pond and creek, eliminating nesting areas.

Student Peter Spicer expressed his concerns over the possibility of a golf course being developed on the property. He said the pesticides and fertilizers used would find their way into the watershed, killing fish and other animals.

Student Laurie Branch told the Board about the class involvement with testing stream flow, water quality and pH, as well as the development of a video tape, brochure and map of the watershed.

Jim O'Connell summarized that he and the students would like to see the Board keep this land as state forest land.

Ruth McFarland, Metro Councilor from District 7, stated her support for state ownership of the property. She stressed the importance of maintaining the property close to its current state for the environmental contributions it makes for the area and the entire world.

State Treasurer Meeker asked her if farming should be continued and if she understood the Board's mandate for making money for the Common School Fund. She responded that she would have some reservations about continued farming in the way it's being farmed now. She reminded him there is sometimes a larger return for most people by ignoring the short-term profit.

Jeff Bachrach, attorney representing Ed Freeman, expressed his support of the property being transferred to the Division and a management plan being developed. Mr. Freeman is considering the potential development of a golf course for the property. Mr. Bachrach stated they want to see the Division move forward and decide what is the best use for the benefit of everyone.

Director Neuman reported that letters had been received from the U.S. Fish and Wildlife Service; Mike Lindberg, Commissioner of the City of Portland; and Jack Broome of the Wetlands Conservancy encouraging continued public ownership and preservation of the wetlands and open space uses.

She stated that the proposal is to acquire the property with revolving funds rather than Common School Fund principal. This would place the property under a statutory land classification, rather than a trust land classification, and enable the Division to manage it for a net financial return for income production, as well as some of the other benefits described before. A master planning process would be done to scope out the best possible options for management.

Secretary of State Keisling asked how long the planning process would take and when the Board would review the plan. Director Neuman said that the management plan would take six to eight months to accomplish, and the issue would again be brought before the Board.

State Treasurer Meeker asked how the appraisal of \$500,000 was derived for the value of the timber. Director Neuman responded that it was calculated by the realty staff at the Department of General Services. She restated that the value of the timber was not considered in the cost-benefit analysis that was done, realizing that it may not be able to be marketed for environmental reasons.

In response to other questions by State Treasurer Meeker, Director Neuman stated the cost of the management plan would be approximately \$25,000. She also added the revolving fund, which is being proposed to be used for purchasing the property, contains about \$100,000, primarily from the sale of filled land and isolated grazing parcels.

State Treasurer Meeker asked what would happen if the Division doesn't purchase the property. Bill Nickelberry, Land Manager from the Department of General Services, said if it is not purchased by the Division, that it would be offered to political subdivisions, then to the general public at its appraised value.

Governor Roberts said this is an unusual opportunity to be able to purchase a piece of property that could pay for itself in five years, then have a higher rate of return than most other properties owned by the Board.

With the cost required to do the management study and the possibility of not getting all of the lease income the first year, State Treasurer Meeker questioned the actual rate of return on the property. He stated he felt it would be prudent to have more information before acquiring it. He questioned whether the Board could legally acquire the property with contingencies, such as giving first right to the City of Wilsonville or Metro, if they decide to sell the property. He also questioned whether the agricultural lessee currently on the property would be willing to enter into a new lease with the Division.

Governor Roberts said she felt it important for the Board to at least express its intent to purchase and allow the contingencies to be worked out as the contract is being finalized.

Secretary of State Keisling said he understood the concerns of the State Treasurer, but stated that finalization of the contract would not occur at this meeting. He said he was impressed with the range of people urging the Board to go forward with the purchase. He moved the Board authorize acquisition of the Dammasch property subject to the contingencies laid out in the agenda item and with the understanding that finalization of the actual purchase contract would take place at a future Board meeting.

Director Neuman said the Division would provide copies of the lease, information regarding a possible extension of that lease and clarification of the legal question raised as to whether the contingency requested by the City of Wilsonville would be consistent with the legal management standards of the Board.

Governor Roberts seconded the motion before the Board.

State Treasurer Meeker moved the Board amend the motion adding that the purchase be contingent upon evidence of a longer-term agricultural lease on the land.

Secretary of State Keisling said that with the suggested amendment, failure to obtain a signed lease for longer than a one-year period would veto the acquisition of the property.

State Treasurer Meeker explained his discomfort with having purposes for this land other than income production, i.e., wetlands preservation, parkland potential, and old growth preservation. He stressed the Board should avoid setting a precedent to use Common School Fund or revolving fund monies for any investments that don't develop a prudent rate of return. He said the Board could find some beautiful parcels of land to make great parks, wetlands, etc., but they must be sure the investments fit their goals and objectives.

Secretary of State Keisling said that much of the timber on the property is second growth rather than old growth, which greatly increases the income-producing potential, if even a very small selective harvest were done on the land. He stated he felt it unnecessary to amend the original motion.

Governor Roberts said if the purchase is contingent upon a guaranteed multi-year lease on the land, this could limit the Board's ability to use the property to its best economic advantage. The need is to determine what income stream is most valuable for the parcel.

Director Neuman stated that if the Division is instructed to obtain a longer lease with that particular lessee, leverage may be lost in obtaining the best possible deal, if the lessee knows the Division must negotiate with him.

The amendment proposed by State Treasurer Meeker failed for lack of a second.

The Governor asked for a vote on the original motion to proceed with the acquisition subject to the contingencies outlined in the agenda item and subject to Board approval of the final contract and transaction. The motion was approved with a two to one vote, State Treasurer Meeker voting against the motion.

Governor Roberts reiterated that the Board is not buying park land, but sound agricultural and timber land with a number of both agricultural and nonagricultural opportunities. Beyond the economic asset, she said, the Board will also be able to provide some other long-term assets for Oregon that may or may not be monetary.

#### Elliott State Forest

Governor Roberts announced that the presentation by the Department of Justice of a legal opinion on the Elliott State Forest would not be presented today, since the opinion had not been finished.

#### **Elk Creek**

Request for approval of two proposals for recreational gold mining in the Elk River Scenic Waterway in Curry County.

Director Neuman introduced this item explaining that the proposals involve less than 50 cubic yards of material, so they would not follow the Division's normal permitting process. The Land Board is involved in the approval because the requests are within areas of the scenic waterway. She stated the proposals have been circulated to state agencies and a number of interest groups. No requests were made by the Department of Fish and Wildlife or any other state agencies to deny the permits. Verbal concerns were expressed by the Sierra Club, the Oregon Natural Resources Council, and the Oregon Rivers Council.

Their objection is to a Water Resources Commission rule allowing small placer mining operations. The statute has some prohibitions against mining activities, but Water Resources passed a rule, based on advice of the Attorney General's Office, exempting small recreational activities from that prohibition. The objection is to allowing any mining activity at all. The Oregon Natural Resource Council suggests that issuance of these permits would be challenged legally. The Division believes that these groups' concerns are more appropriately addressed to the Water Resources Department rather than to the Land Board's approval.

Governor Roberts stated that the Division and the applicants have done everything correctly and these requests seem to meet all requirements of the agencies involved.

Assistant Attorney General Bill Cook stated that the letter from Mr. Kagan calls into question an opinion issued in 1982 stating that agencies could define "placer mining" and differentiate between commercial and recreational mining. He said they stand by that opinion.

Director Neuman said that ORS 390.835 states that the Water Resources Commission shall administer and enforce the provisions of the subsection, which allows them the jurisdiction to do rulemaking and administer that portion of the statute.

State Treasurer Meeker asked whether the waterway is navigable and if so, whether royalties could be obtained. Director Neuman replied that the agency believes it may be navigable. She stated that it's unclear whether individuals have located much material in recreational mining here, but that the Division has been pursuing an investigation of ownership to determine if there is opportunity for royalty.

Secretary of State Keisling moved the item be approved for one season only, expiring September 15, 1992. Governor Roberts seconded the motion and opened for discussion. State Treasurer Meeker voiced his intent to vote against the motion stating he was unhappy with the lack of information regarding the potential for any resources that might be there and the navigability status of the waterway.

Governor Roberts asked whether the issues of navigability and potential income could be resolved quickly or easily.

Director Neuman responded that the Board had asked the Division to prioritize its assertion of claims of navigability based on the potential for return or major use conflicts. Elk River is not high on that priority list. She mentioned a statutory provision preventing the conditioning of DSL removal-fill decisions, leases and permits on ownership issues.

Bill Cook clarified that the issue in question today is not regarding the removal-fill law, but the scenic waterway statute issue and its policies only. He said that by voting today to allow the permit within the scenic waterway provisions, he didn't feel the Board would be giving away their right to require a royalty lease later, if they determined ownership of the river.

Secretary of State Keisling moved to add an amendment to the original motion stating that the State of Oregon reserves the right and gives notice that if income is derived from this recreational placer mining operation, the item could be held subject to a determination of state ownership with regard to the navigability of the waterway. The motion with the amendment was approved two to one, with State Treasurer Meeker opposing it. (See further discussion of this item later in minutes.)

### Consent Agenda

#### **Scenic Waterway**

Request by Rogue Jet Boat Tours to excavate 100 cubic yards of material within the Rogue River.

#### **Administrative Rules**

Request for authorization to adopt the 1991 Attorney General's Model Rules and Uniform Rules of Procedure under the Administrative Procedures Act.

#### **Federal Grants**

Request for approval to accept two federal grants from the Environmental Protection Agency related to interagency wetland planning (\$360,000) and wetland data management (\$29,000), and authorization to appear before the Emergency Board to obtain necessary 1991-93 budget adjustments to receive and expend these funds.

**Data Processing** Request for authorization to appear before the Emergency Board for expenditure limitation to implement the Information Management Plan approved by the Joint Legislative Committee on Data Processing and the Emergency Board in April. Total Other Funds expenditure limitation increase requested is \$198,751. This includes continuation of a limited duration information systems planning analyst and a limited duration systems software analyst for the balance of 1991-93. The request also expands geographic information system access to Division program staff and increases computer system capacity.

**Administrative Rules** Request to adopt amended administrative rules for the Division's removal-fill program. The amendments are primarily "housekeeping" revisions, changing statutory references and definitions to conform with recent statutory amendments, and clarifying the definition of ditches for jurisdictional purposes.

**Minutes** Request for approval of minutes of April 14, 1992, Land Board meeting.

Secretary of State Keisling moved the consent agenda be approved. State Treasurer Meeker seconded the motion and the approval was unanimous.

**Asset Management** Presentation of Wilshire and Associates study on Common School Fund asset allocation options.

Director Neuman introduced this item stating that the highlights of the asset management study done by Wilshire and Associates would be presented today and that no decisions will need to be made at this time. She said a more thorough asset management planning discussion will take place during the next Land Board meeting.

State Treasurer Meeker stated that Wilshire and Associates is a leading consultant for public pension funds. They consented to do this work within the terms of the existing contract with the Treasurer's Office, so there was no extra cost.

Tom Lynch, consultant with Wilshire and Associates, said the study addressed three basic questions: (1) What should be the investment policy of the Common School Fund in order for the Fund's distributions to be a more substantial component of school funding?; (2) How long a time period would it take given that investment policy in order to reach that objective?; and (3) Once the distribution objective is reached, what should the investment policy be in order to maintain distributions?

He reviewed the current financial conditions of the Fund as well as the current asset allocation and distributions.

The major recommendations in the Wilshire Study included:

1. That the Board adjust the asset mix in the Common School Fund from the current proportions of 66 percent in domestic bonds, 18 percent in cash or equivalents, and 16 percent in domestic equities, to a mix of 50 percent in domestic equities; 45 percent in domestic bonds; and 5 percent in cash.
2. That the Board consider distributing both capital gains and equity dividend returns (rather than reinvesting them) once the recommended investment ratios are achieved.

The study concludes that if current investment and distribution policies are continued, it would take almost three hundred years for the distributions to grow from their current level of 0.45 percent of per capita school costs to a 5 percent level.

Director Neuman stated the recommendation to the Board is to allow the Division to return with some more developed investment policies after reviewing the study further with the Land Board Assistants and the State Treasurer's Office.

Governor Roberts asked if the Attorney General's opinion would be ready for discussion at the July Land Board meeting. Assistant Attorney General Bill Cook responded that the opinion is nearly final.

State Treasurer Meeker recommended the Land Board give the Investment Council a target of what percentage they want the Common School Fund to contribute in relation to the total school expenditure. He said the Council could then structure an investment policy to meet that target.

Governor Roberts requested that a couple of the Council members come to a Board meeting to discuss the options and the report. State Treasurer Meeker stated this would be a good time for the Board to meet the new investment officer and chairman of the Investment Council, Gerard Drummond.

Governor Roberts commended individuals that do volunteer work on boards and commissions, such as Mr. Drummond, stating they give incredible amounts of their personal time to make state government work better.

Secretary of State Keisling commented that after being approved by the Board earlier, some additional discussion had been taking place regarding the agenda item requesting approval of two placer mining requests on the Elk River Scenic Waterway. He stated that the issue should be reconsidered for a possible additional amendment to the motion.

State Treasurer Meeker said that his own assistant should have been involved in any separate discussions that had taken place after the approval of the item. He called for a recess to allow a three-way discussion among the three Land Board assistants to determine whether the item should be revisited.

The Board recessed for a short period.

Secretary of State Keisling then moved the Board reconsider the action taken on the Elk River Scenic Waterway placer mining requests. State Treasurer Meeker seconded the motion and the decision was unanimous.

Secretary of State Keisling moved to rescind the approval of the request for placer mining, since questions were raised that may need more information and delaying the decision for a month would be in the best interest of the Board. He further explained that there are legal issues involved and the Board needs to be careful they don't set a precedent they may later regret. He said the scenic waterway issue and the proprietary interests need to be further examined. State Treasurer Meeker seconded the motion and the approval was unanimous.

Governor Roberts adjourned the meeting.

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Janet C. Neuman  
Director

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Barbara Roberts  
Governor