

## G. Trust Land Management in Oregon

Oregon has approximately 769,000 surface acres and 2.1 million subsurface acres of trust lands. These lands are most heavily concentrated in the southeastern portion of the state, where the state holds several multi-section blocks of land that are primarily managed for grazing. Elsewhere in the state the lands primarily consist of scattered parcels, with the exception of an 85,000 acre block of land in the southwestern part of Oregon known as the Elliott State Forest.

### 1. Oregon's Land Grant

Oregon was admitted as the thirty-third state in the Union in 1859 under the Oregon Admission Act, which granted the state sections sixteen and thirty-six of every township for "the use of schools."<sup>1</sup> Where land had been previously deeded or was otherwise unavailable due to federal reservations or other restrictions, the state was permitted to choose other public lands *in lieu* of those sections.<sup>2</sup> The Act also granted Oregon seventy-two sections of land for a state university, and ten sections for public buildings. Prior to statehood, Oregon had also been granted five hundred thousand acres of land by the federal government under a general grant for the state's "internal improvement."<sup>3</sup>

Like other states, Oregon took title at statehood to the beds and banks of all navigable waterways in the state, including tidelands.<sup>4</sup> Although these lands are not considered to be trust lands, unlike most states, Oregon deposits the proceeds from the management of these lands into the Common School Fund after subtracting costs for administering other programs assigned to DSL – most notably, Oregon's Removal-Fill Law, a program regulating dredge and fill in wetlands and waterways.<sup>5</sup>

Oregon currently retains ownership of only about 769,000 acres, or approximately 1/4th of its original trust land grant, due in large part to a state policy of liquidating trust lands during the years immediately following statehood. This policy was discontinued after the discovery of widespread corruption and fraud in a series of investigations from 1872 to 1913 that ultimately led to the conviction of twenty-one high level state and federal officials.<sup>6</sup>

### 2. Admission Act and Constitutional Requirements

The Oregon Admission Act is fairly general in its description of the grant of lands, lacking the specificity found in the enabling legislation of later admitted states. The Admission Act imposes no restrictions on the disposition of the granted lands, does not require the creation of a "permanent fund," and does not use the term "trust" to describe the grant.

Oregon's Constitution requires the creation of a Common School Fund for the support and maintenance of common schools.<sup>7</sup> As a result of subsequent constitutional amendments, current revenue sources for the Common School Fund consist primarily of revenues from the granted trust lands; money accrued to the state from escheats and forfeitures, grants, gifts, bequests; and revenues from the management of the beds and banks of all navigable waterways in the state, including the Territorial Sea.<sup>8</sup> These combined assets – consisting of both financial and real property – are managed as a trust for the benefit of the common schools.

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<sup>1</sup> Oregon Admission Act, 11 Stat. 383 § 4 (1859).

<sup>2</sup> Act of January 7, 1853, 10 Stat. 150.

<sup>3</sup> Act of September 4, 1841, 5 Stat. 455.

<sup>4</sup> OR. REV. STAT. § 274.025; See also *Johnson v. Dept. of Revenue*, 639 P.2d 128 (Or. 1982).

<sup>5</sup> OR. REV. STAT. § 327.0405.

<sup>6</sup> *Administrative Overview*, Oregon Department of State Lands, at 2. Available at: <http://www.oregonstatelands.us/adminoverview.htm>.

<sup>7</sup> OR. CONST. Art. VIII § 2; OR. REV. STAT. § 327.405.

<sup>8</sup> OR. CONST. Art. VIII § 5; OR. REV. STAT. § 327.405.

### 3. Oregon's Trust Responsibility

Despite the lack of specificity in Oregon's Admission Act grants, the Oregon Attorney General has found that "Oregon's acceptance of the proposition of its Admission Act, granting land to the state 'for the use of schools,' imposed a binding obligation on the state."<sup>9</sup> Although the courts have not expressly ruled on whether the Admission Act created a trust, they have found that Oregon's Constitution requires the lands to be held in trust. Based on these provisions, the courts have held that:

- Any act of the Legislature purporting, directly or indirectly, to divert the Common School Funds from the purpose to which they were dedicated is unconstitutional.<sup>10</sup>
- Laws relating to the expiration of mortgages do not apply to foreclosures on mortgages that secure moneys borrowed from the permanent fund.<sup>11</sup>
- Although the proceeds from submerged and submersible lands are dedicated to support public education, unlike the lands granted for the support of common schools, these lands are not held in trust for this purpose by the state.<sup>12</sup>

### 4. Governance of Trust Lands in Oregon

Oregon's trust lands are managed by the Oregon Department of State Lands (DSL). The agency's activities are overseen by the State Land Board (Board), which is composed of the Governor, Secretary of State, and State Treasurer.<sup>13</sup> The Board is responsible not only for the management of state-owned trust lands, but also assets of the Common School Fund, offshore lands and coastal estuarine tidelands, submerged and submersible lands of the navigable waterways within the state, unclaimed property, and escheats (estates with no heirs).

The DSL, acting under the direction of the Board, manages federally granted trust lands and non-trust lands (the state's submerged and submersible land under navigable rivers, lakes, estuaries, and the Territorial Sea to maintain fisheries, commerce, recreation, and navigation), administers Oregon's Removal-Fill Law, acts as the trustee for unclaimed property and intestate estates, manages the South Slough National Estuarine Research Reserve, and provides support to the Oregon Natural Heritage Program.<sup>14</sup>

The Director of the DSL is appointed for a four year term, and has authority over the management and disposal of all lands under DSL jurisdiction.<sup>15</sup> The Director oversees the administrative needs of the Board, makes recommendations to the Board and Legislature, and directs the operation of DSL which includes approving policies and area management plans, overseeing budget preparation, and administering federal grants and contracts.<sup>16</sup> DSL's budget is derived from revenues taken from the Common School Fund.<sup>17</sup>

DSL is divided into the Land Management Division, the Wetlands and Waterways Conservation Division, Finance and Administration Division, the Director's Office, and the South Slough Reserve. The Land Management Division performs a variety of services related to functions of land ownership and property management, including: administering land sales and exchanges; issuing

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<sup>9</sup> 46 Op. Atty Gen. Or. 468, Opinion No. 8223 (July 24, 1992).

<sup>10</sup> Eagle Point Irr. Dist. v. Cowden, 1 P.2d 605 (Or. 1931).

<sup>11</sup> State Land Board v. Lee, 165 P. 372 (Or. 1917).

<sup>12</sup> Johnson v. Department of Revenue, 639 P.2d 128 (Or. 1982).

<sup>13</sup> OR. CONST. Art. VIII § 5.

<sup>14</sup> *Administrative Overview*, *supra* note 751, at 1.

<sup>15</sup> OR. REV. STAT. § 273.161.

<sup>16</sup> *Administrative Overview*, *supra* note 751, at 5.

<sup>17</sup> OR. REV. STAT. § 273.161(3).

leases, such as mineral leases, waterway leases, communications site leases, sand and gravel leases, and agriculture and rangeland forage leases; granting easements, rights-of-way, and licenses for use of state-owned upland and waterways. The Land Management Division also maintains all state land ownership records as well as historical navigable waterways information.<sup>18</sup> The Wetlands and Waterways Conservation Section issues permits and carries out enforcement actions for removal-fill activities on public and private waterways, wetlands, the Pacific Ocean, and other waters of the state.<sup>19</sup> Each Division develops its own policies and rules, and promotes DSL's constitutional and statutory interests via public information and interagency coordination.

The Finance and Administration Division consists of four units: Fiscal Services, Information Services, Auditing Services, and Trust-Unclaimed Property. The Assistant Director of this section also serves as the agency's legislative coordinator responsible for development of legislative concepts, tracking legislation during sessions, providing information to legislative committees, and maintaining relationships with legislators.<sup>20</sup>

Legislation under consideration in the 2005 legislative session would reorganize the agency by transferring the unclaimed property program to the State Treasurer; however, revenues from this program will continue to accrue to the Common School Fund.<sup>21</sup>

### 5. Trust Land Management in Oregon

Under the Oregon Constitution, the State Land Board is directed to “manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.”<sup>22</sup> DSL operates in accordance with general policies formulated by the State Land Board and defines its mission as follows: “The mission of the Department of State Lands is to ensure a legacy for Oregonians and their public schools through sound stewardship of lands, wetlands, waterways, unclaimed property, estates and the Common School Fund.”<sup>23</sup>

DSL's management activities on all lands are guided by an Asset Management Plan prepared under the direction of the 1995 legislature, which establishes management philosophies and strategies tailored to the Board's legal obligations with regard to trust assets.<sup>24</sup> The Plan was developed with the goal of establishing a coordinated comprehensive real estate management philosophy; proactively managing the Land Board's real estate assets with the same vigor applied to the investment portfolio; increasing net revenues from CSF real estate assets to meet Land Board goals; and providing a guide to balance revenue generation and resource conservation decisions.<sup>25</sup> It provides an overall management philosophy, guiding principles for more detailed management direction for all land assets, resource-specific management descriptions, and strategies to resolve potential conflicts between resource stewardship and revenue enhancement. Finally, the Plan includes overall implementation measures – developed with input from stakeholders, other affected parties, and the Land Board – to define the actions necessary to carry out the Plan. In 2005, DSL began to revise its Asset Management Plan. The primary purpose of this revision, which is expected to be completed by the end of 2005, is to provide more resource-specific focus and guidance in the document. Additionally, this revision is intended to incorporate elements of DSL's Strategic Plan and changes that have been made to statutes and administrative rules since 1995.

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<sup>18</sup> *Id.*

<sup>19</sup> *Administrative Overview*, *supra* note 751, at 5-6.

<sup>20</sup> *Id.*

<sup>21</sup> *Removal and Fill Technical Advisory Committee*, Oregon Department of State Lands, available at: [http://www.oregonstatelands.us/ff\\_110404\\_tac.htm](http://www.oregonstatelands.us/ff_110404_tac.htm).

<sup>22</sup> OR. CONST. Article VIII § 5.

<sup>23</sup> OREGON DEPARTMENT OF LANDS STRATEGIC PLAN 2004-2008 (2004).

<sup>24</sup> OR. REV. STAT. § 273.245.

<sup>25</sup> ASSET MANAGEMENT PLAN: A PLAN TO GUIDE THE MANAGEMENT OF LAND, WATERWAYS, AND MINERALS TO BENEFIT THE COMMON SCHOOL FUND, OREGON DEPARTMENT OF STATE LANDS, 2 (1995) (Hereafter, “ASSET MANAGEMENT PLAN”). Available at: [http://www.oregonstatelands.us/amp\\_95.htm](http://www.oregonstatelands.us/amp_95.htm).

The current plan requires trust lands to be managed “with the overriding objective of maximizing revenues over the long term for the Common School Fund, while conserving the value of the land and complying with applicable federal laws.” Interestingly, the Asset Management Plan provides a limited exception with regard for compliance with state laws, indicating that compliance with state law should be pursued only “to the extent that it does not conflict with constitutional requirements, as determined by the Land Board and reviewable by the courts.”<sup>26</sup>

However, in recognizing that the agency has a duty to obtain market value for trust lands and maximize revenues, the Plan also notes that this duty does not limit the Land Board to consideration of only economic factors in managing trust lands. The Land Board is free to explore innovative mechanisms for securing environmental, social, and other non-economic benefits so long as doing so would not diminish prudent long-term economic return from the lands. In executing its duty, present income may be foregone to conserve specific properties if it is determined that such action will enhance land value and income for the benefit of future beneficiaries.<sup>27</sup>

Under the Plan, real estate assets are classified as forest lands, agricultural lands, rangelands, industrial/commercial/residential lands, special interest lands, waterways, and mineral lands. Management activities in each classification are governed by a set of principles which are embodied in the development of area management plans. The types of lands with a priority for area planning are those with potential for sale or exchange; industrial, commercial and residential lands; or lands which attract a significant level of public interest.

Area management plans address geographic location, resource type or revenue generation potential, and inventory, as appropriate, as well as various economic, environmental and social factors. When completed, they are intended to govern all management activities undertaken by the Division within the subject area, including the identification of appropriate land classification(s), such as “special interest” lands and the establishment of specific land management strategies and implementation measures. Area management plans are required to maximize revenue to the Common School Fund over the long term for trust lands; complement the efforts of other agencies by developing coordinated management strategies; and include lessees, adjacent property owners, beneficiaries, and other interested parties in the planning process.<sup>28</sup> To date, the only area management plans that have been prepared are for the Elliott State Forest; the Lower Willamette River; and the Stevens’ Road Tract (Deschutes County, Oregon).

In addition to area management plans, DSL also prepares other resource-specific management plans. For example, to promote better management of state rangelands, the agency has prepared a rangeland management plan for each of its major forage leaseholds in eastern Oregon.

The state’s activities on trust lands can be divided into three general categories: surface uses, subsurface uses and land sales and other uses.

#### *a. Surface Uses*

The majority of the state’s trust land surface acreage is leased for grazing and agriculture, with limited leasing for recreation cabins, industrial, commercial and residential uses, mineral extraction, and communication sites. However, the single largest source of revenue from trust-related activities is the sale of forest products from classified forest lands.

DSL currently manages about one hundred thirty-one thousand acres of forest lands, the majority of which are located in the Elliott State Forest in the Coast Range northeast of Coos Bay

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<sup>26</sup> *Id.* at 6. By way of contrast, the Land Board manages non-trust lands “with the overriding objective of providing the greatest benefit to the people of the State of Oregon, as determined by the Land Board in a manner consistent with all applicable laws and reviewable by the courts. Public Trust Doctrine requirements to manage Waterways in a manner that avoids unreasonable interference with public navigation, fisheries and commerce will be met.” *Id.* at 7.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.*

(comprising nearly eighty-five thousand acres of the total). Other major DSL timber holdings are within the Sun Pass Forest near Klamath Falls and in the Tillamook and Clatsop forests on the northwest Oregon Coast. The agency contracts with the Oregon Department of Forestry to manage forest lands.<sup>29</sup> DSL forest lands are managed primarily to produce a “sustainable, even-flow harvest of timber, subject to economic, environmental and regulatory considerations.”<sup>30</sup> The agency has adopted special provisions that apply in the case of default by a purchaser of timber from common school lands.<sup>31</sup> In addition, the state is constitutionally prohibited from exporting raw logs harvested from Oregon’s state lands.<sup>32</sup>

Grazing leases are issued on approximately 95 percent of the lands designated as rangelands (around six hundred thirty-two thousand acres in total), or approximately 83 percent of the total trust land acreage. The state leases forty-four large parcel leases and 107 smaller parcel leases on isolated tracts. For unleased parcels, the agency notifies the public once the lands become available. If there is more than one applicant, the agency grants the lease based on the ownership and control of the lands immediately surrounding the state property, the willingness of the lessees to develop a range management plan, and other factors, such as the offer of a bonus bid.<sup>33</sup> Leasing preference is given to current lessees and landowners who can use the trust lands in conjunction with privately owned lands in the operation of a livestock business.

A relatively small percentage of trust acreage is leased for other surface uses. Agricultural leases exist on 5,700 acres of Oregon trust land, most of which is located in the central and eastern parts of the state. Industrial, commercial, and residential leases have been issued on around 695 acres;<sup>34</sup> however, that number may increase as the agency makes this type of development a higher priority in the coming years.

#### *b. Subsurface Uses*

Mining constitutes a relatively small portion of total trust land revenues in Oregon. In fiscal year 2004, DSL received approximately \$726,000 per year in mineral royalties, the majority of which (around \$500,000) was derived from sand and gravel mined from state-owned submerged and submersible land (i.e., non-trust lands). Other minerals produced on state-owned land include rock, diatomite, and natural gas.<sup>35</sup> Over half of the state’s mineral rights are “split estates,” in which the overlying surface is owned by either a private party or another government agency, most often the Bureau of Land Management. The majority of the state’s mineral rights occur in southeastern Oregon; however, the state has retained mineral rights in its scattered parcels, large forested areas, and state-owned submerged and submersible land.<sup>36</sup>

Mineral and geothermal mineral rights are retained by the state unless their sale or exchange is for the purpose of obtaining the greatest benefit for the people of this state, consistent with the conservation of lands and under sound techniques of land management.<sup>37</sup> Mineral leases are typically offered upon application and proof of discovery to the holder of an exploration permit. However, DSL may offer a mineral lease through a competitive bid process. The initial term of a lease is ten years, subject to renewal up to a maximum of fifty years.<sup>38</sup> The lease rate is \$1 per acre per year, until the third year at which the rate may increase to \$3, depending on production. The royalty rate is 5 percent of the gross value for metallic minerals and uranium. For non-metallic minerals except sand and

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<sup>29</sup> *Id.* at 13.

<sup>30</sup> *Id.*

<sup>31</sup> OR. ADMIN. R. §§ 141-015-000 to 0050.

<sup>32</sup> OR. CONST. Art. VIII § 5.

<sup>33</sup> OR. ADMIN. R. § 141-110-0040.

<sup>34</sup> *DSL Real Property Inventory and Estimated Market Value, 1994*, Oregon Department of State Lands, available at: <http://www.oregonstatelands.us/landbase.htm>.

<sup>35</sup> *Mining*, Oregon Department of State Lands, available at: <http://www.oregonstatelands.us/mineintro.htm>.

<sup>36</sup> *Id.*

<sup>37</sup> OR. REV. STAT. § 273.780.

<sup>38</sup> OR. ADMIN. R. § 141-071-0595.

gravel, oil and gas, and geothermal resources, the royalty is determined by DSL's Director. Available lease acreage ranges from a minimum of forty acres to a maximum of six hundred forty acres. Lease applications for minerals valued at more than \$100,000 require final approval by the Land Board. If there is a discovery of minerals on lands in close proximity to state lands, the state may offer its unleased lands by competitive bid, either sealed or at public auction, without an application.<sup>39</sup>

*c. Land Sales and Other*

Over the last few decades, land sales have played a minor role in the overall asset management activities on trust lands. Under the 1995 Asset Management Plan, the state is attempting to identify and utilize those lands with high potential for increased revenue, and to dispose of poorly producing, isolated, or difficult to manage rangeland parcels. The Asset Management Plan also directs DSL to identify lands most appropriate for sale or exchange, those located within a transition area, and other lands with potential for disposal. Under the state's recently adopted strategic plan, the acquisition, improvement and disposal of lands will become a higher priority than it has been in the recent past. Consistent with its intent to dispose of isolated, poorly producing, or difficult to manage parcels, the state recently accepted bids for seven parcels in the amount of \$402,500.<sup>40</sup>

The state can sell lands, or interests in lands, to people or qualified entities where this would achieve the objectives of the Asset Management Plan.<sup>41</sup> Upon application, the agency determines if the land is "available for sale" by considering current and future estimates of value and income potential; location, accessibility, and manageability; the potential for alternative income-generating uses; the level and intensity of expressed interest in a sale, exchange, or purchase; and whether the land is classified as trust or non-trust land.<sup>42</sup> If the land is deemed "available for sale," the method of sale varies with the type of transaction.<sup>43</sup> For example, if the applicant is a governmental entity, the agency can offer the lands as a direct sale at a DSL-appraised value. By contrast, if the applicant is private party, the state may offer the lands to the highest bidder at auction with a minimum or reserve bid based on the agency's estimated value.<sup>44</sup>

The state can also exchange lands for the purposes of consolidating and accumulating larger tracts, where this would achieving the objectives of the AMP, or where this would advance the purposes of the South Slough National Estuarine Research Reserve Management Plan.<sup>45</sup> DSL grants four types of easements: temporary (up to ten years), term (between ten and thirty years), permanent, and "special" for certain identified purposes.<sup>46</sup> In addition, DSL offers easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea.

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<sup>39</sup> *Id.* at § 141-071-0545.

<sup>40</sup> News release, *State accepts bids on six range and forest parcels*, Oregon Department of State Lands (March 30, 2005). Available at: [http://www.oregonstatelands.us/pr\\_2005/22\\_land-sale\\_bids.htm](http://www.oregonstatelands.us/pr_2005/22_land-sale_bids.htm).

<sup>41</sup> OR. ADMIN. R. § 141-067-0140.

<sup>42</sup> ASSET MANAGEMENT PLAN, *supra* note 770; OR. ADMIN. R. § 141-067-0140.

<sup>43</sup> OR. ADMIN. R. § 141-067-0270.

<sup>44</sup> *Id.*

<sup>45</sup> OR. REV. STAT. §§ 273.316, 273.820. The South Slough National Estuarine Research Reserve is a nationally recognized estuarine research facility that studies how estuaries function and the benefits to Oregon's coastal environment and economy.

<sup>46</sup> OR. ADMIN. R. § 141-122-0070.

Table V(G): FY 2004 Revenues– Oregon Department of State Lands

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Agriculture	0.90%	\$141,408
Grazing	2.30%	\$623,648
Forest	92.00%	\$14,325,310
Other (Industrial, Commercial and Residential)	4.30%	\$470,390
<b>Total Surface</b>	<b>99.50%</b>	<b>\$15,560,756</b>
<b>Subsurface Uses</b>		
Oil and Gas		
Coal		
Other (Sand and Gravel)	0.50%	\$211,406
<b>Total Subsurface</b>	<b>0.50%</b>	<b>\$211,406</b>
<b>Sales and Other</b>		
Land Sales and Other		\$0
<b>Total Sales and Other</b>	<b>0.00%</b>	<b>\$0</b>
<b>Grand Total</b>	<b>100%</b>	<b>\$15,772,162</b>
<b>Agency Budget*</b>		<b>\$5,000,000</b>

\* Approximate

Source: Data provided by Oregon Department of State Lands, April 2005.

#### 6. Trust Revenue Distribution in Oregon

The only remaining beneficiary of the trust lands granted to the state of Oregon at statehood is the common schools (K-12). Although lands were granted for the benefit of higher education and other public institutions, these lands were sold early in the state's history as part of its aggressive land disposal policy.

All distributions to the trust beneficiaries come from the Common School Fund, which consists primarily of revenues derived from uplands (generally trust lands), submerged and submersible lands (generally non-trust land), and escheats, unclaimed property, and gifts to the state not designated for some other purpose.

Funds are distributed to county school districts based on the number of county residents from ages four to twenty and by law, are dedicated to “support and maintenance of common schools in each school district.”<sup>47</sup> In order to ensure intergenerational equity, the state applies a sliding-scale distribution policy based on the annual change in value of the fund. At a minimum, the Board distributes 2 percent of the fund, up to a maximum of 5 percent if the fund value increases 11 percent or more in a single year.<sup>48</sup> In 2004, the DSL distributed \$26.8 million to Oregon counties for the support of public schools. This amount constituted somewhat less than 1 percent of the state’s overall K-12 budget of almost \$5 billion.<sup>49</sup> In 2005, DSL expects to distribute \$42.9 million to the public schools.

## 7. Recent Developments and Emerging Issues in Oregon

### a. Strategic Plan and Sustainability Plan

Over the last decade, Oregon has adopted a series of innovative plans to guide trust management decisions for the benefit of trust beneficiaries and the state government as a whole.

In addition to the AMP that was adopted by the legislature in 1995, the DSL has developed a Strategic Plan to outline current and future needs and to describe trends affecting agency programs. As a part of the Strategic Plan, DSL revised its mission statement and vision statement, and crafted a set of goals that reflect the input of the public, staff, and environmental consultants, organizations, and associations. The Strategic Plan identifies several areas of focus, ranging from land and waterway management (e.g. updating and implementing the asset management plan) to investment fund management and customer service.<sup>50</sup>

The achievement of the Strategic Plan, as well as the asset management and other plans, is tracked under a set of eleven performance measures, developed as part of the overall state government framework for measuring success. These benchmarks are intended to measure outcomes over which the agency has primary control.

Finally, the DSL has recently prepared a Sustainability Plan to ensure that the agency incorporates sustainability in its management of the assets of the Common School Fund. In addition, the agency is in the process of revising the forest management and Habitat Conservation Plans for the Elliott State Forest.<sup>51</sup>

### b. Elliott State Forest Cost Benefit Analysis

As part of its overall asset management plan, DSL commissioned a study in cooperation with the Oregon Department of Forestry to determine whether it is cost effective for the state to continue to retain ownership and manage lands for timber production in the Elliott State Forest, or whether it would be more profitable over the long term to sell the Forest in its entirety and invest the proceeds of the sale.

The January 2005 study, prepared by Mason, Bruce, and Girard, Inc., provides an estimate of the current value of the Common School Fund timberland on the Elliott State Forest under current market conditions, recognizing the effects of the federal and state Endangered Species Acts and other state and federal laws. The study discusses potential rates of financial return and other factors that

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<sup>47</sup> OR. REV. STAT. § 327.405.

<sup>48</sup> *Oregon’s Common School Fund*, Oregon Department of State Lands, available at: <http://www.oregonstatelands.us/csfbrochure.pdf>.

<sup>49</sup> *Annual Survey of Local Government Finances 2002-2003, Summary of Public School System Finances for Elementary-Secondary Education by State*, U.S. CENSUS BUREAU (2005), available at <http://www.census.gov/govs/www/school.html>.

<sup>50</sup> OREGON DEPARTMENT OF STATE LANDS SUSTAINABILITY PLAN, OREGON DEPARTMENT OF STATE LANDS, 6-7. Available at: [http://www.oregonstatelands.us/sust\\_plan0304.pdf](http://www.oregonstatelands.us/sust_plan0304.pdf).

<sup>51</sup> *Id.* at 6-7.

would be considered by private managers for valuation purposes, and discusses the indirect economic impacts as well the non-market costs and benefits of each alternative.<sup>52</sup>

The study alternatives were developed from two points of view. The first, from the fiduciary perspective of the State Land Board, compares the present value of future income from the Forest to the Common School Fund under continued ownership and management by the state versus a one-time lump sum payment to the Fund that would result from the sale of the Forest. The second perspective is that of the state government in general, considering the indirect economic and non-economic impacts of a decision to sell or not to sell the Forest, including impacts on employment, property tax rates, and other factors. The study concluded that the net present value of the Forest under continued state ownership is near the midpoint of the net income if the Forest were sold. With continued state management, the Forest value is projected to range from \$282 million to \$381 million. The range of net income from the sale of the forest is estimated at \$245 million to \$488 million.<sup>53</sup>

In February 2005, the Land Board considered the cost-benefit study of the Elliott State Forest and stated that they had no intention of selling this asset because of its importance to the Common School Fund portfolio. The Board, however, said that it would use the study results in other planning efforts relating to the management of its forest assets.

### *c. Rangeland Audit*

In 2004, the State's Audits Division released an audit of the DSL's rangeland management program. The audit found that the grazing fee was not being periodically reviewed as required by law, and that the management of rangelands resulted in a net loss of at least \$13,115 for the Common School Fund during the period 1998-2002 (not including a 1999 payment of \$3.5 million from the General Fund to the Common School Fund to provide assured grazing rights to lessees for the term of their leases.) Had the lands been sold and the proceeds invested, the auditor projected "the Common School Fund would have received at least \$3 million to \$4.2 million more income for fiscal years 1998 through 2002. Alternatively, if market lease rates had been charged for state rangeland leases for the five fiscal years from 1998 to 2002, we estimate that the Common School Fund would have earned \$1.45 million more."<sup>54</sup>

Consequently, the Audits Division recommended selling all or part of the rangelands through an open, competitive bidding process, exchanging all or part of the land for a better performing asset, and obtaining market rates for leases, either through competitive bidding for rangeland leases or by increasing grazing fees to market rates.<sup>55</sup>

Although DSL concurred with many of the audit findings, it disagreed with others. DSL agreed with a finding that competitive bidding is a legitimate method of realizing market rates for grazing leases but was unable to let all leases competitively. As a result, DSL reached an agreement with a group of lessees who had sued the Board and the agency which allocated a \$3.5 million legislative appropriation to the Common School Fund to offer assured grazing rights to existing lessees.

In response to the report, the agency convened a Rangelands Grazing Fee Advisory Committee to make recommendations to the DSL and Land Board. The Committee, chaired by the Department's Assistant Director for Policy and Planning, has reviewed the audit findings with regards to grazing fees, analyzed whether the current rate reflects at least a fair market value rental rate, and, as of April 2005, is in the process of determining what recommendations it should make to the

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<sup>52</sup> Carl F. Ehlen and Roger G. Lord, *A Cost-Benefit Analysis of the Elliott State Forest Common School Fund Lands*, Mason, Bruce & Girard, Inc., on behalf of the Oregon Department of State Lands Oregon Department of Forestry (January 12, 2005).

<sup>53</sup> *Id.*

<sup>54</sup> *Oregon State Land Board Rangeland Revenue for the Common School Fund Fiscal Years 1998 to 2002*, Oregon Secretary of State, Report No. 2004-09 (2004). Available at: <http://www.sos.state.or.us/audits/audreports/lands.html>.

<sup>55</sup> *Id.*

Director concerning adjustments, if any, that should be made to fee formula.<sup>56</sup> The Committee, which was appointed in September 2004, is scheduled to have developed a set of final recommendations by June 2005.

As for the audit's other recommendations, DSL has indicated that the agency will continue its practice of issuing only expired or cancelled leases on a competitive basis and will keep to its plan of actively disposing of grazing lands (subject to governing administrative rules) that are largely surrounded by land not owned by the Land Board or that are not contiguous to other, larger tracts of state land, as well as parcels that are difficult or uneconomical to manage due to access, location, isolation, low production value, or similar factors.<sup>57</sup>

*d. Contaminated Beds and Banks*

As manager of the beds and banks of major rivers, DSL is facing an increased responsibility associated with efforts to clean up contaminated areas. While these lands are not designated "trust lands," the revenues arising from the management of these lands contribute to the Common School Fund, and as such, the expenses associated with these efforts will affect revenues to the Fund.

The largest current project is known as the Portland Harbor Federal Superfund Site where contaminated in-water sediments have been found along this heavily industrialized, six-mile stretch of the lower Willamette River. An investigation is underway to characterize the contamination and evaluate the risk that contamination poses to human health and the environment. The next steps will likely require a feasibility study to develop and evaluate cleanup options. In the meantime, investigations are beginning for areas of the Columbia River in Astoria and near Portland. The extent to which DSL will contribute to this work and to the clean-up effort is still under consideration.<sup>58</sup>

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<sup>56</sup> Charter, Rangeland Grazing Fee Advisory Committee. Available at: [http://www.oregonstatelands.us/rangeland\\_gfac\\_charter.htm](http://www.oregonstatelands.us/rangeland_gfac_charter.htm).

<sup>57</sup> OR. ADMIN. R. §§ 141-067-0130 et seq.

<sup>58</sup> *DSL Works on Contaminated River Cleanup*, DSL In The News, Oregon Department of State Lands, Fall 2004, available at: <http://www.oregonstatelands.us/news/print.htm>.