

## Oregon

## Details of public ownership of forest unclear

By CLAIRE WITHYCOMBE  
Capital Bureau

SALEM — Now that a proposal to sell an expanse of state forestland is off the table, the broad outlines of an alternative arrangement are just starting to take shape.

Until this week, the state was considering selling the Elliott State Forest for \$220.8 million to a partnership between a Roseburg timber company and Indian tribe. The State Land Board voted unanimously to stop that sale process in favor of continued public ownership Tuesday.

Officials must tread carefully because the Elliott State Forest is a state trust land. It's required to generate revenues via timber harvests for the Common School Fund. Revenues collected from activity on the forest are invested in the fund, and some money is disbursed from the fund every year to the state's public K-12 schools.

The State Land Board — Gov. Kate Brown, Secretary of State Dennis Richardson and Treasurer Tobias Read — is in the driver's seat.

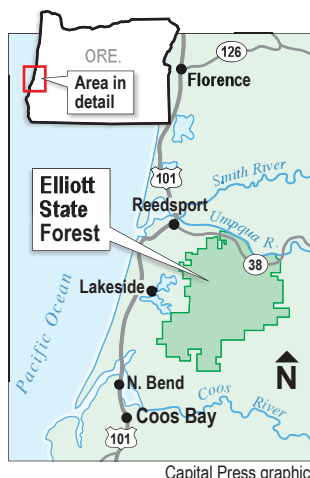
How they choose to move forward on the forest is not without controversy: environmental groups, education advocates, school kids, Indian tribes and the timber industry have all weighed in.

"I would argue there are very high expectations and often competing priorities from the public on what the Elliott should and can provide for Oregonians," Liz Dent, head of the state forests division for the Oregon Department of Forestry, told land board members during their meeting Tuesday.

Some argue that environmental activists put the state in the position of needing to sell the forest after aggressive federal lawsuits challenged how the state managed it. Increased restrictions drastically reduced how much timber could be harvested on the forest and made the Elliott a financial liability to the Common School Fund.

Environmentalists, meanwhile, counter that the state needs to manage public natural resources to forestall climate change and take a stand under a presidential administration decidedly unfriendly to environmental protections.

Many aspects of continuing public ownership are yet to be determined, although the overall intent is to keep the land



Capital Press graphic

public while meeting the state's obligations to the fund.

**How will the state pay for the forest?**

Brown has proposed using up to \$100 million in bonds to buy a portion of the forest.

That arrangement would mean a few things: \$100 million that could be used for other state projects, such as building roads, would be used to buy a part of the Elliott, because the state has a limited amount of money it can borrow.

It also means that the state would not only have to pay back that \$100 million over time, but would also have to pay interest. The cost of that would be borne by the state's general fund.

Just how much the state pays in interest — on top of the \$100 million it owes — depends on the bonding vehicle, Jason Miner, an adviser to the governor on natural resource issues, told the board Tuesday.

The \$100 million, if borrowed, would be deposited in the Common School Fund. Revenue from sales of timber harvested on the land would go to the Common School Fund, as well, and would not be used to pay off the bond.

This arrangement requires legislative approval. Read contends there's support for it in the Legislature, an argument supported by the testimony of Senate President Peter Courtney, D-Salem, at the February meeting of the land board, who said he'd help the board find a way to keep the Elliott public.

But Richardson opposes bonding to buy a part of the forest.

"I do not support a plan that relies on borrowing \$100 million to buy a forest we already own," Richardson said in a written statement Wednesday.

Instead, he has suggested swapping the Elliott for commercial-grade sections of fed-

eral forest — in other areas of the state that aren't home to endangered species — that could be "monetized" by logging.

**Who will have access to the forest?**

Under the governor's plan, public access would be maintained throughout the forest, except in areas that are unsafe due to logging or wildfire, or to protect certain resources.

Under the acquisition proposal submitted by Lone Rock Resources, a Roseburg timber company, and the Cow Creek Band of Umpqua Tribe of Indians only half of the land would have been accessible to the public.

**Who will manage the forest?**

It's not clear which public agency may manage the Elliott. Read has proposed that Oregon State University acquire it and run it as a research forest.

There still could be a role for other groups, such as Indian tribes, to play in managing the land, Miner told the board.

The \$100 million in bonds that form the crux of the governor's plan would pay for ecologically sensitive areas of the forest. Her proposal includes negotiating what's referred to as a habitat conservation plan on the rest of the land.

**What is a habitat conservation plan?**

A habitat conservation plan is a guide for how federal agencies will work with states or other entities to protect endangered species while harvesting timber.

One question raised at Tuesday's meeting is the likelihood of such a plan getting approved.

Dent, the head of state forests for ODF, told the land board she was optimistic.

The possible \$100 million in bond capacity relieves pressure to produce higher levels of timber harvests and signaled that the state was willing to take steps to preserve endangered species; and the potential of privatizing the land "underscored the need for collaboration" among state and federal agencies, Dent said.

State officials want the habitat conservation plan to stay even if there's a change of ownership.

**How would the OSU acquisition proposal mesh with the habitat conservation plan?**

OSU's purchase of the land hinges in part on the approval of a habitat conservation plan.

Under Read's plan, OSU

would not only buy the rest of the forest for no more than \$121 million, but would dedicate a fixed amount of money per year to research associated with the forest.

That research could be funded by harvest or "other revenues, but must be assured as an ongoing commitment to the long-term continuity of the research," according to an April 25 memorandum of understanding from OSU President Ed Ray to Read.

But there are a number of terms that have to be met in order for the university to buy the forest. "In short, there must be a viable business plan," the memo of understanding states.

**What happens if the arrangement with OSU falls through?**

The university isn't obligated to buy the forest. So if the deal doesn't work out, Read says, a "stakeholder advisory board" formed to consult on management issues and timber harvests will recommend other potential buyers to the State Land Board.

**Is the plan legally sound?**

All three members of the land board are adamant that they need to meet their fiduciary responsibility to the Common School Fund. What they decide will be scrutinized by the Oregon School Boards Association. The association warned the board last week that its member districts may sue unless the amount of money that the forest is worth — \$220.8 million, according to a state assessment — is paid to the fund.

Read argues that the \$100 million lessens the immediate pressures on the Common School Fund, which sustained net losses on the Elliott between 2012 and 2015, and functions as a "down payment" while the state secures a permanent public owner.

OSBA's executive director said his organization would be monitoring the proposals closely, and that any resolution must meet the board's fiduciary duty to the fund.

Another consideration is the cancellation of the sale protocol. While the Department of Justice has said that the Department of State Lands and the Land Board are under no legal obligation to Lone Rock and the Cow Creek Band of Umpqua Tribe of Indians, the entities say they spent about \$500,000 to comply with the sale protocol.

## Ditch company explores switch to irrigation district

By KATY NESBITT  
For the Capital Press

JOSEPH, Ore. — For more than 40 years Associated Ditch Co. has struggled to find the money to fix its aging Wallowa Lake dam

This spring the private company announced it is exploring an old idea with new enthusiasm.

Exhausting several avenues over the years, including selling water to a downstream user, the ditch company's board has found the support it needs to form an irrigation district, making funding such as low-interest Clean Water State Revolving Fund loans easier to access.

Following a rash of dam inspections in the wake of the 1976 Teton Dam failure in Idaho, the dam was deemed unsafe to store the ditch company's entire water allotment. In order to bring the dam back to full storage capacity and protect water used by upper Wallowa Valley farmers valued at \$36,079,000 per year, the dam needs to be rebuilt.

Any reconstruction, Tom Butterfield, former Associated Ditch Co. president said, must include fish passage. That dollar amount, he said, is still being studied.

Butterfield's son Dan is now the ditch company's president. He said forming a district had been considered in the past.

Jay McFetridge, a multi-generational Wallowa Lake water user, said when his grandfather was president of the ditch company in the late '70s and early '80s and his father in the '90s the worry was over the equitability, or perceived lack thereof, in how votes are tallied among water users under the rules of a district versus the one-vote-per-acre agreement currently used.

"My dad said his biggest

reason that it wouldn't work, and they would not pursue at all, was because of the voting," McFetridge said.

This time the suggestion came from Nate James of the Natural Resources Conservation Service when he was asked to help the board with its irrigation modernization plan.

"About a year ago we met with Nate to look at financing for piping spur ditches, screening the ditches and possibly even putting in water measuring devices," Butterfield said.

James said he has worked with Wallowa Lake water users individually to upgrade their systems, but with the scope and scale of the ditch company's modernization needs, including reconstruction of the dam, they needed extra funding sources not available to a private ditch company.

A district, formed under state statute, would hold public meetings and be able to vote and process decisions in a timely manner.

"They could see the benefits were very positive to going down this path," James said.

For technical assistance, James asked Farmers Conservation Alliance to work with the ditch company's modernization committee. During their initial meeting, fixing the dam was discussed.

The alliance's executive director, Julie O'Shea, said her organization started out manufacturing fish screens for irrigation districts, but after years of designing and installing screens she said her staff found it difficult to fix one piece of an irrigation system without opening a box of other issues.

"We realized there was a great need for irrigation districts to have people come in with expertise — not just from an engineering perspective, but a financial and community-based one," O'Shea said.



Mateusz Perkowski/Capital Press

The U.S. District Courthouse in Eugene, Ore., where Oregon radish seed growers are pursuing a \$6.7 million lawsuit against a bank over alleged interference with crop sales.

## Oregon farmers sue bank for \$6.7 million in radish seed dispute

By MATEUSZ PERKOWSKI  
Capital Press

A group of Oregon farmers is seeking \$6.7 million from a bank for allegedly interfering with sales of radish seed, causing it to lose value.

The lawsuit filed by the Radish Seed Growers' Association against Northwest Bank is the latest installment in a saga that began with the 2015 insolvency of Cover Crop Solutions, a seed company.

Cover Crop Solutions contracted with numerous Oregon farmers to grow a proprietary variety of radish seed but was unable to pay them due to financial upheaval caused by oversupply and weather disruptions.

The seed company's creditor — Northwest Bank of Warren, Pa. — then filed a lawsuit against the growers, demanding ownership of the radish seed as collateral for a defaulted loan taken out by Cover Crop Solutions.

In June 2016, U.S. District Judge Michael Mosman rejected the bank's claims that it owned the seed, but that hasn't put an end to the matter.

Northwest Bank is now simultaneously challenging Mosman's ruling before the 9th U.S. Circuit Court of Appeals and pursuing a malpractice complaint against the law

firm that advised on the loan to Cover Crop Solutions.

In the malpractice lawsuit, the bank acknowledges it had no collateral in the radish seed even as it argues otherwise before the 9th Circuit, according to the complaint filed by the Radish Seed Growers Association, representing 38 growers, and two non-member farms.

"These two positions are irreconcilable," the complaint said.

Due to the bank's litigation against the growers, they were unable to sell nearly 7.4 million pounds of radish seed in 2015, when it fetched roughly \$1.30 per pound, the complaint said.

Aside from losing value as it aged, the radish seed also competed against crops grown in later years, so farmers were only able to sell it for 56 cents per pound or less, the plaintiffs claim.

The lawsuit aims to recover about \$5.5 million in reduced seed value and \$1.25 million in storage costs and additional expenses caused by Northwest Bank's "wrongful interference."

The case has been assigned to U.S. Magistrate Judge Jolie Russo in Eugene, Ore.

A representative of Northwest Bank said the company doesn't comment on pending litigation.

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