



June 3, 2010

MEMORANDUM

TO: S.B. 513 Working Group Members

FROM: Debra Nudelman and Peter Harkema, Kearns & West

SUBJECT: S.B. 513 Working Group – May 27 Meeting Action Items

Thank you for your participation and efforts at the S.B. 513 Working Group meeting held May 27, 2010 at the OSU North Willamette Research and Extension Center in Aurora, Oregon. This memo includes the upcoming meeting dates, agreed-upon action items, and flipchart notes.

Upcoming Meeting Dates	Who	Location
<ul style="list-style-type: none"> July 21, 2010 September 2, 2010 October 20, 2010 	Working Group	Salem, Dept. of Forestry Salem, Dept. of Forestry Portland, TBD
<ul style="list-style-type: none"> July 29, 2010 September 28, 2010 	Ad Hoc Group	Salem, State Lands Bldg. Portland, Perkins Coie

Action Items	Who	When
1. <u>Information follow up</u> <ul style="list-style-type: none"> Develop and distribute action items and meeting summary 	OWEB/K&W	By cob, June 3
2. <u>Case Studies</u> <ul style="list-style-type: none"> Revise case studies synthesis to reflect Working Group member feedback 	Sally/INR	Strive for in advance of July 21 meeting
3. <u>Methodologies</u> <ul style="list-style-type: none"> Redistribute criteria for methodology evaluation and include in draft recommendation matrix Contact INR (James – lead) and/or Damon for access to review selected methodologies 	Project Team Working Group members	By cob, June 10 By cob, June 10

Action Items	Who	When
4. <u>Co-mingling</u> <ul style="list-style-type: none"> • Send SB 513 Project Team copy of Counting on the Environment Co-mingling document • Coordinate Counting on the Environment work with SB 513 efforts 	Bobby Project Team	By cob, June 10 In advance of July 21 meeting
5. <u>INR Products</u> <ul style="list-style-type: none"> • Contact the Renee or Peter if you would like a copy of any INR products 	Working Group members	As needed

Meeting Documents
<p>The following documents were distributed at this meeting:</p> <ul style="list-style-type: none"> ▪ Proposed Agenda SB513 Working Group 5.27.10 Meeting ▪ Action Items Memo – SB 513 Working Group 4.21.10 Meeting ▪ Draft Recommendations Matrix – Section 3 ▪ Draft Recommendations Matrix – Section 5 (abbreviated) ▪ SB 513 Case Studies Synthesis <p><i>Copies of these documents can be obtained by contacting Kearns & West</i></p>

Flipchart Notes:

Overarching Issues for Further Discussion

- Oversight entity – goals/implementation
- Selling credits off public lands
- Broader payments for ecosystem services
- Crediting preservation
- If landowner gets incentive payment, can they sell the ecosystem service credit at a later date

Additional Considerations

- Which items/recommendations belong in a statute and which should be in rule or guidance?
- Think about how to institutionalize this concept and approach – need for “integrated rule making”
- When drafting remember to describe whether in mitigation world or not and remember to include “both worlds”
- Are there incentives that can be built into existing regulatory programs?
 - When drafting have the creating demand concept included

Meeting Summary

Working Group Members: Joe Zisa (for Paul Henson, US Fish and Wildlife Service [USFWS]), Catherine Macdonald (The Nature Conservancy), Kendra Smith (Bonneville Environmental Foundation), Nikola Smith (for Bob Deal, US Forest Service), Louise Solliday (OR Department of State Lands [DSL]), Ruben Ochoa (OR Water Resources Department), Sara Vickerman, Defenders of Wildlife, Damon Hess (The Freshwater Trust), Ranei Nomura (OR Department of Environmental Quality), Jim Cathcart (OR Department of Forestry [ODF]), Jon Germond, OR Department of Fish and Wildlife, Tom Byler (OR Watershed Enhancement Board [OWEB]), David Primozych (The Freshwater Trust), Rick Glick (Davis Wright Tremaine), Katie Fast (Oregon Farm Bureau), Chris Jarmer (Oregon Forest Industries Council), Bill Warncke (for Hal Gard OR Dept. of Transportation), Mike Wilson (Grand Ronde Tribes), Sally Duncan (Institute for Natural Resources [INR]), Bobby Cochran (Willamette Partnership), Kemper McMaster (Wildlands), Bill Abadie (Army Corps of Engineers).

Staff/Other Attendees: Renee Davis-Born (OWEB), Sue Lurie (INR), Bobby Mauger (INR), James Johnston (INR), David Hammer (U.S. Environmental Protection Agency), Vijay Kolinjivadi (World Forest Institute).

Facilitation Team: Debra Nudelman and Peter Harkema, Kearns & West

Deb Nudelman welcomed the group and reviewed the agenda. She explained that today’s meeting would be divided into three parts. The initial portion of the meeting would comprise the individual reports from each of the subgroups regarding their proposed recommendations, with a focus on all Tier 1 policy recommendations. The second portion of the meeting would allow for discussion of any “big issues,” that is overarching policy issues that raised diverse opinions during the subgroup report-outs or any topic about which members think additional discussion is needed by the full group. Deb noted that today’s discussion will set the stage for the report drafting committee to begin their work in June.

Deb then asked for comments about the meeting summary. No concerns were expressed. The only member update was a brief report by Renee Davis-Born about the 5/25/10 update provided to the joint House/Senate Environment Committee about the 513 Working Group process. Tom Byler introduced the topic of ecosystem services and markets to the committee, Renee provided information about process and status of the Working Group's efforts, then Cathy Macdonald, Chris Jarmer, and Bobby Cochran offered their perspectives both on ecosystem services markets and the Working Group process. The update was well-received and committee members largely paid close attention to the information provided.

Sally Duncan then provided a brief summary of the INR policy analyses conducted in support of the subgroups. She noted that the task had shifted from writing white papers to drafting working documents that informed specific questions raised by the subgroups. An important take-home message from their work is that the law has not yet become interested in ecosystem services markets, thus not a lot of limiting issues currently exist. The INR products include:

- Bundling Barriers – Executive Summary
- OR Third Party Certifications Draft – April 29
- SB 513 Funding Programs
- State Joint Purchasing Memo
- Uniform Commercial Code (UCC) Meeting Notes

David Primozych mentioned the ongoing work by the Counting on the Environment Coordinating Team regarding issues around co-mingling of funds. Bobby Cochran will provide the working document from this group to the 513 Project Team to ensure that the CotE's effort on this topic informs the Financing recommendations.

Damon Hess briefly updated the group about a discussion that he and Bobby Mauger (INR) had with Rick Glick and Jay Hull from Davis Wright Tremaine regarding the UCC. The attorneys advised that the lack of ecosystem services language in the UCC currently is not an impediment. Rather, Article 9 allows for general intangibles, thus a security interest could be taken in ecosystem services. Lenders do, however, want to see the presence of willing buyers and want to know that the collateral offered has value.

The subgroups begin their reports out to the full group (refer to draft recommendations matrix for more detail).

Following the subgroup discussion, the group heard briefly from Vijay Kolinjivadi, a post-doctoral fellow with the World Forest Institute. He is interviewing buyers of ecosystem services to gauge perceived opportunities for investing in environmental services and whether these advantages proved fruitful for them. He also is interested in knowing what obstacles remain based on these experiences. Vijay has contacted several Working Group members and will be following up with them for additional information.

The group then began a discussion of overarching policy issues. Several issues were discussed:

Bundling and stacking: Several members noted that the intent of the Subgroup IV work is to help address potential scientific barriers to bundling/stacking in terms of quantification. Bundling and stacking is desired by some to incentivize involvement by landowners. A question remains as to whether it is good for the ecosystem and how we measure this. The reality is that most buyers at present are interested in only one service. Yet, the challenge of paying for individual credits is that the sum of the transaction costs for each of these may be limiting. The idea with bundling is that several credits could be rolled together in a single credit that is sold at a higher price.

The Family Tree Farm case study exemplifies the issue here. The ultimate goal is to make it practical and possible for landowners to do restoration. At the July meeting, the Working Group will discuss the bundling and stacking issue in more detail, once the Subgroup IV findings are available to inform the group's deliberations.

Strategic investments: The group discussed the importance of using the spectrum of payments for ecosystem services—ranging from incentives programs to voluntary and pre-compliance markets to regulated markets—to encourage more strategic investments to achieve broad conservation goals for Oregon. Some members assert that moving towards functions-based accounting and a watershed-scale approach will result in more strategic, coordinated investment in restoration.

Sale of credits off public lands: The Working Group discussed whether governments should be able to get credit for uplift resulting from restoration work on public lands (including tribal lands) managed for profit (i.e., no preservation, wilderness areas). One member of the group expressed concern that lands with grazing leases could be taken off the table for production if there is a shift to governments being able to sell credits off public lands. Another concern raised was the issue of non-competition with private landowners. Louise Solliday noted that the DSL's fee-in-lieu program for wetland banks includes a non-competition with private landowner clause. Federal agencies currently have no such clauses related to mitigation banks. It was noted that the State sells timber off public forests regularly and does not appear to be in great competition with private landowners, thus this process could potentially be used as a model for sales of ecosystem services credits. Members underscored that private forest is at much greater risk of conversion to other land uses than public forests, and that markets should help guard against this loss. The group suggested the report and recommendations likely should include general guidance on criteria and conservation/restoration priorities for public lands. The Working Group will discuss this topic again in July.

The Group briefly discussed the approach for drafting the report and recommendations, and how recommendations might be advanced through legislation. The report drafting committee includes Tom Byler, Sally Duncan, Sara Vickerman, Damon Hess, Bobby Cochran, and Renee Davis-Born. (Following the meeting, Ruben Ochoa asked to join this group.) The group will meet on 6/16 to begin their work. They will use the recommendations matrix discussed at this meeting and revised to incorporate input provided by members to identify areas of agreement among the recommendations, areas of conflict, and potential solutions to address the challenges to development of ecosystem services markets. The committee will use the Vision Statement and Guiding Principles as potential additional filter for use by drafting committee for winnowing recommendations. They also will think about what it will take to implement the recommendations and, specifically, how it would be done (i.e., legislatively, administratively, other) and begin organizing recommendations by those categories (e.g., at what level of government should the solution be implemented?). The committee also will give thought to two topics raised during today's discussion: 1) administrative/oversight entity for goal-setting and implementation of ES markets, and 2) crediting preservation.

The July meeting will focus on the draft report content developed by the committee. At that meeting, the Working Group will review the committee's work, including those recommendations that may require legislative action. The Project Team will be updating the Sustainability Board in July about the Working Group's progress. Ultimately, the Sustainability Board will be the entity submitting the Working Group's report and recommendations to the Legislature.

In terms of the process for advancing legislation, Tom Byler indicated that although OWEB had submitted a legislative concept placeholder on behalf of the Working Group, he recommending withdrawing this for two reason: 1) the July 14th deadline for agency's having fully developed their

legislative concepts does not align with the timeline of the Wording Group and 2) recommendations that may require legislative action likely will reach well beyond only OWEB. Group members agreed that a more appropriate vehicle for possible legislation may be one or more legislators or a legislative committee.

Deb posed the question as to whether the group was comfortable signaling their general agreement about the subgroup recommendations, with the caveats of needing to incorporate the input provided during the discussion of subgroup recommendations and with the exceptions of those topics requiring additional discussion in July (i.e., bundling and stacking, sale of credits off public lands). With these stipulations in mind, the Working Group members agreed to general support of the draft recommendations and turned these over to the report drafting committee for additional consideration and refinement. At the July meeting, the group will have additional discussion regarding decision making and approval process (e.g. consensus vs. majority/minority) for the recommendations. The group agreed that the July meeting should be all-day, and will be held from 10 a.m. until 4 p.m. at the Dept. of Forestry building in Salem.