



September 10, 2010

MEMORANDUM

TO: S.B. 513 Working Group Members

FROM: Debra Nudelman and Daniel Grant, Kearns & West

SUBJECT: S.B. 513 Working Group – September 2 Meeting Action Items

Thank you for your participation and efforts at the S.B. 513 Working Group meeting held September 2, 2010 at the Oregon Department of Forestry in Salem, 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"> October 20, 2010 | Working Group | Salem, State Lands Building |
| <ul style="list-style-type: none"> September 28, 2010 | Ad Hoc Group | 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, September 8 |
| 2. <u>Updates</u> <ul style="list-style-type: none"> Share update on oak restoration in southern Oregon from Roseburg office | Jim C. | ASAP |
| 3. <u>Introduction</u> <ul style="list-style-type: none"> State purpose of report, and lay out strategies and actions over timeframe | Cathy/Drafting Committee | By cob, September 14 |
| 4. <u>Policy Proposal #1</u> <ul style="list-style-type: none"> Draft language for issue statement to reflect connecting goals and priorities for better strategic investment | Ruben, Meta/Drafting Committee | By cob, September 14 |
| 5. <u>Policy Proposal #2</u> <ul style="list-style-type: none"> Identify impediments/opportunity programs to list and edit | Bobby, Louise | By cob, September 14 |

| Action Items | Who | When |
|--|---|--|
| <ul style="list-style-type: none"> Draft and distribute alternate phrasing on Deschutes case study | Nikola | By cob, September 14 |
| 6. <u>Policy Proposal #6</u> <ul style="list-style-type: none"> Revise language to reference, but not mandate, adaptive management framework | Jim, Cathy, Bobby, Hal, Sara/Drafting Committee | By cob, September 14 |
| 7. <u>Policy Proposal #7</u> <ul style="list-style-type: none"> Provide language on how each entity approaches their work | Hal/Drafting Committee | By cob, September 14 |
| 8. <u>Policy Proposal #8</u> <ul style="list-style-type: none"> Determine how to categorize three pilot projects in implementation section Work with business community to provide language on offsets | Louise/Drafting Committee Kendra, Chris, Damon | By cob, September 14 By cob, September 27 |
| 9. <u>Policy Proposal #9</u> <ul style="list-style-type: none"> Consider language to address unregulated resources Explore value in convening an entity to help with integration/implementation | Sara/Drafting Committee Jim/Working Group | By cob, September 14 Ongoing |
| 10. <u>Report</u> <ul style="list-style-type: none"> Distribute revised report to Sustainability Board and Ad Hoc Group | Drafting Committee/OWEB | By cob, September 17 |

| Meeting Documents |
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| <p>The following documents were distributed at this meeting:</p> <ul style="list-style-type: none"> Proposed Agenda SB 513 Working Group 9.2.10 Meeting Action Items Memo – SB 513 Working Group 7.21.10 Meeting Draft Final Report 8.23.10 version – SB 513 Ecosystems Services Markets Working Group <p><i>Copies of these documents can be obtained by contacting Kearns & West</i></p> |

Flipchart Notes:

Question: How to frame the when/how of implementation?

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 [USFS]), Louise Solliday (OR Department of State Lands [DSL]), Ruben Ochoa (OR Water Resources Department), Sara Vickerman, Defenders of Wildlife, Ranei Nomura (OR Department of Environmental Quality), Jim Cathcart (OR Department of Forestry [ODF]), Tom Byler (OR Watershed Enhancement Board [OWEB]), Chris Jarmer (Oregon Forest Industries Council), Hal Gard (OR Dept. of Transportation [ODOT]), Mike Wilson (Grand Ronde Tribes), Sally Duncan (Institute for Natural Resources [INR]), Kemper McMaster (Kemper Consulting), Ken Faulk (Oregon Small Woodlands Association [OSWA]), Damon Hess (Hess Trading Company), Bobby Cochran (Willamette Partnership), Meta Loftsgaarden (Natural Resources Conservation Service), Bill Abadie (U.S. Army Corps of Engineers [USACE]),

Staff/Other Attendees: Renee Davis-Born (OWEB), Sue Lurie (INR), Vijay Kolinjivadi (World Forest Institute), Jagdish Povdel (World Forestry Institute), Tom O'Brien (Network of Oregon Watershed Councils [NOWC]), Devin Judge-Lord (Willamette Partnership), Shauna Ginger (USFWS), Emily Alcott (Bonneville Environmental Foundation)

Facilitation Team: Debra Nudelman and Daniel Grant, Kearns & West

Deb Nudelman welcomed the group and reviewed the agenda. Renee Davis-Born provided an update on the Sustainability Board and Ad Hoc Group's meetings in July. She mentioned that the Sustainability Board was interested in hearing about actionable items and pilot projects such as that proposed to be completed by the Willamette Partnership, The Freshwater Trust and OWEB, as well as the sagebrush pilot. Tom Byler echoed the importance of the Ad Hoc Group as a big-picture sounding board for the Working Group. Sara Vickerman mentioned that the Ad Hoc Group voiced their concern that the document proposes policies to be implemented before explaining the importance and reasoning behind those policies.

As part of member updates, Sara mentioned that Defenders of Wildlife received a State Conservation Innovation Grant to develop tools to quantify and create credits for three habitat types—oak woodland, bottomland hardwood forest, and sagebrush—for use in incentive programs and voluntary markets. She urged any Working Group members who are interested in helping to let her know. Ruben Ochoa recognized the importance of Bobby Cochran's presentation to the Oregon Water Resources Department. Ken Faulk mentioned oak restoration in southern Oregon, and asked Joe Zisa if he was familiar with it. Jim Cathcart added that the effort is something in which Oregon Department of Forestry staff in Klamath Falls are involved, and he will share the update on the meeting from those staff. Nikola Smith mentioned that there was a meeting held with the US Forest Service Supervisors for the Willamette and Deschutes National Forests on studies done comparing forests on the east side of the Cascades with those on the west side. Tom mentioned that he and Renee Davis-Born are in the process of setting up meetings for additional outreach with private sector interests, so that they can present information about the 513 process and recommendations and obtain feedback.

Deb then transitioned the group into the report review. Renee noted that staff had asked group members to voice overarching heartburn concerns via e-mail prior to the meeting, and noted two issues raised by Kendra regarding the voluntary market pilot project and the ecosystem services district concept. Jim voiced several overarching concerns regarding Policy Proposal #6 and #7, and added that he saw #7 potentially being more difficult to find a solution for than #6. Deb reminded the group of the context for this meeting—that, by the end, the group should deem the document acceptable. Cathy Macdonald mentioned the importance of rhetoric in setting the scale and timeline

for action and implementation—she added that the words “should,” “could,” and “encourage” provide context for a longer set of actions, and that the “soft” language may not necessarily connote an immediate sense of urgency. She said that she was trying to understand the audience that the document is targeted towards. Tom offered the word “strategic” to replace “soft,” adding that these issues will take time, but that the report is strategic in highlighting which issues require movement sooner. He said that the document should set the stage for a conversation during the next legislative session and establish a blueprint. Meta proposed that the document should state Policy Proposals and recommendations clearly, and Mike echoed this.

Deb and Renee then asked members of the group to voice specific heartburn issues for each Policy Proposal. The heartburn issues are as follows:

Section II: Introduction: Chris Jarmer proposed that the effectiveness of natural infrastructure at fixing problems such as stream temperature not be assumed, and that the language should be adjusted accordingly. He added that the mention of job creation should be tempered because restoration related jobs may be short-term in nature. Hal Gard acknowledged the need to be realistic about not having all the answers regarding ecosystem services and markets, but added that the group should encourage incremental progress and that it needs to start somewhere. Cathy mentioned that she saw a lot of improvement from previous versions of the document, but added that there remains language that connotes policy shifts that are too abrupt. Ranei Nomura asked whether there will be a paragraph about the purpose of the report, and mentioned that there are things that ODEQ and other agencies may be able to do internally, without the need for the 513 report. Louise mentioned that strategic decisions about language used in the policy proposals are important because if these have fiscal impacts, they may not be looked upon well during the next legislative session. Jim added that he sees the report as informational to clarify and call for more investigative work later. Sara moved to not include that the report is informational. Cathy proposed that there be a Statement of Purpose of the report included in the introduction to lay out a timeline of future strategies and actions.

Section III: The Senate Bill 513 Implementation Process: Meta recommended separating out the vision and guiding principles as a stand-alone section, and the group agreed.

Section IV: Policy Proposals:

- Policy Proposal #1, Facilitate coordinated investment: Hal proposed that the document include a more overt statement that by investing in credits, they will be accepted by people who will be granting the mitigation. He added that he would like more assurance that those who invest in credits will get the regulatory outcome that they need. Louise proposed that this section might not be the right one for such a suggestion, and that it should perhaps go into Policy Proposal #2. Mike mentioned the need to reconcile conservation strategies within the Proposal, and proposed the language, “The state should implement plans...” Meta also offered to provide language to Renee. Cathy mentioned the need for an envoy to address new challenges. Jim said that if the Proposal is going to list plans, the strategy needs to reference the Forestry Program for Oregon. He was hesitant to embrace the notion of reconciling conservation strategies, and he mentioned that the issue seems to be conflicting agency mandates. Cathy agreed with this. Ruben spoke on implementation. He said that strategically, it is not a good idea for a state plan to be used as an umbrella for other plans. He further added that the wording needs further clarification and revision to be deemed acceptable, and offered to provide language. Louise voiced concern that the issue statement needed revision in that it should more clearly state that it wants to be more strategic with investments in ecosystem services and better connect goals and

priorities with the intent of more strategic investment. Nikola asked whether there has been any request to coordinate conservation priorities on federal lands.

- Policy Proposal #2, Statutory and administrative impediments to employing ecosystem market approaches: Cathy mentioned the need to revise the text for the rationale, and Sara echoed this. Ranei asked why the DEQ state revolving loan program the only program listed as the one that can change. She mentioned that she would like space to explain a bit more, or to offer an alternative example. Bobby proposed that the state revolving loan fund could frame logistics moving forward, but added that references to other examples should be added. Cathy echoed this, saying that there could be more programs listed, and understands how it could be perceived that other examples are positive while the DEQ one is negative. Bobby and Louise agreed to identify impediments/opportunity programs to list and edit. Joe mentioned that Working Group members should not feel the need defend or explain specific programs because the spirit of the proposal would get lost if this occurs. Bill added that there are some semantics that confuse the public regarding in-lieu fee programs. Sara mentioned the potential to add the ODFW mitigation policy as an opportunity for refinement. Cathy proposed that the group clarify that it is asking agencies to do a retrospective analysis of policies that could be revised to incorporated ecosystem services concepts, given that many natural resource policies were developed in previous decades, prior to the emergence of such concepts. Jim observed that the issue summary needs to be revised and clarified. Joe added that each example needs to have limitations and opportunities associated with it. Nikola offered to send an alternate phrase on the Deschutes case study. Tom mentioned the need to connect with the Public Lands Advisory Committee.
- Policy Proposal #3, Encourage partnerships to develop tools for approving ecosystem credits and payments: No heartburn issues were raised.
- Policy Proposal #4, Provide authority and direction to State agencies to purchase credits, and invest in ecological outcomes: Jim mentioned some heartburn with the third paragraph of the rationale, and questioned if it is necessary. Others noted that the fourth paragraph may be more logically placed in the implementation section. Cathy mentioned that agencies already are investing in ecological outcomes and, in some cases, purchasing credits already. Kendra suggested a revision to “further invest.”
- Policy Proposal #5, Allow state agencies to sell credits under limited circumstances: Jim raised the need to assure the private landowner community, and advised removing #3 and #4 under “Rationale.”
- Policy Proposal #6, Encourage state and local governments to cost and compare natural infrastructure as a preferred alternative to hard engineering for new development projects: Jim mentioned effectiveness and evaluation monitoring when addressing natural infrastructure. Cathy mentioned that another Policy Proposal could be to keep investing in research on adaptive management. Hal mentioned that ODOT could not support a recommendation to monitor natural infrastructure at the project level. Hal proposed a language revision, substituting “effectiveness research” for “monitoring.” Tom proposed referencing an adaptive management framework, but not prescribing or mandating project-level monitoring. Bobby added that it would have to require effectiveness monitoring or research at a programmatic level. Cathy proposed a comprehensive, strategic approach to monitoring design, and urged spending less on project-level monitoring, but doing effectiveness research in a more comprehensive, strategic way. Sara said that the language should reflect cumulative effects, not project effects.

Jim, Cathy, Bobby, Hal, and Sara agreed to provide input to the drafting team on this. Cathy proposed aligning Policy Proposal language with implementation language.

- Policy Proposal #7, Encourage state and local governments to consider and quantify impacts to ecosystem services at the watershed scale: Ruben voiced concern over the issue statement, and asked that the second sentence regarding land use and water laws be removed because it meets strong resistance within the Oregon Water Resources Department. Louise said that she prefers the sentence stays, but that it include a specific example (e.g., early planning decisions to site industrial land uses in wetland areas, which now are creating permitting challenges). Ranei agreed with this idea. Chris asked what “land use” means, and Jim added that there is more focus on land use zoning. Tom noted that the focus is on land use and associated planning and proposed a revision to the Policy Proposal statement wording, adding, “within their jurisdictions” to the end. Jim added that this recommendation reminded him of a state EIS. Chris voiced the benefit that would occur from having a developer to be present during this discussion. Hal offered to add the language on how each entity approaches their work. He also asked the group to consider ecological values, not just economic expediency. Damon Hess asked how this would help a developer, and added that this would give a developer certainty about what their costs would be. A number of members of the group voiced that the Policy Proposal needs revision before they deem it acceptable.
- Policy Proposal #8, Provide a testing ground and stimulate demand for payments for ecosystem services through pilot projects, proofs of concept, and scoping efforts: Renee indicated that the Sustainability Board and Ad Hoc Group liked the idea of testing concepts through pilots. Louise mentioned that the Proposal needs an “implementation” section. Ranei asked if the Sustainability Board is supposed to bless these pilots. The group noted that we may want to clarify if any of these are already being implemented. Kendra proposed that the language of pilot #3 be softened, and agreed to provide language. She suggested that branding is acceptable, but it should be done only through organizations that are set up to do it. Chris added that such a suggestion would be received skeptically by the business community unless it was clear was benefit it would provide to them. Damon added that the drivers are already out there in the form of increasing requirements for ecological accounting, and that more drivers are not necessary. He proposed that businesses lead the Working Group on how to proceed with this idea. Sara mentioned that those in the Working Group who would like to pursue this idea should meet with people in the business community. She also mentioned that the notion of having a voluntary market for offsets only is constraining, and said it should include opportunities for additional investment to demonstrate environmental stewardship. Chris said that he disagrees with where the process to engage the business community is starting. He said that Oregon needs to determine how the business community will succeed in a tangible way. He said that his issue is not with the goal of this proposal, but rather how the proposal is framed. Kendra, Chris, and Damon agreed to provide advice to the drafting team on the business community’s role. Tom and Renee will be conducting outreach meetings with business interests, including the Small Woodlands Association, select Ad Hoc Group members, and agriculture and forestry representatives, in the coming weeks and will be discussing the 513 process and recommendations; these meetings can be used to obtain input about pilot project ideas and degree of interest from the business community in these. Louise mentioned that the role of government should be as a convener, not a decision-maker. She added that the group is convening the business community to identify what they need.
- Policy Proposal #9, Further development of ecosystem services market approaches: Kendra voiced the need to better understand motivation of ecosystem services districts. Sara mentioned that special districts have existed for a long time. CleanWater Services is close to being an

ecosystem service district, and has broader authority to act via restoration. She proposed exploring the notion of authorizing ecosystem service districts. Sara added that this discussion would leave room to move forward in a more holistic way, which keeps Oregon on the leading edge of ecosystem services market development by having a venue to discuss and potentially implement novel approaches such as this. She suggested articulating this as an enabler of partnerships rather than the formation of entirely new districts. Kendra said that the Policy Proposal should remain general. Mike mentioned that Rationale #3: “Protection of unregulated ecosystem services” sounds like taxes on unregulated resources. Sara proposed that the group consider language to address unregulated resources, but keep it fairly generic. Jim proposed that the next group be structured such natural resource Boards and Commissions can be encouraged to act in an integrated way and that formally involves these groups in periodic check-ins/approvals/etc. Sara agreed to update the Sustainability Board on the process of proposals, and would inquire about the role of the Governor’s office to serve in this capacity. She mentioned that integration could occur with legislative and/or Governor’s support. Tom added that this is a launching point for work that will the next biennium. Deb proposed adding a sixth policy issue under “Rationale:” “Explore value in convening an entity to help with integration/implementation.” Jim proposed that the group consider a common charter for the next group by all the boards and commissioners for implementation. Jim will review this section’s new edits.

The group agreed that the next revised version of the report will be completed and sent to the Sustainability Board and Ad Hoc Group by September 17. In early October, revisions from the Sustainability Board and Ad Hoc Group will be incorporated into the report in advance of the Working Group’s meeting on October 20.

The meeting adjourned at 3:00 pm.

This summary respectfully submitted by Kearns & West.