Comments on the *<u>Elliott State Research Forest</u>* proposal

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Summary

The ESRF proposal is built on the following key assumptions:

- The state legislature will provide the financing to decouple the ESF from the Common School Fund in a way that would survive legal challenge from CSF beneficiaries;

- The $100 million in bond authorization previously approved is a legally sufficient down payment on that decoupling strategy;

- The total amount needed to decouple is $220.8 million;

- The state legislature or some other entity will provide $24.8 million in start-up funds;

- The ESRF will be a financially self-sustaining entity through annual timber harvests of 16.6 MMBF and the sale of carbon credits;

- If the ESRF is not able to be self-sustaining, OSU trustees will create a firewall to protect the university from incurring losses;

- The state of Oregon will successfully negotiate a multi-species HCP with the federal government that will allow OSU to harvest an annual average of 16.6 MMBF of timber; and

- There is a market demand by forestland managers, academics, and policy-makers for the research outputs promised by the ESRF.

It's unlikely that any of these assumptions are valid, therefore this proposal has little chance of ever being implemented. In the meantime, the State Land Board is breaching its fiduciary obligations to CSF beneficiaries, and remains vulnerable to a lawsuit on the scale of the successful litigation brought by the Forest Trust Counties on similar grounds. Given this vulnerability, the Board should terminate any further work on the ESRF, and prepare to sell the Elliott State Forest in a public auction.

Discussion

This section explores each of the points made above in greater detail.

Decoupling: No one on the SLB or at OSU has a vote in the legislature. Therefore it's a mistake to assume that a decoupling strategy can work. Indeed, that was the reason why the Board agreed to sell the ESF back in 2015 – it was the only decision that the Board itself controlled. Until such time as a funding package is approved by the legislature and signed into law by the Governor, no one should assume that funding will be available.

Moreover, the assumption that tax-supported funding of $121 million will suffice to decouple is wrong, on both counts. Any financing that relies on taxing CSF beneficiaries is a breach of fiduciary trust by lawmakers. To put the matter plainly, the $100 million in bond funding previously approved by the legislature requires $145.9 million in debt service over the life of the bonds. The debt service in the current biennium is $15.59 million. Those payments are being made by Oregon taxpayers, and a large subset of that group include CSF beneficiaries – parents of K-12 students, school employees, and school board members.

In essence, the SLB has given money to the beneficiaries in one pocket, but is extracting an identical amount from another pocket. That is the opposite of "fiduciary trust."

While SLB members may be rationalizing this on the assumption that it provides an arbitrage opportunity to borrow money at low rates, and then make a profit through CSF investments, that is purely speculative. Those investments could also lose money. A prudent person would certainly not choose this option when a private party has previously made a cash offer of $220.8 million to take the entire ESF liability off the Board's hands.

In addition, at the same time the Board rejected the cash offer, it dissolved the ESF Sale Protocol that had resulted in the $220.8 million valuation. That valuation was deliberately depressed by the Board when it designed the protocol with four key sideboards. Previous valuations had been much higher, including the 2006 estimate of $344-489 million stated in the DSL Asset Management Plan, and the estimate of $850 million stated in DSL's first AMP in 1995.

The only way to determine the true value of the ESF is to place it up for sale in a global auction, with no constraints. Since the Board has already rejected that course of action, while also reducing timber harvests levels to zero, there is no legally viable path forward. As the ESF continues to drain money from the CSF, it's only a matter of time until beneficiaries sue the Board.

Start-up funding: The ESRF concept requires estimated start-up funding of $24.8 million. There is no indication of who will provide this. The legislature cannot provide it because appropriating tax revenues would inevitably harm CSF beneficiaries, which is illegal. It will also be difficult for OSU to provide the money because any fundraising effort risks diverting money from other OSU programs, which OSU has promised to protect. This concept paper does not provide any guidance that resolves this problem.

The ESRF will be financially self-sustaining: The pro forma offered in this proposal is based on two anticipated streams of revenue: timber sales averaging 16.6 MMBF annually; and carbon credit sales into the California cap-and-trade market. Neither of these assumptions holds up to scrutiny.

Over the past 30 years, preservation groups litigating under the ESA have reduced the annual timber harvest on the ESF to zero. The last time harvests exceeded 16.6 MMBF was in 2012, when the harvest was 28.54. During the period of 2013-2017, the average annual harvest was 7.09 MMBF. The strategy of ESA litigants has always been to halt timber cutting in the ESF, and they have succeeded. There is no reason to think that they will simply give back those gains.

In fact, shortly after the Board rejected the Lone Rock offer and embraced the ESRF concept as a substitute, a spokesman for Cascadia Wildlands told the Eugene Register-Guard, “If logging old public forests is going to be part of this experimental forest, we oppose it.”

Cascadia Wildlands has consistently out-maneuvered the Land Board both in the court of law and the court of public opinion. That will continue if the ESRF proposal relies on timber harvesting as a source of financing. Using timber revenue to finance a social good (in this case, research) has exactly the same built-in conflict of interest that the CSF has in relying on Trust Lands as a revenue source.

The second assumed source of revenue, carbon credits, is even more speculative. The pro forma is not based on a detailed analysis of ESF timber stands. As stated in the narrative, "Results are estimates. Actual credits available for registration require a carbon inventory, review of baseline assumptions by regulatory agencies and approval by California ARB.”

The ARB has approved the use of specific biomass equations generated by the US Forest Service Forest Inventory and Analysis (FIA) National Program to estimate biomass. All approved projects are required to use them. The equations differ depending on region as well as by tree type. These equations were not used in the draft research proposal in calculating biomass (which is then used to calculate carbon), nor are they referenced.

Instead, for biomass the proposal cites a 2003 national study by Jenkins et al. However, this is a national meta-analysis on hundreds of other equations and is not recommended for site specific use. Authors of the study state:

- There is a “...clear variability in tree C allocation from site to site and from study to study...This variability makes it difficult to estimate tree biomass accurately even when a site-specific regression equation is used.”

- “We found that many of the published equations were unusable for large-scale application because of inconsistencies in methodology and definitions, incomplete reporting of methods, lack of access to original data, and sampling from narrow segments of the population of trees in the United States. Our equations may be applied for large-scale analyses of biomass or carbon stocks and trends, but should be used cautiously at very small scales where local equations may be more appropriate."

Another substantial barrier is the concept of “additionality.” As noted in the ESRF proposal, “Fundamentally, a landowner must sequester more carbon than would be sequestered under a business-as-usual approach.”

Since 2012, the “business-as-usual” approach on the ESF has been to harvest an annual average of 7 MMBF of timber. Since 2017, that has dropped to zero. Therefore, the 16.6 MMBF proposed in this concept paper is ***worse*** than the baseline, from the perspective of the California ARB. Why would California regulators spend taxpayer dollars in Oregon for the ESRF proposal when California residents are already getting a better carbon deal for free?

Moreover, any agreement with California would require that Oregon monitor and maintain tree stands for 100 years. Given the erratic behavior of the SLB over just the past decade – including the bizarre rejection of a $220.8 million cash offer – it’s unlikely that California regulators would trust the Oregon SLB to hold up its end of the contract for 100 years.

Finally, the concept paper provides two scenarios for obtaining carbon credit financing, based on the type of ownership. As explained in the concept paper, “The private protocol yields harvest levels that result in an average stocking equal to the common practice metric. The public protocol is so restrictive that the carbon offsets generated are about one fifth of the private protocol. The main reason the public protocol generates fewer credits than the private protocol is because ARB’s baseline requirements for the two protocols are different.”

The high-bound assumption of carbon credit revenue assumes that the “OSU ownership structure allows for use of private protocol.” Why is this being assumed? The concept paper is replete with statements that the ESF will remain a public asset with public governance. All of the political factors that have resulted in the ESF becoming a net liability to school beneficiaries over the past decade will still apply. There is no reason to create a high-bound assumption of revenue based on private protocol when the ESF is not a private asset.

<u>OSU Trustees will create a financial firewall to protect the university:</u> The ESRF narrative states, “As part of this structure, we anticipate that the OSU Board of Trustees will ensure OSU does not redirect university resources to cover shortcomings in ESRF revenue.”

This statement of intent is designed to assure students, faculty and donors of OSU that the ESRF will not become a financial albatross. Unfortunately, history suggests that this is a false hope. The ESF already has the strongest possible protection for K-12 beneficiaries – a Constitutional mandate for the SLB to maximize net revenue over the long term – yet Board mismanagement over the past 25 years has turned the forest into a CSF liability.

Given that the Constitutional mandate to do one thing is not being met, how does OSU expect to be protected from losses when the new mission statement described in this 107-page document includes multiple goals, many of which are conflicting?

This problem is referenced on page 10 of the proposal, in the following sentence: "We also acknowledge that not all commitments can be honored simultaneously in the same spaces, which will require a balanced and sustainable approach to forest research and management."

The Land Board itself has been required by the Oregon Constitution to manage the ESF in a balanced and sustainable way, in pursuit of a single over-arching objective, and it has failed miserably. The most likely scenario going forward is that if the ESRF ever becomes reality, it will suffer immediate operating losses, and after years of procrastination, ownership will revert again to the SLB. That is not a long-term resolution; it simply prolongs the agony.

DSL will successfully negotiate a multi-species HCP with the federal government that will allow the ESRF to move forward: According to the ESRF narrative, DSL initiated the HCP process in 2018, contracting with IFC, Inc. Drafting the HCP is underway, with a draft "anticipated to be available for public review in early 2021 prior to submission to the federal agencies."

Pursuit of the HCP is the triumph of hope over experience. This was noted by former Gov. Ted Kulongoski at his last SLB meeting. In a lengthy soliloquy at the end of the meeting, he reminded the audience, "We spent 10 years and $3 million trying to get an HCP, and we wound up with nothing."

Eventually the SLB, including Gov. Kate Brown, reached the sober conclusion that there was no hope of negotiating an HCP that would allow the SLB to meet its constitutional duty to maximize net timber revenue over the long term. The desire to establish an ESRF with annual timber harvesting at levels more than 100% higher than the average achieved since 2013 is what football fans might refer to as a "Hail Mary" pass. Those plays sometimes succeed, but no team counts on them for points.

There is a compelling need for the proposed ESRF research among academics, forestland managers, and public policy-makers. When State Treasurer Tobias Read hastily proposed to transfer ownership of the ESF to OSU in early 2017, in order to justify the reversal of his prior vote to sell the forest to the Lone Rock consortium, he and his collaborators argued that the world of science was eager to carry out the envisioned research.

In fact, the OSU representatives who testified before the Board that day made it clear that they had other financial requests pending with the legislative Ways and Means Committee, all of which were more important. Conducting long-term, large-scale research as envisioned in this proposal was never a priority for the university. Under questioning, the OSU spokesmen stated that they would be willing to accept ownership of the forest, as long as it was given to them and operational expenses would not impinge on the business model of the university. Those sideboards remain to this day.

It's evident that this is a shotgun wedding between OSU and the SLB, and that the "fundamental aspiration" for the ESRF is not something the academic community has been pining for. This is noted in the peer review section by Dr. Jerry Franklin, who states:

> I find the concept of conducting an experiment that essentially involves the entire property at the outset of OSU's stewardship to be inappropriate… I don't consider an experiment about how to divide forest landscapes at any scale among production and conservation goals to be a high priority in our current world...There are so many important things to be done and this is not one of them.

The fact is, forest management practices are determined by ownership class, not science. Private landowners are motivated by fundamental business principles and don't need any of the research being proposed herein. Public sector forestland owners are constrained by statutory requirements and litigation outcomes, especially related to the ESA.

Since timber harvest on the ESF has been reduced to zero, exactly as planned by Cascadia Wildlands and other ESA litigants, there is no need for the kind of research envisioned with this proposal. No matter how "pure" the research may prove to be, timber management on the ESF will always be driven by law and politics, as long as it remains in public ownership.