



Oregon

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TO: Joint Committee on Ways and Means: Subcommittee on Natural Resources

FROM: Mary Abrams, Director, Department of State Lands

RE: Follow-up to Questions During March 10 Hearing

Co-chair Devlin, Co-chair Rayfield and subcommittee members:

Below is information related to questions we could not answer in the March 10 Department of State Lands budget hearing. Please let me know if I might provide additional detail.

Was Common School Fund trust acreage given to Oregon before or after the Homestead Act?

The Homestead Act was passed in 1862 – three years after statehood – however, there were other significant legislation at the Federal and State level regarding homesteading in Oregon including the Donation Land Act of 1850. These earlier laws allowed settlers (and land speculators) to claim parts or all of some of the 16th and 36th sections, making them unavailable for the State of Oregon's constitutional grant in 1859. The general idea was to replace any previously claimed lands with *in lieu* lands that would be selected by the state from the remaining public domain.

The real challenge resulting in significant loss of the original constitutional land grant was the disorganized, lax, and in some cases illegal disposal of constitutional lands from statehood through the end of the 19th century. In 1878, a legislative investigation found that the fund had “been depleted about one-half by criminal carelessness and willful neglect of duty...”

Note: it was an accepted premise at the time of statehood for public lands (both federal and state-owned) to be sold rather than managed for revenue. This was during a time when both federal and state governments were selling vast tracts of public land to encourage settlement of new areas. So the sale of the constitutional grant lands was a normal approach. That said, the management of the sales and the accounting for the resulting revenue were apparently particularly sloppy.

(See citations on Common School Fund and land fraud at the end of this memo)

Has the Department of State Lands conducted economic impact analyses of multiplier effects from agricultural conversions?

We have not done a “multiplier” analysis of agricultural development on rangelands. It is interesting to note, and a good reason to look into this further, that a rural county commissioner recently remarked that one job in rural Oregon is equal to 250-300 in the Portland metropolitan area.

Has the Department ever thought about having rangeland lessees pay for everything for agricultural development on rangelands – i.e., why does the state have to make investments if the lessee is going to benefit economically?

Previously the Department has allowed or required the lessee to pay for all of the improvements, and we accepted a lower lease fee. However, these experiences have proven some risks with this approach. A couple of examples include:

- 1) A lessee goes bankrupt, leaving legal and ownership questions about water rights held in another party’s name as well as ownership and use rights for the infrastructure (pipelines, pump stations, electrical).
- 2) A lessee develops an irrigation system on state-owned land with the water rights in their name and the wells on adjacent private land, with no state right-of-way to cross the private land. That landowner could cut access, and force a legal challenge to access the wells to serve water rights on state-owned land.

In both cases the Department might prevail eventually in court but it is a legal risk that can be avoided through the upfront investment sharing approach. Even without legal challenges, owning the fixed infrastructure allows the Department to more easily transfer from one lessee to another without the controversy of sorting out ownership and depreciated value of lessee investments.

Underground improvements such as wells and electrical service are considered capital improvement fixtures, and cannot be removed. Irrigation equipment such as pumps and above-ground improvements can be readily removed and replaced, and are subject to a useful lifespan of 20 to 30 years.

This shared investment approach is similar to the Department’s approach in other rangeland capital improvements (fencing, watering areas, etc) which are shared approximately 50/50 with lessees (the state commonly purchasing materials and the lessee providing equipment and labor). In the agricultural development process, the costs are also approximately 50/50 between the below-ground “fixtures” (state investment), and the process of preparing the ground for planting and buying and installing the irrigation equipment (lessee responsibility)..

Select Citations on Common School Fund and Land Fraud – Early Oregon History

Hawk, N. R. 1949. A History of the Irreducible School Fund in Oregon. M.S. Thesis. University of Oregon. 210p.

Messing J. 1966. Public Lands, Politics, and Progressives: The Oregon Land Fraud Trials. 1903-1910. Pacific Historical Review, Vol. 35(1):35-66.

Puter, S.A.D. and H. Stevens. 1908. Looters of the Public Domain. Portland Publishing House, Portland, OR.

Souder, J.A. and S.K. Fairfax. 1996. State Trust Lands. University Press of Kansas. 370 p.

Vaughn, C.C. ???. A History of the U.S. General Land Office. Bureau of Land Management. <http://www.blm.gov/or/landsrealty/glo200/files/glo-book.pdf>