

Analysis

Item 47: Department of State Lands

Portland Harbor Cleanup Fund

Analyst: Matt Stayner

Request: Increase the Other Funds expenditure limitation for the Department of State Lands from the Portland Harbor Cleanup Fund by \$6,247,691 for continued cleanup efforts of the Portland Harbor Superfund Site.

Analysis: The Department of State Lands (DSL) is the conduit for managing a two-front strategy regarding the state's potential liability in the Portland Harbor Superfund site as directed by the Governor's Natural Resources Policy Office. The first of these is a legal defense that limits the state's liability for the cost of the Portland harbor clean-up. The legal defense work primarily includes Attorney General costs and professional services contract work that supports the state's legal assertions. Since 2011, the DSL budget has included \$25.75 million for this work.

The second front is a project-centric approach to remedial design and cleanup efforts that serve to minimize the total potential costs to the state, and to encourage other potentially responsible parties to begin cleanup work at the site. The Portland Harbor Cleanup Fund established by SB 5530 (2017) supports the coordination of, and participation in, any contracts or agreements relating to or arising out of the Portland Harbor Superfund Site that may include investigation of baseline conditions, investigation of key sediment sites, potential infrastructure needs related to contaminated sediments, development and administration of a comprehensive data management system for the site, satisfaction of obligations under any settlement or administrative order, work required by the U.S. Environmental Protection Agency (EPA) in connection with the site, and other activities directly related to minimizing the state's liability for costs related to the Portland Harbor Superfund Site.

The agency's current biennium budget includes an Other Funds expenditure limitation from the Portland Harbor Cleanup Fund for projects that had begun in the previous biennium. These included:

- Feasibility Study for a possible landfill in St. Helens for Portland Harbor contaminated sediments; cost share of \$500,000.
- Pre-remedial design investigation for field studies and sampling necessary to support remedial design at Willamette Cove location; cost share of \$400,000.
- Data management plan and institutional controls assurance and implementation plan development; cost share of \$600,000.
- Two-year support for Multnomah County Health Department's fish advisory community outreach and education program; \$115,000.

Some of this work was completed in the prior biennium and some of the work is ongoing. From this point the focus of the project work has shifted to remedial design. The Department, in partnership with the Oregon Department of Transportation and the City of Portland negotiated a settlement with the EPA limiting the state's liability for remedial design work. As a part of that settlement, the state agreed to provide up to \$12.0 million in funding to pay a portion of the per-acre cost for remedial design work by potentially responsible parties who volunteered to fund that work prior to the EPA issuing an administrative order for the work to be completed. The City of Portland provided a

matching funding commitment under the same terms. An increase in expenditure limitation of \$6.0 million was provided to DSL from the Portland Harbor Cleanup Fund in HB 5050 (2019) to facilitate the transfer of a portion of that funding to a joint trust fund held by the state and the City of Portland to fulfill the joint obligations to the EPA under the negotiated agreement. Seventeen potentially responsible parties participated in the funding opportunity provided by the city and state on seven different sites within the superfund area, limiting the state's liability exposure for remedial design work on those sites to \$5.61 million.

Of the requested additional \$6.25 million Other Funds expenditure limitation, \$4.8 million is for three remedial design projects outside of the areas that were funded under the joint city/state agreement. Two of these projects propose a cost share participation that is proportionally equal to the state's obligation under the joint city/state agreement. The third assumes a 25% liability for the total remedial design cost. The completion of these agreements will provide virtually complete coverage for remedial design throughout the superfund site. The remaining \$1.45 million of requested limitation will be used for informational management plans, data management plans, public outreach, and technical support contracts.

Legislative Fiscal Office Recommendation: The Legislative Fiscal Office recommends that the Emergency Board increase the Other Funds expenditure limitation for the Department of State Lands from the Portland Harbor Cleanup Fund by \$6,247,691 for continued cleanup efforts of the Portland Harbor Superfund Site.

Request: Increase Other Funds expenditure limitation by \$6,247,691 for the continued cleanup efforts of the Portland Harbor Superfund Site.

Recommendation: Approve the request.

Discussion: The Environmental Protection Agency (EPA) has identified the Department of State Lands (DSL) as a Potentially Responsible Party (PRP) for contamination in the Portland Harbor Superfund Site, a 10-mile stretch of the lower Willamette River area the EPA has listed under the federal Superfund law.

There are over 200 responsible parties identified, both public and private, that may be liable for a share of the costs related to the investigation and cleanup of the site. In response to DSL being named one of the PRP's, the Portland Harbor Cleanup Fund was established to mitigate risk, uncertainty, and financial liability.

In January 2019, EPA issued a Record of Decision for the final cleanup remedy of Portland Harbor with estimated costs of \$1.05 billion and an estimated completion timeline of 13 years. House Bill 5050 (2019) increased Other Funds expenditure limitation by \$6.0 million for DSL from the Portland Harbor Cleanup Fund. The Department has expended nearly all of the \$6.0 million and is requesting additional expenditure limitation to continue clean-up efforts. This work includes consulting dollars and remedial design work at the Willamette Cove, Swan Island Basin, and Cathedral Park cleanup areas.

Legal Reference: Increase Other Funds expenditure limitation established by chapter 454, section 2, Oregon Laws 2019, for the Department of State Lands, Common School Fund, by \$6,247,691, for the 2019-21 biennium.



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregon.gov/dsl

August 27, 2020

State Land Board

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Tina Kotek, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Kate Brown
Governor

Bev Clarno
Secretary of State

Tobias Read
State Treasurer

Dear Co-Chairs:

Nature of the Request

The Department of State Lands (Department) respectfully requests an increase of \$6,247,691 Other Funds expenditure limitation for continued cleanup efforts of the Portland Harbor Superfund Site.

Agency Action

The Department has been identified by the United States Environmental Protection Agency (EPA) as a Potentially Responsible Party (PRP) for contamination in the Portland Harbor Superfund Site, a ten-mile stretch of the lower Willamette River area that the EPA has listed under the federal Superfund law (CERCLA). The Department is one of over 200 parties, private companies, and public entities that may be found liable for a share of the costs related to the investigation and cleanup of the site.

The Portland Harbor Cleanup Fund was established to mitigate risk, uncertainty, and financial liability, as the Department is identified as a PRP of the Portland Harbor Superfund site. In January 2019, EPA issued a Record of Decision for the final cleanup remedy of Portland Harbor with estimated costs of \$1.05 billion and an estimated completion timeline of 13 years. The Department seeks to minimize risks, uncertainties, and financial liabilities over the 2019-21 biennium by entering various settlement agreement with EPA

These agreements include the Cooperative Remedial Design Funding Agreement with the City of Portland and Environmental Protection Agency (EPA). The Department has satisfied its obligation under this agreement. Additional expenditure limitation being requested is for work that continues to move forward for the Portland Harbor Superfund Site between the State,

property owners, and EPA. This work includes consulting dollars and remedial design work at the Willamette Cove, Swan Island Basin, and Cathedral Park cleanup areas.

Action Requested

Approve an increase in Other Funds expenditure limitation of \$6,247,691 in the 2019-21 biennium.

Legislation Affected

Chapter 454, Section 2, Oregon Laws 2019

Thank you for your interest and assistance. If you have any questions, please contact Jean Straight at (503)986-5227.

Sincerely,

A handwritten signature in black ink, appearing to read "Vicki L. Walker".

Vicki L. Walker

Director

Cc: Jason Miner, Office of the Governor
Camron Smith, Office of the Secretary of State
Ryan Mann, State Treasurer
Jim McKenna, Office of the Governor
Linnea Wittekind, DAS Chief Financial Office
Matt Stayner, Legislative Fiscal Office
Jean Straight, Deputy Director Administration, DSL
Bill Ryan, Deputy Director Operations, DSL