

# **Western States Land Commissioner's Association Winter 2006 Conference**

January 8-12, 2006  
Notes for CLASS

## **OPENING MEETING AND ROLL CALL OF THE STATES**

### **Welcome**

Doug Sutherland, Commissioner of Public Lands for the Department of Natural Resources in Washington State welcomed the conference participants.

### **President's Address**

Kevin Carter, President of WSLCA welcomed the participants and provided an update of WSLCA activities. Kevin pointed out the importance of the organization and the organization's ongoing communication with policy makers and federal departments. A bill is expected to be introduced by Representative Wilden of Oregon and Senator Craig of Idaho, the intent of which will facilitate land exchanges with the Federal Government for state land offices.

### **Washington Update**

Elinor Schwartz provided an update about activities in Washington that impact land management. The changes resulting from the resignation of Tom DeLay will change the make-up of some committees and will have a rippling effect. There is increasing attention to lobby reform and legislative ethics that may result in greater difficulty to lobby and increased disclosure requirements. Public interest lobbying is what land managers are all involved in. This important activity provides information, shapes policy involving the public domain and attempts to prevent unintended consequences.

Elinor offered an invitation to attend the March Land Commissioner's Conference in Washington D.C.

She expressed concern over the proposed Hard Rock Mining Law, sponsored by Rep. Gibbons and Sen. Craig.

Senator Chaffey has stalled the proposed endangered species amendments and another bill dealing with endangered species has just been introduced by legislators not on the committee.

Expanded off-shore drilling is being considered by the Energy Committee.

The 2007 Farm bill includes some highly controversial conservation issues.

A task force studying NEPA has recommended some changes that include better training, monitoring and enforcement.

The military base closure package has been approved.

Conservation easements and land trusts have been under attack in the Senate but a well organized and effective “grass-roots” effort pushed back. The result will likely be more focused oversight by the IRS instead of legislative action.

Increased Renewable energy tax proposals were considered but not adopted.

The Congress is discussing issues a program of increased sale of federal lands and with it issues have been raised about the suitability of land to be considered for sale.

Elinor made the following recommendations for the conference participants to consider.

- The surface committee will receive summary copies of the proposed Threatened and Endangered Species Act for review by the committee.
- Contact the state AGs to be added to a brief dealing with wetlands.
- Consider sending a letter to the appropriate congressional committees concerning the proposed changes to NEPA. Mitigation, reclamation and monitoring are important pieces to consider. Current law encourages but does not require state involvement in any planning.

It was clarified by a representative of the BLM that the BLM is already involving states as part of their planning via BLM rules.

### **Roll Call of the States**

Dave Hebertson, secretary of WSLCA conducted the roll-call. The prize for guessing the roll-call order was introduced to the group. It was a cricket. A cricket on the hearth is a symbol of good luck.

### **Washington – Doug Sutherland**

The Washington Forest Sustainable Harvest Plan, resulting from a multi-year study was just begun when halted due to a lawsuit filed by a Washington environmental group. The court ruled in favor of the environmental groups in three of five counts, however, the group did not want to go through an appeal and have offered to settle. That action is still under discussion. The anticipated fire season in Washington did not materialize. Sometimes the Department of Natural Resources requests as much as 30 million to cover the fire cost in a year but this year the request will be one million. Clean-up work of Puget Sound continues. There are some “dead zones” created by loss of oxygen as a result of

increasing population and increasing international trade that introduces noxious conditions in the Sound.

**California** – Barbara Dugal

Bob Lynch has retired. Michael Valentine is now the chief of the land management section of the Department of Natural Resources. The department has been working on a gas liquefaction facility but first must resolve some environmental issues before moving forward.

**Oregon** – Ann Hanus

The Oregon Legislative Session ended in August where a package was approved that will allow the land office to better manage the trust lands. Work continues to complete the remaining in-lieu land selections. Selection of about 1,100 acres will be completed very soon with 2,100 acres remaining that may take another five years. The Elliot State Forest Management Plan that includes a forest habitat conservation plan is nearing completion but the land office is waiting for word on listing of the Coho Salmon and Marbled Marlette before it can be completed. A petition has been filed on an Oregon Land Board ruling dealing with navigable waterways and who owns the beds and banks of the waterways. The ruling could have impact on other states.

**Texas** – Jerry Patterson

The land office has signed the first off-shore wind farm lease in the United States. It will support a 150 megawatt facility with 50 towers. Texas is excited about wind-power because the farms can be located close to population centers removing some transmission obstacles. The devastation of the two recent hurricanes has resulted in a Coastal Resource Assistance Program that will receive \$240 million over a four year period to mitigate the impacts. Oil and gas revenue has been impacted by the hurricanes reinforcing the decision of the land office to diversify the trust portfolio, placing increased emphasis on real estate development. The legislature has been responsive to that effort by providing the land office with requested tools to accomplish that goal.

**Colorado** - John Brejcha

A legislative audit of the land office has just been released. A fifty percent increase in revenues in Colorado in the past year is primarily from oil and gas. A project is under way to show that sage grouse and oil and gas can work together. It may act as a template for replication in new projects. In Colorado the land office expects to spend one million in land development projects each year for five years in a trial project to demonstrate to policy makers how the investment can increase the revenues to the trust.

**Arkansas** – Mark Wilcox

The fire season has been serious in Arkansas. The land office is party in a lawsuit being considered in the Federal Supreme Court. It involves sale of a home where notification of one of the owners was made by certified mail and the

owner rejected the mail. The lawsuit claims that US certified mail is not a legal source for notification.

**Oklahoma** – Keith Kuhlman

The fires highlighted in the press in Oklahoma are of particular concern this year because most have started near metropolitan areas instead of in remote areas. The winds spread the fires so rapidly resulting in a loss of 250 homes so far. The oil and gas section is leasing more property than ever before. A study and discussion of increased returns from the permanent fund investments have resulted in a proposal to amend the Oklahoma Enabling Act to allow improved opportunities for investment of the permanent fund. Oklahoma has twenty-year term easements for non-governmental entities that are now coming due for renewal. To date the office has not encountered any difficulties in the renewal but would appreciate advice from other states that have a similar process.

**Idaho** – Denise Mills

Reforms are being considered by an Endowment Reform Task Force to increase revenue to the trust. A reform package passed in 2000 increasing the target return mix goal from 2-3% to 8.25% from land revenues. The task force is now reviewing the implemented changes and progress towards that goal, including how and if the changes are working. Recommendations are expected that intend to improve the management of the trust asset. A package of recommendations is expected to be approved in September. Pooling of the assets is being considered as one possibility for the package and the office is seeking input from other states. The land office is working on a 12,000 acre exchange with the federal government to be carried by Senator Craig. It is possible that the summer WSLCA in 2007 may be held at Tamarak.

**Louisiana** – not present

**Utah** – Kevin Carter

The year 2005 resulted in record earnings due largely to oil and gas as well as a marked revenue increase in real estate holdings. The development section enters into partnering agreements with developers and has also begun investing in infrastructure to increase values and trust positioning in some development deals. A new set of mineral rules have just been completed that replaced those that have been unchanged for decades. Industry was included in the preparation of the rules so the new rules have their support. Grazing lease fees have also been increased bringing Utah fees somewhat closer to those of surrounding states. An exchange of 40,000 acres of land situated along the Colorado River Corridor for a similar acreage of oil and gas lands in the north eastern part of the state has been introduced in Washington, D.C. A final meeting with DOI is anticipated next week with mark-up expected next spring. A legislative audit of the trust activities has been under way for the past year that included three areas of focus.

- Returns on the investment portfolio – primarily a look at the investments of the State Treasurer
- Development (commercial and real estate) program
- Compensation – this area will be discussed in a legislative appropriation committee meeting tomorrow morning.

#### **Wisconsin** – Doug LaFollette

The land office completed the largest timber sale in history this past year. In addition the revenue from the permanent fund for libraries was also the largest. The department is working to implement a land bank system mirroring one that operates in the state of Washington. The effort is not to acquire more land but to consolidate the land holdings for more efficient management.

#### **New Mexico** – Patrick Lyons

As of January 1<sup>st</sup> the land office generated over a billion dollars in a three year period for New Mexico public schools with 90% coming in from oil and gas. A monthly oil and gas sale brings in about five million each month. The state is the lucky recipient of a 700 million dollar surplus that promises to create an interesting legislative session. Mesa Del Sol, a proposed development project in Albuquerque has just begun construction on an access road and the first commercial building in the development has broken ground. The commercial development will begin the project with residential following in a second phase. New Mexico is working toward a wind energy plant and a 15,000 megawatt solar energy facility in Southern New Mexico. A land exchange with BLM has been proposed and supported by BLM to remove 100,000 acres out of wilderness study areas. The trust owns 300,000 acres of split estate they would prefer not to own as split estate that will also be part of the exchange. Ultimately the exchange is expected to happen in three phases moving from non-controversial to very controversial.

#### **Arizona** – Richard Hubbard

Arizona is in the middle of the immigration issue discussion. A number of projects to address the issue are under discussion including a wall at the border that could have interesting impacts for the trusts. The initiative discussed at the summer conference to address changes to Arizona trust land management is collecting signatures. Nine auctions have generated 500 million dollars on 2,500 acres. The increased revenue has provided bonuses for teachers in Arizona.

#### **Montana**-Mary Sexton

Twenty percent of the annual school budget in Montana comes from trust lands. Most of the revenue comes from oil and gas. The land office is looking at a real estate management project in northern Montana that includes open space to increase the value of the trust lands. Through a land banking program approved by the legislature a few years ago, 25,000 acres have been nominated to sell so that other acres can be purchased. The sales are expected to begin in the spring. There have recently been some discussions about changing how the

land office is funded so that it is funded out of proceeds instead of from the general funds of the state.

**Wyoming** – not present

**Alaska** – Rick Thompson

The department has lost seven long-time members resulting in upheaval in the land office. An RS2477 claim has been asserted over private property in Alaska. The owner has promised to take them to court, hopefully resulting in some case law supporting the land department's right to enforce the claim.

**South Dakota** – Bryce Healey

The land office has run into some difficulty trying to develop natural gas on thrust lands where they do not own the surface. In another split estate situation, an ethanol plant is being built on lands where the trust owns the minerals. Curt Johnson, the former land commissioner is involved in the project.

**Nebraska** – Robert Martin

Robert Martin is a board member in Nebraska and representing the state at the winter conference. Nebraska owns 1.4 million surface acres. The state continues to struggle with drought coming from years were the drought was so severe that more moderate years have not yet brought the lands out of difficulty.

**Nevada** – Robert Nellis

Nevada retains just 3,000 acres of the 2 million originally granted trust lands. The land office is working to develop some land outside Carson City – that will include about 10% of the remaining trust lands - where about 200 homes will be built in a planned residential development. They are also working on a conservation program that would provide revenue for local government to purchase conservation lands.

**North Dakota** – Gary Preszler

North Dakota is working on a wind energy project with a major developer. They have completed some smaller ones but this will be the largest. A portion of the project has been postponed due to cost – perhaps from the cost of steel. Three oil plays that extend into North Dakota have increased revenue from that source. A quarterly auction resulted in a revenue record. The oil play covers a seven county area and is one of the largest in the United States. A constitutional amendment will go to the voters proposing to distribute revenue to the beneficiary on a rolling average to even out the distribution for budgeting purposes.

**Hawaii** – not present

**Associate Members**

### **Alaska Mental Health** – Alison Smith

Real estate land sales have provided an increased revenue stream to the trust. The land is being developed prior to sale to increase the value. An oil and gas leasing program including a seismic study is ongoing. Some areas that have not been considered for many years are of interest to industry again. The land office is tracking local community development projects to keep their lands as a viable part of the planning.

### **Marianas Islands** – Edward Guerrero

Telecommunications cables have been buried without properly compensating the people and the land managers are working towards recovering the debt. Designations of habitat have an increased impact on a small land mass like the Islands and they work continually on that issue.

### **Western Governor's Association (WGA)** - Amelia Jenkins

The association is systematically working with governmental and non-governmental agencies to amplify their effectiveness in Washington D.C. on issues of importance to the West. The association has been working on issues including:

- Clean and diversified renewable energy - including increased transmission
- A ten year forest implementation plan – including a restoration component
- Endangered Species Act revisions – including Keystones recommendations on biomass grants
- Sage grouse mitigation
- A transportation initiative will be discussed in the upcoming February meeting – looking at needs across the west.
- Immigration resolution – Napolitano and Huntsman are looking for agreement.
- Good Samaritan legislation on mining reclamation
- Water policy
- Omnibus land legislation

They will hold a June meeting in Sedona, Arizona. WGA would like to be kept advised of WSLCA issues and welcome their input.

### **BLM** – Cynthia Moses-Nedd

BLM is interested in strengthening the relationship with land commissioners in the West. The Cooperating Agency Guidebook is complete and books are on the way to be distributed later in the conference. Comment on visitation treatment has been extended to February 10 and can be made by going to. Oil and gas leasing information, biomass utilization strategy that includes four million in grants for this year and information about a biomass conference scheduled March 14-16 in Denver can also be found at [www.blm.gov](http://www.blm.gov). The Programmatic EIS for Wind Energy has been completed and is also on the website. Oil shale development, research funding and incentives have been discussed but are dependent on the energy policy act.

## **CLASS – Margaret Bird**

CLASS now has representation from the education beneficiaries in eighteen states and will include Nevada at the upcoming summer conference bringing the total to nineteen. The organization operates on a two year federal grant. A newsletter is provided twice a year. Those wishing to receive a copy or would like to include an article could let one of the CLASS directors know. Survey information has been mailed to each office that is being collected for the beneficiaries at the upcoming summer conference. CLASS and the Sonoran Institute are conducting a research project looking at the management, revenue generation and the impact of the trusts on the school funding. A presentation of the first phase data will be presented tomorrow morning in the Paris room. Managers were encouraged to make sure that someone from each state attends to provide input into the project. Margaret thanked the Utah land managers for a banner revenue year.

No one present was able to guess the official roll call order and thus the cricket was donated to Doug Sutherland as the sponsor of the conference. The roll call order was determined by information on the official website of the BFRO, a site dedicated to Bigfoot Research. The order from the most to the least sightings is listed there by state.

## **SUBCOMMITTEES**

### **LEGAL SUBCOMMITTEE**

The committee engaged in a fascinating discussion during banter of the issues of trusts purchasing private property, renewing easements, disposing of personal property left behind on trust property, governmental accounting, split estates, and attempting to redefine the trust mission instead of supporting schools.

In a nutshell:

- Texas has found creative ways to buy property and improve the local tax base at the same time. If your trust is buying private property, call Bill Warnick in Texas for some good ideas.
- Some states charge annually for an easement across trust property and other states charge the fee up front at the beginning of the lease. Terms vary from 15 years to 30 years in the states. Some states use a fee based on length, use, or cost of relocation for the easement. In Utah, when permanent rights-of-way owners seek to assign the right-of-way, the trust agency requires the permanent right-of-way to be converted to an easement for a specified period, thus giving the control of the property back to the trust. Some states use a revolving bank with the Department of Transportation (DOT), so the trust can acquire surplus DOT property in exchange for providing other lands for a DOT road.

- Washington requires a disposal bond for wind towers to be sure the trust does not have to pay to remove old towers in a decade or so when the tower is abandoned or outmoded. Other states use standby letters of credit because it has become hard to get performance bonds after September 11<sup>th</sup>. Alaska only requires the performance bond at the beginning and the end of the lease, providing protections while saving their lessee money.
- GASBE 37 sets accounting standards for governmental entities. This recent version abolished the governmental category that fit the trusts and now school trust agencies have to fall under the category “special revenue fund.” This category changes the accounting from cost accounting to accrual accounting and requires the trust to pay for an annual audit. Some states report costs for the annual audit as high as \$50,000. Try to find out if your trust has to pay for this annual audit and let us know at the next conference.
- “Split estate” means that you own either the surface or the minerals, but not both. In some states the mineral interest dominates which means a surface owner cannot prevent the mineral owner from mining. In other states the surface owner dominates, meaning the surface owner can prevent the development of the minerals. You may want to find out which is the case in your state and whether the state law is costing the school trust. Your land office can answer those questions.
- Threats to the children’s school trust are REAL, ALIVE, AND CREATIVE! There were three bills filed in Washington to allow the state to buy the children’s trust lands in the 2005 session. The Wisconsin land office reports that they were told to pay 2% of their budget to the state for administrative services. Tom German, who happens also to be an attorney, said “No Way! That would breach the state’s fiduciary duty to the trusts.” What would we do without men of integrity like him! So far he has not paid.

## **SURFACE SUBCOMMITTEE**

The surface group is making plans to participate in the 2007 International Conference of Shopping Centers providing a booth and/or placing an advertisement in the conference materials. They subcommittee is preparing a database of commercial lease laws, rules, forms etc. from each state that could be used as templates for other states. The committee will also request that a letter from WSLCA go to federal departments and committee chairs as well as the Western Governor’s Association concerning the proposed Threatened and Endangered Species Act reforms to encourage that any proposed legislation include identified revenue streams for funding and incentives.

## **COMMUNICATIONS COMMITTEE**

The committee received a report and recommendations of the new logo for WSLCA and discussed possible changes to the website.

## **ASSET MANAGEMENT COMMITTEE**

Kathy Opp of Idaho and Jim Owens, a consultant to the Oregon Department of State Lands, both presented asset management models for discussion.

Tom Shultz agreed to chair a subcommittee to study and recommend a uniform system of land classification for consistent data collection and reporting.

## **LAND EXCHANGE COMMITTEE**

John Andrews, who has been working towards completion of a congressional land exchange in Utah, discussed the process they are pursuing. Administrative land exchanges are difficult to close because of valuation issues so the Utah land office continues to pursue legislative exchanges. To subdue controversy their early work is at the local level with the environmental community and local governments identifying properties both parties are interested in exchanging. Then they take a proposal to the national level.

John Brejcha sent out a Land Exchange Survey to the states that included the issue of how land offices deal with federal agencies. He stated that from the survey it was apparent that dealing with federal agencies is not easy and slow at best. John will pass the survey results on to Kevin Carter.

## **PRESENTATIONS**

### **William Lokey, Federal Emergency Management Administration (FEMA)**

Mr. Lokey discussed the importance of states having a disaster plan in place before a disaster occurs and encouraged the land offices to be involved in preparing the plans. He explained the role of the administration and what they are allowed to do under the law. The effectiveness of FEMA is in part determined by what is in the state plan.

## **OFF HIGHWAY VEHICLE USE**

A five member Off Highway Vehicle (OHV) panel explained statute issues that need to be addressed for OHV use, accomplishments made possible when focus groups include diverse representatives, industry efforts at education, enforcement issues, and the importance of having well-engineered trails for a safe, quality experience. During the two hour discussion it became obvious that there are common components of successful OHV trails. Common components include use of diversified focus groups that include all interested parties; passage

of recreational immunity for the land owners so trails are not closed for fear of liability; well-engineered trails with fees for the great experience; collaboration between federal agencies, trust land agencies and private landowners including a uniform pass and well signed trails; education of young riders while they are still teachable; beginning riding sites called "first year-first gear" to avoid accidents with experienced riders; active user groups who volunteer hours of service before being granted the right to hold an event on the trail; and visible enforcement with a "bite." Establishment of a statewide alliance representing all user groups aids land owners who can be confused by different groups wanting different outcomes. It is hoped that wise and responsible use can result in OHV revenue to the trusts, rather than the degradation currently occurring with little or no revenue.