

DEPARTMENT OF FISH AND WILDLIFE

WILDLIFE CONSERVATION BOARD

MAILING ADDRESS: 1416 9TH STREET, ROOM 1266

SACRAMENTO, CALIFORNIA 95814

(916) 445-8448

FAX (916) 323-0280

www.wcb.ca.gov

State of California
Natural Resources Agency
California Department of Fish and Wildlife
WILDLIFE CONSERVATION BOARD
Minutes

March 12, 2015

The Wildlife Conservation Board met by teleconference on Thursday, March 12, 2015 at the California Natural Resources Agency, 1416 9th Street, Room 1103, Sacramento, CA 95814 and the California Department of Fish and Wildlife, Los Alamitos Office, Library 4665 Lampson Ave, Suite C, Los Alamitos, CA 90720. Mr. Charlton H. Bonham, Director of the California Department of Fish and Wildlife and the Chairman of the Wildlife Conservation Board, called the meeting to order at 10:00 A.M. Mr. John Donnelly, Executive Director of the Wildlife Conservation Board, performed the roll call.

1. Roll Call

WILDLIFE CONSERVATION BOARD MEMBERS

Charlton H. Bonham, Chair
Director, Department of Fish and Wildlife

Karen Finn, Program Budget Manager
Vice, Michael Cohen, Member
Director, Department of Finance

Jack Baylis, Member
President, Fish and Game Commission

John P. Donnelly
Executive Director, Wildlife Conservation Board

- | | | |
|----|--|----------------|
| 2. | Blue Creek,
Humboldt and Del Norte Counties | \$5,035,000.00 |
|----|--|----------------|

The purpose of the meeting was to reconsider the allocation for a grant to Western Rivers Conservancy for a cooperative project with the State Coastal Conservancy, the Wyss Foundation, and the Yurok Tribe, to acquire

approximately 6,749 acres of mixed conifer forest property known as Blue Creek Phase 2B, in light of new information and changes proposed to the project after it was presented to the Wildlife Conservation Board on November 20, 2014. The proposed acquisition would protect riparian corridors, salmonid streams, coastal watershed and habitat linkages.

Nancy Templeton, General Counsel, said this is a regular meeting under the Bagley-Keene Act being held by teleconference with 10 days' notice under Government Code Section 11123. No special procedures are required other than any vote by the Board must be taken by roll call.

Mr. Donnelly said that at the last Board meeting on February 25, 2015, staff was directed to reconsider the project and then bring it back to the Board. In addition, staff was to post online all legal documents important to the transaction. The documents that were posted online are as follows:

1. Meeting Notice
2. November 20, 2014 WCB Board Meeting Final Agenda, Item 14
3. November Grant Agreement executed by Western Rivers Conservancy and Western Rivers Forestry
4. Final draft revised Grant Agreement
5. Final draft Notice of Unrecorded Grant Agreement
6. Subordination Agreement
7. Fundraising Agreement
8. Put/Call Agreement

Mr. John Walsh presented an overview of the project to the Board.

The presentation to the Board back in November stated that \$1.9 million of the total purchase price of \$9.9 million would be provided by the New Markets Tax Credit financing and that the property would be encumbered by 2 deeds of trust for a period of up to 7 years. After the Board meeting, Western Rivers Conservancy proposed changes to the Grant Agreement clarifying that the \$1.9 million of short term financing is part of a larger financing transaction involving 2 loans for a total amount of \$12 million to be secured by a single Deed of Trust against the property. The requested Grant Agreement changes also state that the loans and Deed of Trust will be in place for a minimum term of 7 years, but could remain longer. The 7-year period is the time during which the New Market Tax Credit investor, U.S. Bank, can receive federal tax credits based on its investment in the New Markets Tax Credit Structure. As staff explained at the November 2014 meeting, under the federal New Markets Tax Credit program, a tax credit investor is able to claim a federal tax credit equal to 39% of its investment. The credit is claimed over a 7-year period. At the end of 7 years, if the tax credit investor or Western Rivers Conservancy exercises its option under a put/call agreement, then Western Rivers Conservancy can gain control over the financing structure, exit the transaction, extinguish the remaining loans and release the

Deed of Trust.

The WCB grant will fund the purchase of the land by Western Rivers Conservancy from Green Diamond Resources Company. The land will then be sold to Western Rivers Forestry. As successor grantee, Western Rivers Forestry will hold the land subject to the terms of the WCB Grant Agreement for at least 7 years. After 7 or more years, Western Rivers Forestry intends to transfer the land to the Yurok Tribe, which will still be subject to the terms of the WCB Grant Agreement.

Once the property is purchased from Green Diamond Resources Company, it will be managed by the Yurok Tribe pursuant to a land management plan. WCB and CDFW have the right to review and approve the management plan.

The Grant Agreement allows for a carbon project and generation of carbon revenues. The revenues may be used to pay for certain existing debt, make debt service payments on two new loans secured by the property, and pay for ongoing management and maintenance of the property.

Ms. Templeton presented the New Markets Tax Credit financing structure to the Board. There are 7 primary parties to the project:

- Allocatee – Opportunity Fund Northern California (OFNC)
- Project Sponsor and Leverage Lender – Western Rivers Conservancy (WRC)
- Tax Credit Investor – U.S. Bancorp Community Development Corporation (USBCDC)
- Investment Fund – WRC Blue Creek Investment Fund, LLC
- CDE (Community Development Entity) – LCD New Markets Fund XVIII, LLC
- CDE Managing Member – LCD New Markets Fund, LLC
- QALICB (Qualified Active Low Income Community Business) – Western Rivers Forestry (WRF)

Mr. Baylis said that he is still concerned that the costs for the project exceed the value of the land. Additionally, he is questioning the fees associated with the funding and if they are excessive.

Mr. Baylis asked who is receiving fees in this transaction. Ms. Templeton said the Allocatee is receiving approximately \$1 million in fees. Ms. Templeton said the New Markets Tax Credit financing structure is not directly relevant to WCB's grant. In fact, it will not be put in place until later on.

Chairman Bonham asked if WCB's grant funds will be used to pay fees associated with the transaction. Ms. Templeton replied that WCB's grant funds are going to the purchase price of the property and will not be used to pay other parties' fees.

Ms. Templeton said there are 2 major parts to the transaction. The first part is where WCB's funding is applied directly to the purchase of the property. The property will be purchased using \$5 million from WCB, \$2 million from the State Coastal Conservancy, \$1 million from a foundation grant and a remainder of \$1.9 million from a short term loan obtained by Western Rivers Conservancy. Thus, all of the WCB grant proceeds will be used directly for the purchase of the property.

Ms. Templeton said the reason the Board is discussing the New Markets Tax Credit financing issue is that the Board needs to consent to the sale of the property by our Grantee to another entity in order for the financing to happen. The Board also needs to consent to a Deed of Trust against the property purchased with grant funds to secure the two loans that are part of the financing transaction. WCB is not a party to the New Markets Tax Credit Financing.

Chairman Bonham said he has 2 core interests; the first is in understanding the WCB transaction and the second is confirming the Board and the State's interest are adequately protected. Chairman Bonham asked what has been done since February to manage any potential risk and he is interested in staffs and counsel's recommendation.

Ms. Templeton said typically our grant agreements are with one grantee and require, as this one does, that state funds are used only towards the purchase price of the property. The grant agreement prohibits the property from being used as security for any debt without the Board's consent and also prohibits transfer of the property without the Board's consent. The grant agreement further provides that the Board has the right to approve all the documents in the transaction including purchase and sale agreements, escrow instructions, deeds, title, etc.

What is added to this grant agreement is that we have a successor grantee, as WCB was asked to add successive transactions to the grant agreement. There will be a sale of the property from Western Rivers Conservancy to Western Rivers Forestry. The property will, at a later time, be transferred from Western Rivers Forestry to the Yurok Tribe. The Yurok Tribe could then potentially transfer the property in trust to the United States. The grant agreement includes terms and conditions unique to this transaction related to these future property transfers.

Ms. Finn asked if there were any occasion in which our grantees sell property and the Board approves the sale. Mr. Donnelly replied no, and explained that property is normally transferred for management purposes at no cost. In this case, Western Rivers Forestry is going to buy the property from Western Rivers Conservancy as part of the New Markets Tax Credit Financing.

Chairman Bonham asked about Section 6.3 of the Grant Agreement regarding

Breach and Default. Specifically, whether Default includes the parties withholding information. Ms. Templeton said that is correct. Chairman Bonham said the remedies can be money coming back, penalties being assessed, and a conservation easement on the property. Ms. Templeton confirmed the remedies but added that what is unique to this grant agreement is the repayment remedy. It will only be triggered if there is a foreclosure or a transfer of property in lieu of a foreclosure that risks a loss of the state's investment.

Ms. Templeton said staff looked at risk in two ways; potential risk to the State and potential risk to the property. Staff developed a Risk Table which is attached. Ms. Templeton said in regards to risk to the property itself, there are multiple layers of protection. Ms. Templeton said they concluded they have no remaining identified risks to the property that are not provided for in multiple layers of protection. As the Risk Table shows, however, there is one remaining identified risk to the State that could not be fully addressed; the Carbon Project risks.

Chairman Bonham asked about the reserve fund as it appears to be a unique element added to the grant. He said the purpose of the reserve is to hold aside funds that would be available in the event of default or breach to cover our exposure.

Ms. Templeton said it is important to know who is holding the reserve fund and how that money would be accessed. The New Markets Tax Credit requirements prohibit accessing the money in a straight forward way. The amount of the reserve is 2 years of debt service on the new "A" and "B" loans. The reserve needs to be funded on the date Western Rivers Forestry buys the property from Western Rivers Conservancy using the proceeds from the New Markets Tax Credit financing. The expectation is that a portion of the \$10.9 million that Western Rivers Conservancy receives will be used to fund the reserve. Ms. Templeton said the reserve is not very big as the loans are interest only for the first 7 years. The annual debt service on the 2 loans combined is approximately \$140,000. The reserve will be just under \$280,000.

Ms. Templeton said the reserve that WCB's grant requires under Section 5.7 is meant to provide funds to service the debt should the income from the property be insufficient, or for any other reason that Western Rivers Forestry is unable to pay its debt. But, the reserve is being held by Western Rivers Conservancy.

Chairman Bonham asked if staff conclude that the risks to the Board related to the \$5 million grant are well managed. Mr. Donnelly said they were very well managed. Chairman Bonham expressed that it was his desire to not see similarly complicated projects coming to the Board in the future.

Sue Doroff, president of Western Rivers Conservancy and Western Rivers Forestry, spoke in support of the project. Ms. Doroff said they decided to use New Market Tax Credit financing on this project so that they can use private

capital for conservation. The program will generate restoration, forestry, and fishery jobs as well as provide conservation. Ms. Doroff said it was all for public benefit.

Chairman Bonham asked Ms. Doroff if they were agreeable to the edits made to the Grant Agreement, Subordination Agreement, Put/Call Agreement and Fundraising Agreement. Ms. Doroff said they fully agree to all the changes.

Ms. Finn noted that Western Rivers Conservancy is an Oregon non-profit organization and Western Rivers Forestry is a California non-profit organization. She also noted that Ms. Doroff is president of both organizations. Ms. Doroff said Western Rivers Forestry is a newly created organization and is an affiliate of Western Rivers Conservancy. For all intents and purposes, Western Rivers Forestry is part of Western Rivers Conservancy. They do have separate audits and keep separate books. Ms. Doroff thanked the Board for the opportunity to speak in support of the project.

Julie Treppa, an attorney whose clients are Western Rivers Conservancy and Western Rivers Forestry, spoke next and gave some background on the New Markets Tax Credit Program. She briefly explained that Western Rivers Forestry was formed and incorporated in California as the land is in California and they have to qualify to do business in California. She said Opportunity Fund Northern California is a non-profit organization. It has used New Markets Tax Credits to fund other projects. In order to get the credits, Opportunity Fund has to go through a rigorous application process that is very competitive. The application is very costly to prepare. These costs may not be recovered if an allocation is not awarded. Additionally, Opportunity Fund enters into an indemnity obligation with U.S. Bank as they have to satisfy reporting and monitoring requirements. The fees are high as the expense of participating in the program is high. Ms. Treppa said no one organization is profiting exorbitantly from this program.

Chairman Bonham asked if this is an area of expertise for Ms. Treppa. Ms. Treppa said yes, she has worked in this area since the tax credit was enacted and has completed over 20 transactions. Chairman Bonham asked if this was an average transaction and were the fees within the normal range of similar transactions. Ms. Treppa said yes, the fees are typical, but added it is unique in that it is a conservation project.

Mr. Baylis asked if there were follow up reports or monitoring requirements for this project. Mr. Donnelly said there is a reporting requirement contained within the grant agreement. There is specific information the grantee is to report on annually.

Chairman Bonham asked if there were any further questions or comments and there were none. Chairman Bonham asked staff if they recommend approval of the project. Mr. Donnelly said yes.

It was moved by Chairman Bonham, that based on the Wildlife Conservation Board's meeting discussion on February 25, 2015 and careful due diligence by WCB staff since that time, the Board affirm their approval of this project from November 20, 2014 as proposed; allocate \$3,535,000.00 from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 (Proposition 84), Public Resources Code section 75055(a) and \$1,500,000.00 from the Habitat Conservation Fund (Proposition 117), Fish and Game Code Section 2786(b/c) for the grant to WRC and to cover project-related expenses; authorize staff to enter into appropriate agreements necessary to accomplish this project; and authorize staff and the California Department of Fish and Wildlife to proceed substantially as planned.

Passed Unanimously.

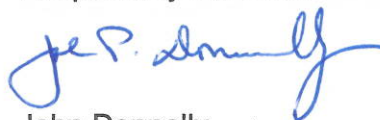
**Bonham - Yes
Baylis - Yes
Finn - Yes**

Mr. Donnelly thanked both WCB staff and CDFW staff at the Los Alamitos office for all their diligent work on this project.

Nathan Voegeli, Senior Attorney for the Yurok tribe spoke and thanked both WCB and CDFW staff for all their hard work and due diligence in seeing this project through to the end.

With no further business to discuss, the meeting was adjourned.

Respectfully submitted



John Donnelly
Executive Director

KNOWN PROJECT-SPECIFIC RISKS AND PROTECTIONS

Potential Risks to WCB	How Addressed (Grant Provisions/Other)	Remaining Identified Risks
Loss of State Investment	Repayment w/Interest (7.3)	n/a
Liability for Carbon Project	Indemnity and WCB not "Forest Owner" requirement (5.11)	Current Protocols for Carbon projects do not allow limitations on who can be a "Forest Owner"

Potential Risks to Property	How Addressed (Grant Provisions/Other)	Remaining Identified Risks
Revenue Insufficient to Service Debt and/or Operate Property	Reserve (5.7), Uses of Revenue (5.11), Fundraising Agreement (5.14), Breach and Default (6, 7)	n/a
No NMTC Financing Unwind/Exit	WCB Approval of A and B Loan Changes (5.6), Reserve (5.7), Uses of Revenue (5.11), Fundraising Agreement (5.14), Breach and Default (6, 7)	n/a
Foreclosure of Deed of Trust	Right to Approve Transfer (5.4), Subordination Agreement (5.6), Notices/Default (5.6), NUGA (5.8), Repayment (7.3)	n/a
Non-Performance by or Dissolution of WRC or WRF	Specific Performance (7.1), Conservation Easement (7.2), Repayment (7.3), Property Vest in State (8)	n/a
Future Trust Transfer to U.S.	Agreement with U.S. (5.4)	n/a