Re: Transfer of Elliott State Forest

Dear Governor Brown, Secretary Richardson, and Treasurer Read:

We represent the Oregon School Boards Association.

We urge you to fulfill your fiduciary duties as trustees of the Common School Fund by either completing the Elliott State Forest Ownership Transfer Opportunity as set forth in the Transaction Specific Protocol which was adopted by the State Land Board (“Board”) in August of 2015, and which was responded to in November of 2016 (“the Proposal”), or by contributing $220,000,000 to Common School Fund in exchange for the Elliott State Forest (“Forest”).

No other proposal fulfills the Board’s trust obligation to use the Forest to maximize the financial return to the Common School Fund.

Summary of Board’s Obligation

Two constitutional rules control the Board’s decision in this matter:
1. When deciding the action to take with the Forest, the Board may consider only the interests of the state’s underfunded public schools. The Board may not consider the wishes of anyone else.

2. The Board must choose the option that maximizes the financial benefit to schools.

**Explanation of Board’s Obligation**

Your lawyer, the Attorney General, has made clear the exclusive obligation Congress and the people of Oregon have imposed on the Board:

The State Land Board’s duty is to maximize the financial return from [Common School Fund forest] lands for the benefit of the Common School Fund. Op Atty Gen No. 6383, p. 5 (1990).

Not only does the Act through which Congress admitted Oregon to the Union permit the use of former federal lands only to benefit schools, Article VIII, section 2, of the Oregon Constitution compels maximization of return to the Common School Fund. Op Atty Gen No. 6094, p. 3 (1987). Any action that fails to fulfill this trust obligation would be unconstitutional.

We appreciate that some individuals may place a higher regard on noneconomic values of the Forest, such as scenery or recreation, than on the value of the Forest as an economic asset to benefit the State’s public schools. The Board, however, may not consider the desires of anyone other than the State’s schools. The Board’s management obligation is a “trust responsibility,” Op Atty Gen No. 6383, p. 17, which means the Board owes an exclusive duty of loyalty to the beneficiaries of the fund. To fulfill this duty of loyalty, the Board must “give regard only to the interests of the beneficiary, namely, the schools[.]” 43 Op Atty Gen 140, 142 (1983) (emphasis added).

We recognize that Article VIII, section 5(2), of the Oregon Constitution authorizes the Board to manage the Forest to promote noneconomic values, but those values are secondary to the “paramount objective” of financial return to the Common School Fund. Op Atty Gen No. 6383, p. 15. In other words, “in every case the *** action to be taken [must] achieve the maximum benefit to the Common School Fund and the schools, rather than achieving benefit to the Oregon economy in general.” 43 Op Atty Gen at 143.

The Board may promote noneconomic values only when promotion of those values does not reduce the moneys that would flow into the Common School Fund. Put another way, the Board may accept a proposal that includes noneconomic uses of the Forest only if those uses do “not prevent maximizing the financial contribution of that land to the Common School Fund.” Op Atty Gen No. 6383, p. 14 (citing 38 Op Atty Gen 850 (1977)). Specifically, the Board may not, in an effort to limit harvesting timber, accept a proposal that provides less financial benefit to the
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Secretary of State Dennis Richardson  
State Treasurer Tobias Read  
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Common School Fund than another proposal does: “the State Land Board may voluntarily prohibit harvest on Admission Act lands only if doing so would not prevent maximizing financial return to the Common School Fund.” Op Atty Gen No. 6383, p. 5.

The economic value of the Elliott Forest has been established by your independent appraisal of $220.8 million. This appraisal value has been further justified by the fact that there currently exists a purchaser who is ready, willing and able to pay that sum to the state pursuant to the Proposal referenced above. This means the Board may not accept any less by way of a state transfer plan of the type contemplated by S.B. 847, or otherwise envisioned by the Governor’s office.

If the Board does not fulfill its fiduciary duties, beneficiaries of the Common School Fund, the State’s school districts, plan to commence litigation to enforce those duties.

We recognize that well intentioned groups are strongly suggesting another course and are placing substantial pressure on the Board members to secure a result that does not comport with the Proposal. But, in this instance, your fiduciary obligations are crystal clear. We urge you to adhere to those fiduciary obligations in the face of whatever political pressure may be brought to bear by those who lack appreciation for those duties.

Very truly yours,
Davis Wright Tremaine LLP

[Signature]

John A. DiLorenzo, Jr.  
Gregory A. Chaimov

cc: Oregon State School Boards Association