

## Agenda Item Summary

### BACKGROUND

The Commission is being asked to approve transferring ownership of that part of the Butte Falls hatchery property still owned by the State to the Butte Falls School District.

With the closure of the Butte Falls Hatchery in the 09-11 biennium, ODFW began the process of preparing the portion of the property owned by the State for disposal, as ODFW no longer had any use for the property. ODFW has spent much of the last year correcting several environmental problems created while the property was serving as a fish hatchery. Those problems have been repaired, the raceways have been decommissioned and the property is ready for a new use. State law gives first priority for the acquisition of surplus property to other state agencies, then to state political subdivisions, as long as the property is to be used for public purposes. ODFW has been negotiating with several potential entities including the Military Department, Jackson County, the City of Butte Falls and the Butte Falls School District. Of these entities, only the Butte Falls School District desires to complete the transfer.

Most state agencies intending to dispose of surplus property must get the approval of the state's Department of Administrative Services (DAS) (ORS 270.100(3)) (Attachment 2), ODFW is specifically exempted from the DAS approval requirement (ORS 270.100(4)) and is an "exempt disposing agency", unless the property is being disposed of for less than the fair market value, (ORS 270.100(5)), in which case DAS approval is still required. By administrative rule, DAS has created an exemption from its approval requirement if the governing body of the exempt disposing agency (that is, the ODFW Commission) expressly approves the terminal disposition for less than the fair market value; see OAR 125-45-0245 (Attachment 3). Thus, while normally ODFW may dispose of surplus property without DAS approval, when the property is disposed of for less than the fair market value, the normally required DAS approval is waived if the Commission expressly approves the disposition, and provides certain information to DAS within 30 days of the disposal of the property.

At the Commission's October meeting, staff briefed the Commission on the history of this property, the cleanup efforts we have made and the search for a suitable entity to whom to transfer the property, which we will not repeat here.

### PUBLIC INVOLVEMENT

- Discussions with local legislators concerning the potential closure of the hatchery began in July 2010.
- After the decision to close the hatchery was finalized in August 2010, local legislators, Jackson County Commissioners, and the City of Butte Falls were notified of the decision.
- Following the decision to close the hatchery, a news release was issued and the story was covered in the local media.
- ODFW staff presented the issue for discussion at the January 18, 2011

meeting of the Butte Falls City Council.

- Discussions with local political subdivisions concerning potential ownership of the hatchery occurred between February and September of 2011.
- ODFW issued a Surplus Land Notification to state agencies and political subdivisions on August 25, 2011

## ISSUE 1

### **DISPOSAL OF BUTTE FALLS PROPERTY AT LESS THAN FAIR MARKET VALUE TO THE BUTTE FALLS SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF OREGON.**

ODFW is asking the Commission to approve the transfer of the Butte Falls property to the Butte Falls School District, in satisfaction of the statutory and rule requirements for this transfer.

Another of the rule's requirements to dispose of this property for less than the fair market value is to provide the "Appraised Fair Market Value" of the property. That would apparently mean commissioning a real estate appraisal of the property. Because ODFW proposes giving the property to the school district, its actual market value seems irrelevant. We will work with the Butte Falls School District and DAS to either waive the appraisal requirement by rule interpretation, adoption of a DAS temporary rule waiving the requirement or having the school district cover the cost of the appraisal.

## ANALYSIS

ODFW discussed transfer of this property with several local political subdivisions and the Military Department about accepting the property, with the condition that it must be dedicated to public use. Only the Butte Falls School District wishes to receive the property, so the Department proposes the Commission approve donating the property at no cost to Butte Falls School District, providing:

1. The property is dedicated to public use;
2. The property is transferred AS IS without warranties, representations, or remedies to the condition of the property;
3. No water rights are transferred to the political subdivision;
4. The State of Oregon retains all mineral rights as required by ORS 273.780; and
5. The property is accepted subject to SHPO preservation and archaeological requirements.
6. The School District will cover the cost of any required real estate appraisal necessary to close the transaction.

Upon Commission approval, ODFW will notify the Director of DAS that the Commission has approved this transfer in satisfaction of OAR 125-045-0245, and request approval to dispose of the property at less than fair market value as required by ORS 270.100(5).

If the transfer to the Butte Falls School District is unsuccessful, ODFW will proceed to dispose of the property at fair market value according to ORS 270.110 to the general public, but still subject to conditions 2 through 5 (above).

ODFW proposes that the Commission approve the disposition of the

Butte Falls Hatchery real property to the Butte Falls School District, a political subdivision of the State of Oregon at less than fair market value.

**OPTIONS**

1. Approve staff proposal.
2. Modify staff proposal.
3. Reject staff proposal

**STAFF  
RECOMMENDATION**

1. Option 1

**DRAFT MOTION**

I move to approve the disposition of the Butte Falls Hatchery real property at less than fair market value to the Butte Falls School District, a political subdivision of the State of Oregon, subject to the conditions described by staff, and notify the Director of DAS of our approval.

**EFFECTIVE DATE**

Upon Commission approval.