

# Oregon Invasive Species Council

Virtual Meeting | January 20, 2021 | 1:00 - 2:00 PM

## Summary of Outcomes & Next Steps:

- December 2020 meeting minutes were approved.
- The OISC holds in abeyance a due date for requesting legal advice from DOJ and to proceed with MOU discussions with ODA. If DOJ is involved, ODA would share the cost with OISC on a 50/50 basis with the extent of DOJ involvement to be agreed upon by both OISC and ODA.
- Cat to follow up with more details about the MOU, timeline, and updates from the working group.

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## Welcome & Introductions

*See list of meeting participants at the end of this document.*

Welcome to new members!

Eugene Wier from The Freshwater Trust replaced Olivia Duren in the environmental advocacy seat.

Josh Emerson from the Oregon Department of Environmental Quality replaced Rian vanden Hooff.

## Approval of Meeting Minutes: December 9, 2020

**Christine: Motion to approve the December 9, 2020 meeting minutes**

**2nd: Catherine de Rivera**

**All in favor**

## Memorandum of Understanding with Oregon Department of Agriculture (ODA) and Oregon Department of Justice (DOJ) Review

Based on a motion at the December 2020 OISC meeting, Catherine set up a meeting with ODA on December 21, 2020 with an open invitation to OISC members who wanted to attend.

*Motion(s) from December 2020 OISC Meeting as a Reference*

*Troy moves to approve the question (see below) from the Council for ODA to submit to the DOJ.*

*2nd: Noel Bacheller*

*Aye: 13*

*Abstain: 3*

Nay: 0

1. **CONTEXT:**

*The Oregon Department of Agriculture (ODA) is an ex officio voting member of the Oregon Invasive Species Council (Council) with one vote out of 18 for making decisions in accordance with the governance structure for the Council, as specified in ORS 570.770(1). Vis-a-vis the Council's budget, contracts and fiscal compliance, the Oregon legislature specifically provided that ODA's role was to administer those delegated functions as the Council's fiscal agent. See HB 2213 (2009), codified in ORS 570.780(3). In contrast to ODA, the Council in 2009 did not and still does not have any state employees or occupy state premises to carry out infrastructure functions. The introductory clause of the 2009 bill, HB 2213, as codified in ORS 570.770(1), provides generally that the Council is established "within" the Department of Agriculture. The legislative history of HB 2213, including two hearings, does not explicitly address substantive control of the Council's budget or its policies or programs duties by another agency. As articulated by an ODA representative at one of the hearings, the original impetus for HB 2213 was to allow the Council to make use of ODA's federal tax ID for purposes of applying for federal grants; HB 2213 contained a provision authorizing the Council to enter into contracts.*

2. **PRECISE, PROSPECTIVE LEGAL QUESTION:**

*Is ODA statutorily authorized by the general provision in HB 2213 (2009) (declaring that the Council was "established" within ODA) to make controlling decisions concerning the Council's budget, policies or other matters, given that ODA has a single vote in the Council's governance structure described in ORS 570.770(1), and given that ODA's role vis-a-vis the Council's budget, contracts, and fiscal compliance infrastructure was specified in the same 2009 bill (HB 2213) as that of being the Council's fiscal agent for in-house administration of those infrastructure functions?*

*Jas. moves to approve asking ODA to submit the question approved by the Council to the DOJ by January 8, 2021.*

*2nd: Dave Pranger*

*Yay: 16*

*Abstain: 1*

*Nay: 0*

At the follow up meeting, Lisa Hanson from ODA described the agency's point of view to move forward with a Memorandum of Understanding (MOU) process before going to a DOJ review. At that meeting, the group agreed to move forward with an MOU rather than holding ODA to the motion that was approved at the December meeting.

The group discussed the need to officially endorse the new route with the MOU process by a new motion rather than taking back a former motion.

Jas proposed a motion: that the OISC go ahead with MOU discussions with ODA. If DOJ is involved, ODA would share the cost with OISC on a 50/50 basis with the extent of DOJ involvement to be agreed upon by both OISC and ODA. Seconded by Troy.

Discussion:

Cat: we still need to better understand the process of what we take to the DOJ for review. They may need to review additional information that is not what we asked for.

Jas: given the way that DOJ is seeing it this way, it may be too expensive. Although I don't agree that it couldn't be answered directly, I think this may be the best course of action. We are looking at half of \$209/hour (\$100/hr); we need to look at how much we would like them involved.

Wyatt: can we set a maximum expenditure to be able to factor this into our budget? The last time the OISC got the DOJ involved, we got a pretty big bill. It's reasonable that we would mutually agree; but we have to talk about cost at some point.

Cat: we can't take away our vote on the January 8 deadline for DOJ review, what do we do with this vote - does this motion fully cover our decision about this?

Jas: this motion doesn't; we can instead suspend the former DOJ motion until a further date in time.

Troy: that's why I suggested that we first pull our former request and then revise our question and vote on a new motion with the council at the time that we have a new question.

Cat: maybe there are two motions. 1) Jas' original, and 2) a motion to suspend the due date for our December motion.

Jas: I would combine the motions; leaving the option to proceed with the original question. If the council wanted to change the question in the future, it would be possible to do that.

Jas amended his motion based on discussion:

Move that the OISC hold in abeyance a due date for requesting legal advice from DOJ and to proceed with MOU discussions with ODA. If DOJ is involved, ODA would share the cost with OISC on a 50/50 basis with the extent of DOJ involvement to be agreed upon by both OISC and ODA.

Troy: 2nd

In favor: all voting members present

Abstain: 0

#### Proposed next steps from Chair & Executive Committee for feedback

Rick walked through an updated process to develop the MOU including a chair appointed MOU working group: Cat as Chair, Troy, Rick, Christine, Wyatt, and Helmuth. The Governance Committee would be then invited to do a first read and suggest edits along with a few federal partners. Then, the draft would be sent to ODA and the full OISC for review and discussion at a special meeting. The goal is to have a first draft in February and an agreed upon MOU by the end of the biennium.

Q (Jas): why not have a larger group write it? A (Rick): it is easier to write with a smaller group, then review and solicit edits from the larger group although I haven't confirmed the process with ODA yet. Cat: I think this process will work because conversations with ODA indicated we would start by drafting something and send it to them. Also, I suggest requesting Amira's participation in the review group for input. We will use information that has been discussed by the OISC.

Q (Sam): if the agreement is between ODA & OISC, which role would Helmuth play in initial drafting - I wouldn't want to put Helmuth in an odd position as both an OISC member and and ODA representative? A (Rick): Helmuth has experience creating MOUs with other groups and would play a role in drafting, we will leave it up to Helmuth to see what his feelings are.

Q (Jas): will Helmuth's role be explicit or will you talk to Lisa to know that the role is agreed upon with ODA leadership? A (Cat): the OISC Chair should feel free to communicate directly with Lisa.

Q (Christine): are we going to need some legal advice before taking the MOU to ODA? A (Rick): to keep costs down, let's agree on as much as possible with ODA first. We should only have DOJ review the sticky points.

Q (Jas): should we have specific dates / deadlines for the MOU? A (Rick): the MOU working group needs to meet and talk about a more specific schedule, and then send that out to the council via email. Does that make sense? A (Cat): yes, I'd like to see if the group can meet weekly and that will help; Cat will be reaching out to past council members as well for topics of concern. We will be working through one or more objectives at each meeting as knowing the objectives will help us understand the timeline.

#### Draft Proposed Timeline:

- February: MOU working group convenes and works on first draft
- Feb/March: Review group has an opportunity to give input on first draft
- Late March: special OISC meeting to review draft
- Bring to ODA for discussion
- May : final review and DOJ questions
- June OISC meeting : finalize

#### Public Comment

No public comment.

#### Action Items & Next Meeting

All: Send Cat suggestions about objectives for the MOU

Cat: to send out scheduling information for the MOU working group

Cat: MOU working group to discuss and send a timeline to the full council as an update

*Next meeting: February 17, 2021 (1:00 -4:00 pm)*

#### Meeting Participants

##### **Council Members Present**

Troy Abercrombie, Western Invasives Network  
Jas. Adams, Public Member  
Rick Boatner, Oregon Department of Fish & Wildlife  
Christine Moffitt, Friends of South Slough Reserve  
Glenn Dolphin, Oregon State Marine Board  
Josh Emerson, Oregon Department of Environmental Quality  
Wyatt Williams, Oregon Department of Forestry  
Catherine de Rivera, Portland State University  
Eugene Wier, The Freshwater Trust  
Cheryl Shippentower, Confederated Tribes of the Umatilla Indian Reservation  
Dave Pranger, Morrow County  
E. Chuck Fisk, F5 Wildlife Control  
Peter Kenagy, Kenagy Family Farm Inc, Oregon Farm Bureau, Willamette Mainstem Cooperative, Oregon  
Agricultural Trust & Specialty Seed Growers of Western Oregon  
Sam Chan, Oregon State University & Oregon Sea Grant (joined at 1:43 pm)  
Sean McMillen, USDA APHIS PPQ  
Karen Ripley, USDA Forest Service  
Roy Marler, US Customs and Border Protection  
Jen Poirier, US Fish & Wildlife Service

**Other Meeting Participants**

Jalene Littlejohn, Samara Group  
Shawna Bautista, USDA Forest Service (alternate)

Excused:

Noel Bacheller, Oregon Parks & Recreation Department  
Nikki Brooks, US Customs and Border Protection  
Erin McConnell, Bureau of Land Management  
Tim Newton, Malheur County SWCD  
Kathy Pendergrass, USDA NRCS  
Helmuth Rogg, Oregon Department of Agriculture  
Alex Staunch, Mosaic Ecology  
Amira Streeter, Office of Governor Kate Brown  
Brendan White, US Fish & Wildlife Service  
Heidi McMaster (US Bureau of Reclamation)  
Rep. David Brock Smith (Oregon State House of Representatives - District 1)  
Oregon State Senate - vacant