

Secretary of State **AUDIT REPORT**

Report No. 2002-46 • December 31, 2002

Audit of Agencies Spending Measure 66 Funds from July 1, 1999 to June 30, 2001



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Summary

PURPOSE

The purpose of this audit was to fulfill the constitutional requirement that an independent audit be performed of agencies receiving and expending Measure 66 funds. Measure 66 dedicated a portion of lottery fund proceeds for parks, beaches, and habitat and watershed restoration. The audit objectives include steps to measure the financial integrity, effectiveness and performance of these agencies.

BACKGROUND

The lottery funds directed to fulfill the constitutional requirements of Measure 66 must be used for specific purposes. Of those funds, 50 percent are to be used for financing the protection, repair, operation, creation and development of state parks, ocean shore and public beach access area, historic sites and recreation areas. The remaining 50 percent are to be used for the restoration and protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality in Oregon with at least 65 percent being used for capital expenditures.

RESULTS IN BRIEF

We found that agency expenditures of Measure 66 funds between July 1, 1999 and June 30, 2001 complied with the intended uses of those funds. Our review of unexpended capital project funds found multiple agencies that had yet to obligate a significant amount of these funds (approximately \$4.0 million) as of June 30, 2001. As a result, we were not able to conclude whether 65 percent of the Restoration and Protection Subaccount was expended on or obligated for capital expenditures as required. We will include a review of these unexpended funds as a part of our 2001-03 audit and will conclude on the 65 percent requirement at that time.

We also noted confusion over the expenditure of interest earnings directed from the Restoration and Protection Subaccount, Watershed Improvement Grant Fund, and the Watershed Improvement Operating Fund to the Restoration and Protection Research Fund. Although there had been no expenditures from this fund as of June 30, 2001, we felt it important to note that the Department of Justice has indicated that these interest earnings retain the character of the principal; therefore, any future expenditure from this fund must comply with the restrictions imposed on the principal from which the interest was derived.

Finally, we found that additional agency development of effectiveness and performance measurements related to outcomes was needed.

We sent each agency a management letter providing additional detail of the specific agency results.

OTHER MATTERS

The Oregon Watershed Enhancement Board may need to seek additional clarification from the Department of Justice as to its role as administrator of the restoration and protection fund. Indications existed that OWEB may need to take a more active role in dispensing, monitoring and accounting for these funds to fulfill the intent of Measure 66.

Further, regarding the legislative definition of "capital expenditure" contained in HB 3225, we noted at least one instance in which this definition is more restrictive than the constitutional definition. We suggest that legislative leaders consult with legal counsel and attempt to clarify any disparities between the legislative definition and the constitutional definition of "capital expenditure."

RECOMMENDATIONS

We recommend that:

- The Oregon Watershed Enhancement Board develop a method to track the interest directed to the Restoration and Protection Research Fund and provide the oversight necessary to ensure that all expenditures from this fund are compliant.
- Agencies continue with their development of output and outcome measures that will most accurately reflect the effectiveness and performance of the agency's expenditure of Measure 66 funds.

AGENCIES' RESPONSES

The Oregon Parks and Recreation Department agrees with the findings and recommendations of the audit. OPRD will strive to continue expending Measure 66 funds in compliance with their intended use.

Agencies receiving funds from the Restoration and Protection Subaccount generally agree with the recommendations.

- Based on advice received from the Department of Justice in January 2002, OWEB developed a method to track the interest directed to the Restoration and Protection Research Fund and to ensure that expenditures from the fund are compliant. This tracking is currently in place.
- All agencies receiving Measure 66 funds concur, and those agencies that do not already have performance measures are working on developing performance measures aimed at addressing the intent of Ballot Measure 66.
- OWEB has begun to work with the Department of Justice to address issues of legal interpretation raised by the Secretary of State.

Introduction

On November 3, 1998 the voters of Oregon passed ballot Measure 66, which amended Section 4, Article XV of the Constitution of the State of Oregon for the purpose of dedicating a portion of state lottery proceeds for parks, beaches, and habitat and watershed restoration.

Among the provisions of the measure was the requirement that any state agency receiving this money secure an independent audit to measure the financial integrity, effectiveness and performance of the agency.

Background

Ballot Measure 66 dedicated 15 percent of the net proceeds from the state lottery funds to a parks and natural resources fund. Of these constitutionally dedicated funds, 50 percent was to be distributed for the public purpose of financing the protection, repair, operation, creation and development of state parks, ocean shore and public beach access area, historic sites and recreation areas (Parks Subaccount) and 50 percent for the restoration and protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality in Oregon (Restoration and Protection Subaccount).

Expenditures from the Parks Subaccount were limited to:

- Maintaining, constructing, improving, developing, managing and operating state park and recreation facilities, programs and areas;
- Acquiring real property, or interest therein, deemed necessary for the creation and operation of state parks, ocean shores public beach access areas, recreation and historic sites or because of natural, scenic, cultural, historic and recreational values; and

- Operating grant programs for local government entities deemed necessary to accomplish the public purposes of the parks and natural resources fund established under Section 4 of Article XV of the Oregon Constitution.

Expenditures from the Restoration and Protection Subaccount were limited to:

- Restoring and protecting watersheds, fish and wildlife, and riparian and other native species; and habitat conservation activities including, but not limited to, planning, coordinating, assessment, implementation, restoration, inventory, information management and monitoring activities;
- Watershed and riparian education efforts;
- Developing and implementing watershed and water quality enhancement plans;
- Entering into agreements to obtain from willing owners determinate interests in lands and waters that protect watershed resources, including but not limited to, fee simple interests in land, leases of land or conservation easements; and
- Enforcing fish and wildlife and habitat protection laws and regulations.

A further restriction on the expenditures from the Restoration and Protection Subaccount is that at least 65 percent of the money must be used for "capital expenditures" and be administered by a single agency.

The 70th Oregon Legislative Assembly passed HB 3225 that implemented Ballot Measure 66. This bill designated the Oregon Watershed Enhancement Board (OWEB) as the single state agency to administer the Restoration and

Protection Subaccount. This bill included language intended to help define the term "capital expenditure."

During this same session, the legislature passed SB 5549 and SB 5530, which provided the allocation and limitations for the two subaccounts. The legislature included a budget note in SB 5549 intended to help clarify reporting requirements for those entities receiving Measure 66 funding.

The estimated net lottery proceeds for the 1999-2001 biennium resulted in \$43.4 million being dedicated to the Parks Subaccount (7.5 percent) and \$43.4 million (7.5 percent) being dedicated to the Restoration and Protection Subaccount. Of the amount dedicated to restoration and protection, a minimum of \$28.2 million must be "capital expenditures" in order to meet the 65 percent capital expenditure requirement.

Since the ballot measure's passage in 1998, we have received clarification from the Department of Justice on the intent of the ballot measure and associated audit issues. These issues included determining:

- The role of the Oregon Watershed Enhancement Board as the administrator of the Restoration and Protection Fund;
- Projects, activities, and expenditure types that should be considered "capital" for the purposes of meeting the 65 percent requirement; and
- The character of interest earned on money appropriated to the Restoration and Protection Subaccount as directed by the Legislature to the Restoration and Protection Research Fund, and the effect on the 65 percent capital expenditure requirement.

Audit Results

Parks Subaccount Expenditures Complied with Constitutional Requirements

Our review of the Parks Subaccount involved a review of Oregon Parks and Recreation Department expenditures and obligations for the 1999-2001 biennium. Specifically, the department was allocated and expended Measure 66 funds in the following categories:

Fund Source	Budgeted Amount (\$ millions)	Unexpended Amount at Biennium End (\$ millions)
Administration, Operation, and Debt Service	\$19.4	\$0.1
Land acquisitions	\$ 4.0	\$0.0
Local park grants	\$ 5.0	\$2.2
Facility repair and maintenance	\$15.0	\$0.0
Total	\$43.4	\$2.3

We found that the agency's expenditures between July 1, 1999 and June 30, 2001 from the Parks Subaccount were in compliance with the intended use of the funds.

Restoration and Protection Subaccount Expenditures Complied with Constitutional Requirements

Our review of the Restoration and Protection Subaccount expenditures involved six agencies: Oregon State Police (OSP), Oregon Department of Fish and Wildlife (ODFW), Oregon Department of Agriculture (ODA), Department of Forestry (DOF), Department of Environmental Quality (DEQ), and the Oregon Watershed Enhancement Board (OWEB). These agencies were

allocated operational and capital funds as follows:

Agency	Budgeted Operational Amount (\$ millions)	Budgeted Capital Amount (\$ millions)	Unexpended Amount at Biennium End (\$ millions)
OSP	\$ 2.7	\$ 0.6	\$ 0.0
ODFW	\$ 3.7	\$ 4.0	\$ 2.1
ODA	\$ 2.8	\$ 1.1	\$ 0.1
DOF	\$ 0.4	\$ 0.0	\$ 0.0
DEQ	\$ 0.4	\$ 0.0	\$ 0.0
OWEB	\$ 5.1	\$22.6	\$14.4
Total	\$15.1	\$28.3	\$16.6

We found that the agencies' expenditures between July 1, 1999 and June 30, 2001 from the Restoration and Protection Subaccount were in compliance with the intended use of the funds. However, our review of unexpended capital project funds found a significant amount (approximately \$4.0 million) to be unobligated at the end of the 1999-2001 biennium. We were unable, therefore, to conclude whether 65 percent of the Restoration and Protection Subaccount was expended on or obligated for capital expenditure projects as required. We will include a review of these funds as a part of our 2001-2003 review, and conclude on the 65 percent requirement at that time.

During this period, no money was expended from the Restoration and Protection Research Fund. The Department of Justice has indicated that interest earnings directed to this account from the Restoration and Protection Subaccount or the capital expenditure and operating funds retain the character of the principal. Therefore, any amount directed to this fund should be tracked in such a way as to ensure that future expenditures are in compliance with the constitutional requirements.

We recommend that OWEB develop a method to track the interest directed to the Restoration and Protection Research Fund and

provide the oversight necessary to ensure that all expenditures from this fund are compliant.

Agencies' Response:

The Oregon Department of Agriculture agrees with the auditors' figure of 145,353.55 of unexpended funds for ODA, but notes that much of that amount was obligated to finish grants that crossed the biennium and subsequently was authorized by the legislature as carryover limitation. OWEB agrees with the auditors' figure of \$14.4 million of unexpended funds for OWEB, but notes that 12.4 million of that amount was committed to grantees as of June 30, 2001 and simply awaiting requests for reimbursement of funds.

Based on advice received from the Department of Justice in January 2002, OWEB developed a method to track the interest directed to the Restoration and Protection Research Fund and to ensure that expenditures from the fund are compliant. This tracking is currently in place.

Performance Measures Need Improvement to Establish Baselines

The agencies tested were in varying stages of developing effectiveness and performance measurement systems. We found that only two of the seven had implemented a system to measure outcomes as they relate to the expenditure of Measure 66 funds. This is not unexpected, as outcome measurement is the most difficult. To be meaningful, outcome measures need to be developed, a baseline needs to be established, and performance needs to be tracked over a period of several years.

We did note, however, that most of the agencies reviewed had developed measures of output or have them under development, and

can show to some extent the results of their Measure 66 expenditures. The following table shows the results of our review by agency.

Agency	Output Measures	Outcome Measures
OPRD	Yes	Yes
OSP	Yes	No
ODFW	Yes	No
ODA-Soil & Water	Yes	No
ODA-Weed Control	Under Development	No
Forestry	Partial	No
DEQ	Yes	Yes
OWEB	Partial	No

In our review of agencies' methods for collecting the data, we concluded that their methods were reasonable.

We recommend that each agency continue with the development of output and outcome measures that will most accurately reflect the effectiveness and performance of the agency's expenditure of Measure 66 funds.

Agencies' Response:

All agencies receiving Measure 66 funds concur and those agencies that do not already have performance measures are working on developing performance measures aimed at addressing the intent of Ballot Measure 66.

Other Matters

Role of the Administrator of the Restoration and Protection Subaccount

During our discussions with the Department of Justice, we raised the question of the role of OWEB as the designated administrator of the restoration and protection funds. The Department of Justice has indicated that this role would entail distribution of, accounting for, and monitoring expenditures for compliance for the entire

Restoration and Protection Subaccount (plus interest), not just the portion specifically allocated to OWEB.

We suggest that OWEB consult with the Department of Justice on this issue. If OWEB's role is as it appears, then future audits of Measure 66 expenditures may require more of a focus on OWEB's accounting and oversight of these funds.

Effects of Legislation on Measure 66 Implementation

In seeking clarification on the acceptable uses of Measure 66 "capital" expenditure funding, we noted that HB 3225 attempted to lend some clarification to this issue.

However, there are potentially some problems inherent in the definition provided by HB 3225. If this definition is a narrower definition than was originally understood by the voters in passing Measure 66, then the broader Measure 66 definition would seem appropriate and the narrower Legislative definition unacceptable. For example, the statutory definition of "capital expenditures" allows purchase of personal property only if used in fish and wildlife enforcement (protection). Personal property expenditures would appear to be constitutionally acceptable capital expenditure if they involve the restoration or protection of one of the resources identified in Article XV, Section 4b.

We suggest that legislative leaders consult with legal counsel and attempt to clarify this and any other disparities in the definition applicable to "capital expenditure".

Objectives, Scope and Methodology

The objectives of our audit were to determine if:

- The agencies expending Measure 66 funds are doing so in

accordance with Constitutional requirements (financial integrity); and

- These agencies have established effectiveness and performance measures, and whether they have systems in place to capture data relevant to those measures (effectiveness and performance).

The scope of our review included the seven agencies receiving and expending Measure 66 dedicated funds during the 1999-01 biennium. These agencies included the Oregon Parks and Recreation Department, Oregon State Police, Oregon Department of Fish and Wildlife, Oregon Department of Agriculture, Department of Forestry, Department of Environmental Quality, and Oregon Watershed Enhancement Board. Our test period covered July 1, 1999 to June 30, 2001.

In performing this audit, we reviewed applicable sections of the Oregon Constitution, statutes, and ballot measure summaries.

We interviewed responsible agency and state officials, agency program staffs, and consulted with the Department of Justice.

To assess compliance with the requirement that a percentage of funds needed to be used for capital expenditures, we reviewed several sources of potentially relevant criteria. These included sources such as Generally Accepted Accounting Principles, the Oregon Accounting Manual, and dictionary definitions. As we began to review agency expenditures for compliance with this requirement, however, it was unclear to us whether expenditures such as weed control and post-project monitoring met the intent of the voters for a capital expenditure, since it did not match the criteria we identified for use. We therefore posed questions to the Department of Justice in this regard, and its subsequent opinion (OP-2002-4) provided the criteria we used when judging these expenditures

compliant with the intent of Measure 66.

We selected a judgment sample of expenditures for each agency and evaluated controls over those expenditures. We reviewed the agencies supporting documentation for the expenditures selected and concluded on compliance with

relevant constitutional and legislative requirements.

We interviewed agencies' program staffs and management to determine relevant effectiveness and performance measures and to determine their systems for collecting the relevant data. Where possible, we conducted additional

testing over data collection to ensure that the data collection systems were operating as depicted.

We conducted this audit in accordance with generally accepted government auditing standards.

This report, which is a public record, is intended to promote the best possible management of public resources. Copies may be obtained by mail at Oregon Audits Division, Public Service Building, Salem, Oregon 97310, by phone at 503-986-2255 and 800-336-8218 (hotline), or internet at Audits.Hotline@state.or.us and <http://www.sos.state.or.us/audits/audithp.htm>.

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The courtesies and cooperation extended by the officials and staff of the Oregon Parks and Recreation Department, Department of Oregon State Police, Oregon Department of Fish and Wildlife, Oregon Department of Agriculture, Department of Forestry, Department of Environmental Quality, and Oregon Watershed Enhancement Board were commendable and much appreciated.

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