



As a deciduous conifer, the western larch has a contrary nature.

LARCH COMPANY OCCASIONAL PAPER #2

TRANSFERRING WESTERN OREGON BUREAU OF LAND MANAGEMENT FORESTS TO THE NATIONAL FOREST SYSTEM

by Andy Kerr

ABSTRACT

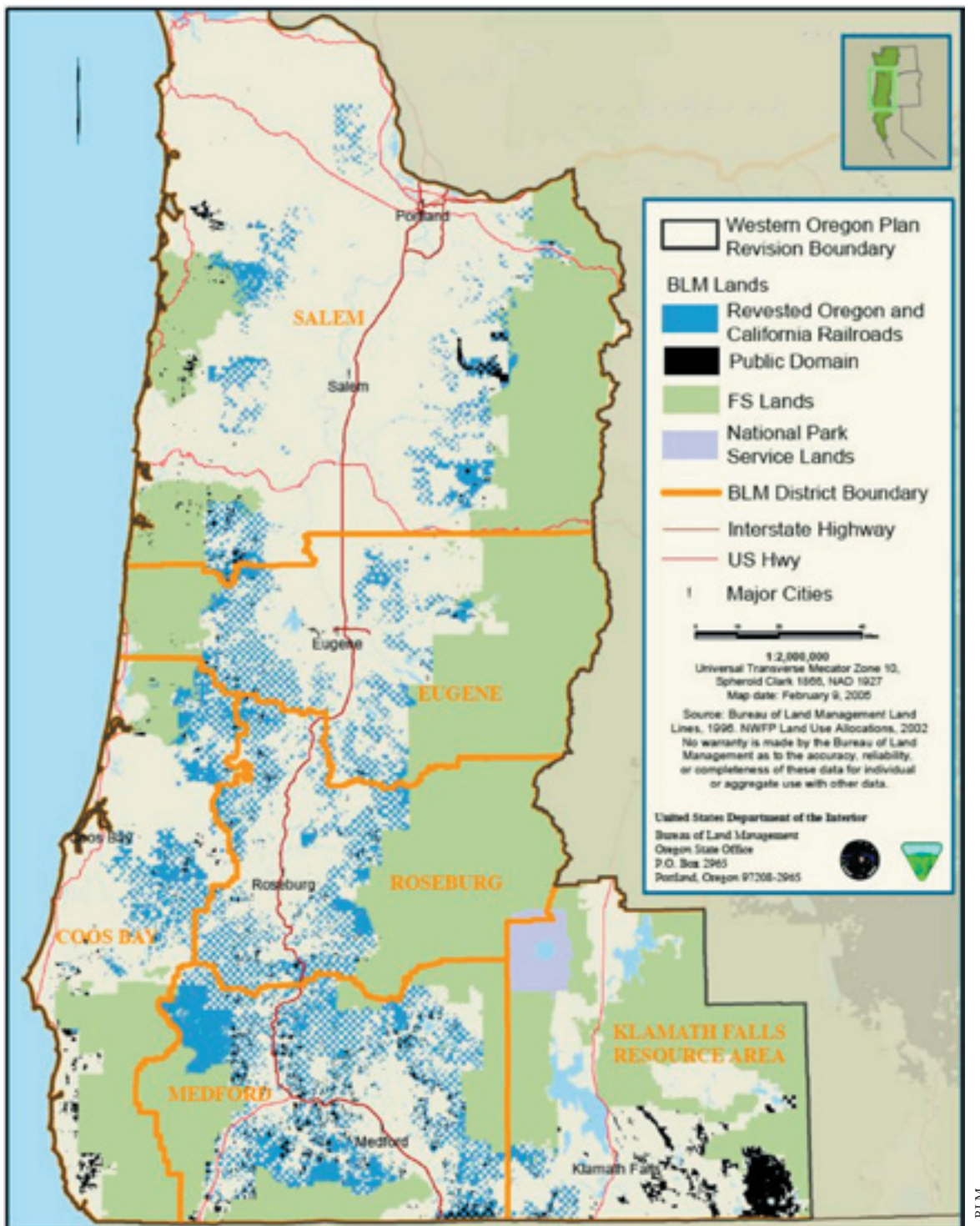
Both environmental protection and fiscal efficacy would be improved if federally owned forestlands in western Oregon presently managed by the Bureau of Land Management were transferred to the National Forest System and managed by the United States Forest Service. The Forest Service—even with all its flaws—is the nation’s premier forest management agency. Most forested holdings managed by the BLM in western Oregon comprise “O&C” lands—“Oregon and California” Railroad lands that reverted back to federal ownership after a sordid and colorful history as private railroad properties. Unfortunately, that history is perpetuated today by BLM’s consistent, intentional—and often illegal—mismanagement of these lands.



Francis Eatherington

Cow Catcher timber sale, cut in 2006 on Roseburg District BLM.

MAP 1: Federal Forestlands in Western Oregon



The Bureau of Land Management manages approximately 2.6 million acres of public forests in western Oregon, which are the agency's only significant forest holdings.

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BRIEF HISTORY OF O&C PUBLIC LANDS

In 1866 Congress offered to grant alternate sections of land (“checkerboard”) extending twenty miles east and west of a proposed north-south railroad line from Portland to the California border to the first railroad company that constructed the line. If land within the 40 mile-wide corridor was no longer available for conveyance to the railroad company (i.e., the land had already left federal ownership), the railroad could select land from an additional 10-mile wide indemnity strip on either side of the corridor. The railroad was constructed, and the lands were conveyed to the lines builder. Today, these land parcels are referred to as “O&C” (Oregon and California) lands. (In 1869 a similar grant was made for the completion of the Coos Bay Wagon Road from Roseburg to Coos Bay, hereafter also referred to as part of the O&C lands.) The land grant from Congress specified that the successful builder of the rail line (Oregon and California Railroad) was to sell the checkerboard land parcels to “actual settlers,” in quantities not greater than 160 acres, and for a price not exceeding \$2.50 per acre.¹



Lost Creek timber sale, cut 2002, Medford District BLM.

In 1887, Southern Pacific Railroad gained control of the Oregon and California Railroad. It was obvious to Southern Pacific that much of the O&C land was not suited for agriculture and was worth much more as timberland and—in any case—worth far more than \$2.50/acre. In 1903 Southern Pacific announced a policy to retain (not sell) its O&C lands. In 1907, the Oregon Legislature petitioned Congress to reclaim the lands still held by the railroad. In 1908 the Congress authorized the United States Attorney General to sue the railroad in order to seize the remaining O&C lands. In 1916, after a Supreme Court ruling that Southern Pacific had violated the terms of the land grant,² the Chamberlain-Ferris Act revested 2.8 million acres of railroad lands to the federal government.³ Subsequent land exchanges and sales reduced the amount in federal ownership today.⁴

The Bureau of Land Management (BLM) currently controls nearly 2.2 million acres of O&C lands.⁵ The agency also manages almost 400,000 acres of unreserved public domain and other public lands⁶ in western Oregon,⁷ bringing its total holdings to approximately 2.6 million acres of forestlands in the western portion of the state.

¹ Beckham, S. D. 1987. O&C Sustained Yield Act: The Land, the Law, The Legacy: 1937-1987. USDI-Bureau of Land Management. Portland, OR. 6 pp. (Available at www.or.blm.gov/styles/pdf/History_of_the_O&C.pdf.)

² Oregon and California Railroad Company v. United States, 238 U.S. 393 (1915).

³ Chamberlain-Ferris Act of 1916, 39 Stat. 218 (June 9, 1916).

⁴ Beckham, O&C Sustained Yield Act, at 9-10.

⁵ BLM. 1998. Public Lands Statistics. Table 1-5. USDI-Bureau of Land Management. Washington, DC. (Available at www.blm.gov/natacq/pls98/98PL1-5.PDF.)

⁶ Prather, D. 2004. “WOPR Preplan 27SEP.doc.” Bureau of Land Management, Coos Bay District. (Sept. 27, 2004).

⁷ “Western Oregon” means the 18 counties west of the Cascade Crest. Seventeen of the 18 counties with O&C lands are coterminous (Clatsop County is the only western Oregon county without any O&C land, and only 42 acres of public domain). One O&C county, Klamath County, is located east of the Cascade Crest. All of the O&C land in Klamath County is within the planning area identified in the Northwest Forest Plan (generally west of U.S. Highway 97).

The 1916 law that revested the O&C lands to the federal government did not provide for any revenues to counties, which had expected the land to have been sold to private parties and remain on their county tax roles. In 1937, Congress passed a law requiring “sustained yield” of resource production and, arguably multiple-use, of O&C lands. The law provided that 75 percent of gross revenues earned from logging (and grazing) be given to the counties in which the lands were located.⁸ At the time, timber was sold for a few dollars per thousand board feet and the revenue that would be received by the affected counties was considered a relatively fair trade-off for the lost property taxes.

Federal law notwithstanding, at least one O&C county asserts that O&C lands are not typical federal public lands, but “trust” lands that must be managed to provide a continuous stream of revenue (from logging) for the eighteen O&C counties. Table 1 reveals the “clearcut” motivation for these counties to make such an argument—especially Douglas County, where the county commission has been vocal about their purported right to revenue derived from federal “trust” land.⁹



Whisky Creek on Medford District BLM.

BLM FORESTLANDS IN WESTERN OREGON

Table 1 presents the various classifications of lands administered by BLM in western Oregon. Table 2 depicts acreages dedicated to special conservation purposes in western Oregon BLM districts. Of all BLM lands in western Oregon, 86 percent are O&C lands. O&C public lands comprise:

- 90% of BLM Late Successional Forest Reserves.
- 91% of BLM Key Watersheds (Tiers 1 & 2).
- 77% of BLM Mature Forests (80-119 years of age).
- 84% of BLM Old-Growth Forests (>120 years of age).
- 76% of roadless BLM lands proposed for Wilderness.
- 77% of western Oregon BLM lands designated as Wilderness.

⁸ Beckham, O&C Sustained Yield Act, at 11-13.

⁹ Historically, Douglas County has been so awash in cash, that there is no such thing as an unpaved county road, the dumps (sanitary landfills) are free, and it built a Corps of Engineers-scale dam without federal funding.

TABLE 1:**Oregon and California (O&C) Revested Lands and Public Domain Lands, Western Oregon**

Oregon County	O&C Public Lands *	Coos Bay Wagon Road Public Lands **	Public Domain Lands ***	Acquired Public Lands ****	Other Public Lands *****	Split Estate *****	Total Surface BLM Admin-istered Public Lands *****
	<i>Acres</i>	<i>Acres</i>	<i>Acres</i>	<i>Acres</i>	<i>Acres</i>	<i>Acres</i>	<i>Acres</i>
Benton	51,439		6,378	40		27,800	57,857
Clackamas	52,448		21,571	296			74,315
Clatsop			42				42
Columbia	10,960		0	1	1		10,962
Coos	99,038	59,914	9,723	249		7,828	168,924
Curry	36,681		31,825	105	2,260	2,589	70,871
Douglas	617,824	14,633	31,114	6		3,452	663,577
Jackson	389,564		55,638			4,352	445,202
Josephine	259,123		38,290		10,330	320	307,743
Klamath	46,202		166,000			21,000	212,202
Lane	280,473		7,862	362	40	1,291	288,737
Lincoln	8,773		11,047	65			19,885
Linn	85,265		3,127	45	7	8	88,444
Marion	20,707		219	75	21		21,022
Multnomah	4,208						4,208
Polk	40,491		177		1		40,669
Tillamook	38,307		11,108				49,415
Washington	11,380		320	1			11,701
Yamhill	33,003		137	65			33,205
TOTAL	2,085,886	74,547	394,578	1,310	12,660	68,640	2,568,981

* Administered by the BLM; includes O&C timber on non-federal land on 322 acres in Columbia County and 243 acres in Yamhill County.

** Administered by the BLM; excludes Coos Bay Wagon Road timber on 87 acres of non-federal land in Coos County.

*** These lands have never left the public domain after being acquired by treaty or conquest.

**** Land re-acquired for public purposes.

***** Unknown. Author has not received satisfactory explanation from BLM regarding these “other public lands.” However, these lands are not O&C or CBWR lands.

***** The federal government retains the subsurface mineral rights on these lands, while the surface is in non-federal ownership. (The 27,800 acres entered for Benton County is actually the entire split estate within the BLM Salem District (Clatsop, Columbia, Clackamas, Linn, Lincoln, Marion, Multnomah, Polk, Tillamook, Washington and Yamhill counties).

***** Does not include USFS O&C public lands otherwise shown in table.

Adapted from: Bureau of Land Management. 1998. Public Lands Statistics. Table 1-5. USDI-Bureau of Land Management. Washington, DC. (Available at www.blm.gov/natacq/pls98/98PL1-5.PDF); D. Prather. 2004. “WOPR Preplan 27SEP. doc.” Bureau of Land Management, Coos Bay District.(Sept. 27, 2004).

TABLE 2:
Special Land Use Designations, Native Forest and Roadless Areas on O&C and CBWR Lands

BLM District							
Land Designation or Special Use*	Total (acres)	Coos Bay	Eugene	Lakeview**	Medford	Roseburg	Salem
Total Acres of O&C/ CBWR Lands	2,031,746	219,620	302,167	43,205	724,156	392,180	350,418
Total Acres of All Public Lands	2,375,406	322,127	312,391	47,883	865,100	425,941	401,964
Percentage of Public Lands that are O&C Land	86%	68%	97%	90%	84%	92%	87%
Special Administrative Land Use Designation							
Late Successional Reserves	664,496	121,080	126,445	0	152,546	157,541	106,884
Key Watersheds (Tiers 1 & 2)	386,342	50,671	10,592	21,048	129,758	99,177	75,096
Riparian Reserves	- data unavailable -						
Special Congressional Land Use Designation							
Wilderness	10,994				8,562		2,432
Wild & Scenic Rivers	0						
National Monument	40,156				40,156		
Native Forests							
Old-Growth Forests (>120 years of age)	796,994	73,564	61,234	21,649	388,510	178,221	73,816
Mature Forests (80-119 years of age)	251,277	11,218	21,297	11,422	135,803	24,067	47,470
Roadless Areas							
Proposed Wilderness	207,579	13,702	13,430	1,590	142,777	18,780	17,300

* Special land use acreages not totaled as some designations overlap.

** Only the portion of the Lakeview District that is within the Northwest Forest Plan is included.

Source: Pers. comm., Erik Fernandez, Oregon Wild (then Oregon Natural Resources Council) (Mar. 24, 2005).

IS THE O&C LANDS ACT A “MULTIPLE-USE” OR A “DOMINANT USE” LAW?¹⁰

*The revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands ... shall be managed ... for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal (sic) of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.*¹¹

The Oregon and California Railroad Lands Act of 1937¹² (OCLA) was Congress’ first attempt to institute a multiple-use and sustained yield law for public lands. The act mandates “permanent forest production” for O&C lands, which appears to be a conscious choice of terms over permanent *timber* production. The statute also identifies regulating stream flow, protecting watersheds and providing recreation opportunities as other multiple-uses, although it fails to mention wildlife and other uses defined by subsequent Congresses as additional multiple-uses of public lands.¹³ The purposeful inclusion of these additional goals for O&C lands suggests that OCLA is a “multiple-use” statute, as opposed to a “dominant use,” timber-first law.

An expansive reading of the statute could interpret that Congress’ intentions for O&C lands are that timber cutting may (or even must) be prohibited or restricted to:

- protect the quality and quantity of water coming off the forests (“protecting watersheds”);
- provide for favorable (usually) late season water flows (“regulating stream flow”);
- provide commercial guiding opportunities for hunters, anglers and birders (“contributing to the economic stability of local communities”); and
- provide old-growth forests in which to hike and camp (“recreational facilities”).

The above interpretation is a reasonable reading of the law and could have important ramifications for BLM if the courts so interpret. For example, if the agency could violate the statute by authorizing a level of timber cutting that would threaten the “permanent source of timber supply” on O&C lands (as the agency currently does), then by the same reasoning BLM could also act illegally by authorizing levels and locations of timber cutting that would result in inadequate protection of watersheds, inadequate regulation of stream flows, inadequate provision of recreational facilities, and inadequate economic stability for local communities and industries.

Over the decades, various BLM solicitors (agency attorneys) have issued opinions that tend to favor one view or the other about the agency’s obligations to manage O&C lands. Sometimes their official opinions support multiple-use of the lands (timber, watershed, and recreation, if not also wildlife), sometimes they lean toward dominant use (timber first; all other uses subservient).

¹⁰ For a more scholarly treatment see S.J. M. Brown and D. Scott. 2007. The Oregon and California Lands Act: revisiting the concept of “dominant use.” *J. Env’t Law & Litig.* (in press).

¹¹ 43 U.S.C. § 1181(a).

¹² Oregon and California Railroad Lands Act of 1937, 43 U.S.C. §§ 1181(a)-(f); 50 Stat. 874.

¹³ The Multiple-Use Sustained Yield Act of 1960 defines “multiple use” as applied to the National Forest System as “outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” 16 U.S.C. § 528. The Federal Lands Policy and Management Act of 1976 (43 U.S.C. §§ 1701-1782) defines “multiple use” for Bureau of Land Management lands as “including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values.” 43 U.S.C. § 1703(c).

Adverse solicitors' opinions notwithstanding, federal courts have held that sufficient administrative discretion (granted by Congress in the form of numerous other statutes, several of which are noted herein) exists for the agency to manage its lands under higher protection standards than the OCLA statutory minimum—if OCLA is indeed a dominant use, timber-first statute. Two district court cases that supported a broader mandate for O&C lands than just timber production were decided after the U.S. Ninth Circuit Court of Appeals ruled that OCLA was primarily a timber, not a multiple-use, statute.¹⁴ The district court rulings were not appealed.

SWEETHEART SETTLEMENT

In 2003, the Bush Administration settled litigation brought by the timber industry (which the industry had previously lost), in a manner that suggests that timber production is supreme on O&C lands.¹⁵ BLM agreed that during its revision of Western Oregon resource management plans, it would consider an alternative that withdraws the O&C lands from the Northwest Forest Plan.

The legal and ecological ramifications would be enormous if such an alternative is adopted. The Northwest Forest Plan (NWFP), which has brought relative political—if not ecological—stability to the region, would be completely eviscerated. The plan would have to be revised for National Forest System lands in an attempt to compensate for the resulting shortfall in forest conservation that the National Forest Management Act requires. BLM O&C lands would not be exempt from other federal conservation statutes, including, but not limited to, the Endangered Species Act and the Clean Air Act.

The agency intends to have made its decision that will likely effectively withdraw western Oregon BLM public lands from the Northwest Forest Plan before President Bush leaves office at high noon on January 20, 2009.

In any case, with the increased public concern about O&C public lands, and increasing polarization of the associated politics, the public can continue to expect the fate of O&C forestlands to wax and wane with changing administrations.



KS Wild file photo

East Fork Coquille timber sale, proposed in 2003 on Roseburg BLM.

¹⁴ See M.C. Blumm and J. Lovvorn. 1997. The Proposed Transfer of BLM Timber Lands to the State of Oregon: Environmental and Economic Questions. *LAND & WATER L. REV.* 32(2): 353-412.

¹⁵ BLM. 2004. Western Oregon Resources Management Plan Revision Process (Mar. 5, 2004). Available at www.or.blm.gov/lucurrwopr.htm.

O&C (AND CBWR) LANDS ARE NOT “TRUST” LANDS FOR WESTERN OREGON COUNTIES

Most O&C counties (some counties have abandoned the argument) contend that O&C lands and Coos Bay Wagon Road lands must be managed as a “trust” by the federal government for the benefit of county governments. They argue that language in the OCLA that authorizes timber production on O&C lands and that a savings clause in the Federal Lands Policy and Management Act (FLPMA) makes FLPMA’s multiple-use mandate subservient to OCLA, support their contention.¹⁶

If Congress intended that O&C lands would be anything less than full-fledged federal public lands, it seems it would have taken at least one of the numerous opportunities it has given itself to say so during the nearly 100 years since it first took legislative action to reclaim these lands in 1908:

- In 1916, when Congress revested O&C lands back to the United States, they were not specified to be held in trust to maximize timber revenues for western Oregon counties.¹⁷ Nor did Congress then state that the Antiquities Act of 1906, passed a decade earlier, did not apply to O&C public lands (see below).
- In 1937, Congress enacted OCLA,¹⁸ identifying other uses, besides timber production, as purposes of affected lands. Such is inconsistent with a “trust” obligation to maximize income to beneficiaries. (Congress did state that most timber revenues would be given to the counties, but that was a political choice, not a supposed “trust” obligation.)¹⁹
- In 1954, Congress resolved the conflict over whether 400,000 acres of “O&C” lands within national forests are federal land or “trust” land. Congress declared them federal (national forest land) in the Controverted Lands Act (although the political choice in 1937 to give the majority of revenue to counties was continued).²⁰
- In 1968, Congress designated the Lower Rogue as one of the first units of the National Wild and Scenic Rivers System.²¹ The designation included O&C lands, and Congress made no mention of any supposed “trust” obligation arising from O&C lands. The Wild and Scenic Rivers Act also mandated BLM to study additional free-flowing streams on its lands for possible designation as Wild and/or Scenic Rivers.²² No exception was made for O&C public lands.
- In 1970, Congress enacted the Clean Water Act²³ and the National Environmental Policy Act.²⁴ Congress did not exempt O&C lands or the agency that manages them from compliance because O&C lands are some type of trust, rather than ordinary public lands.
- In 1972, Congress enacted the Endangered Species Act.²⁵ The requirements of that law are stricter on federal land as compared to non-federal land. Congress did not exempt O&C lands from the act.

¹⁶ 43 U.S.C. § 1701 nt.; Pub. L. 94-579 § 701. “Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j) ... insofar as [it] relate[s] to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.”

¹⁷ See Chamberlain-Ferris Act of 1916, 39 Stat. 218 (June 9, 1916).

¹⁸ Oregon and California Lands Act of 1937, 43 U.S.C. §§ 1181(a)-(f); 50 Stat. 874.

¹⁹ 43 U.S.C. § 1181(a). Congress also directed that O&C counties also receive revenues from livestock grazing on O&C lands, according to the same formula prescribed for timber receipts. 43 U.S.C. § 1181(d).

²⁰ Controverted Lands Act of 1954, 43 U.S.C. §§ 1181(g)-(j); 68 Stat. 270.

²¹ 16 U.S.C. § 1274(a)(5).

²² 16 U.S.C. § 1276(d)(1).

²³ Clean Water Act of 1970, 33 U.S.C. §§ 1251-1376.

²⁴ National Environmental Policy Act of 1970, 42 U.S.C. §§ 4321-4347.

²⁵ Endangered Species Act, 16 USC §§ 1531-1544.

- In 1978, Congress designated the Wild Rogue Wilderness, which included BLM O&C lands.²⁶ There was no consideration in the Wilderness legislation of any supposed “trust” obligation arising from O&C lands.

- In 1984, Congress designated the Table Rock Wilderness, which included BLM O&C lands.²⁷ There was no consideration in the Wilderness legislation of any supposed “trust” obligation arising from the O&C lands.

- In 1988, Congress designated portions of the North Umpqua River, Quartzville Creek, Salmon River, and Sandy River as units of the National Wild and Scenic Rivers System.²⁸ While O&C lands were included in the designation, there was no consideration of any supposed “trust” obligation arising from those holdings.

- In 1996, Congress designated a portion of Elkhorn Creek as a unit of the National Wild and Scenic Rivers System.²⁹ While O&C lands were included in the designation, there was no consideration of any supposed “trust” obligation arising from those holdings.

- In 2000, when President Clinton proclaimed the Cascade-Siskiyou National Monument pursuant to authority granted to the President by Congress under the Antiquities Act of 1906,³⁰ Congress took no steps to reverse the proclamation because 40,156 acres of O&C lands were included in the 52,947-acre monument. The presidential proclamation, pursuant to the Antiquities Act of 1906, trumps OCLA, with the President going so far as to eliminate commercial timber production inside the monument (except under very narrow constraints to aid the restoration of ecological processes).³¹

In determining whether or not O&C lands are to be managed broadly for the public interest, or narrowly for the provincial interests of affected counties, one must consider the entire body of law that applies to O&C lands. Consider two of the most expansive statutes that apply to O&C lands. The Clean Water Act and the Endangered Species Act both require the “Secretary” (BLM) to do certain things and authorize other actions to protect water quality and threatened or endangered species on both public and private lands. Under authority of these laws, a “green” Secretary of the Interior has latitude to do good things for nature, just as a “brown” Secretary can do bad things to nature. It is the discretion that lies between required and authorized that results in the periodic ping-pong effect of public lands management.

Section 701(b) of FLPMA and (perhaps) OCLA itself notwithstanding, there is a strong conservation mandate for multiple-use—not just timber as the dominant or only use—of public lands and the sustained yield of all forest resources—not just timber.



Francis Eatherington

Westside timber sale, sold 2006 on the Medford District BLM.

²⁶ Endangered American Wilderness Act of 1978, P.L. 95-237 (Feb. 28, 1978). The Wild Rogue Wilderness includes a 10,160-acre block of BLM O&C lands (the remaining 25,658-acres in the Wilderness are on the Siskiyou National Forest). A. Kerr 2004. OREGON WILD: ENDANGERED FOREST WILDERNESS. Timber Press. Portland, OR: 216-217.

²⁷ Oregon Wilderness Act of 1984, P.L. 98-328 (June 26, 1984). Table Rock is 5,500 acres of checkerboard comprised of O&C and public domain lands). A. Kerr 2004. OREGON WILD: ENDANGERED FOREST WILDERNESS. Timber Press. Portland, OR: 216-217.

²⁸ 16 U.S.C. § 1274(a)(95), (97), (99)-(100).

²⁹ 16 U.S.C. § 1274(a)(159).

³⁰ 16 U.S.C. § 431.

³¹ Establishment of the Cascade-Siskiyou National Monument, Proclamation No. 7318, 65 Fed. Reg. 37249 (June 9, 2000).

FUTURE WILDERNESS AND WILD AND SCENIC RIVERS DESIGNATIONS ON O&C LANDS IN WESTERN OREGON

Conservationists are currently recommending that 269,357 acres of western Oregon BLM lands (including 219,900 O&C lands) be designated as Wilderness by Congress.³² Proposed Wilderness areas with O&C lands include the Coast Range, Elk River, Kalmiopsis Additions, McKenzie, Santiam, Siskiyou Crest, Soda Mountain, South Cascades, Upper Willamette and Wild Rogue Additions.³³

BLM has recommended that the ~6,000-acre Soda Mountain Wilderness Study Area be designated as Wilderness by Congress.

The WSA is artificially small in that it contains only public domain land and O&C land not considered to be commercial timberland (capable of growing at least 20 cubic feet of wood fiber per acre per year [20 cubic feet is a cube approximately 2.7 feet on each side; an acre is approximately one city block]). Conservationists are recommending a larger, two-unit 23,138-acre Soda Mountain Wilderness within the national monument.³⁴ Legislation was introduced into the 109th Congress to designate the Soda Mountain Wilderness in association with a buyout of federal livestock grazing leases.³⁵

BLM applies the same non-commercial timberland exception to its Wilderness evaluation of the Zane Grey Roadless Area—a proposed addition to the Wild Rogue Wilderness along the lower Rogue River—which the agency defines as only ~18,000 acres, while the entire roadless unit is, in fact 47,890 acres.³⁶ Similar circumstances exist for the Whisky Creek (5,753 ac.), Grave Creek (2,095 ac.) and Mule Creek (1,702 ac.) units of the proposed Wilderness expansion.³⁷

BLM has, and must continue to review its holdings in western Oregon for free-flowing streams that are eligible for inclusion in the National Wild and Scenic Rivers System. Several stream segments totaling hundreds of miles have been found eligible for designation by the agency.³⁸



Dang Ngo

Nearly 60,000 acres of roadless lands in the lower Rogue River watershed should be protected as Wilderness. The BLM plans to log more than 500 acres of old-growth and build roads into this unique landscape.

³² Pers. comm., Erik Fernandez, Oregon Wild (then Oregon Natural Resources Council), (Mar, 17, 2005).

³³ Kerr, A. 2004. OREGON WILD: ENDANGERED FOREST WILDERNESS. Timber, Press. Portland, OR: 88, 91, 103, 106, 109, 112, 127, 130, 133, 139, 142, 152.

³⁴ An additional and adjoining 9,000 acres of wildlands in California is also recommended for Wilderness.

³⁵ S. 3858 (109th Congress) was introduced by Senators Gordon Smith (R-OR) and Ron Wyden (D-OR).

³⁶ Kerr, A. 2004. OREGON WILD: ENDANGERED FOREST WILDERNESS. Timber Press. Portland, OR: 88, 113.

³⁷ _____. 2004. Proposed Additions to the Wild Rogue Wilderness and Lower Rogue Wild and Scenic River. American Rivers, Klamath-Siskiyou Wildlands Center, Oregon Wild and Siskiyou Project. (Available at www.savethewildrogue.info/wilderness.)

³⁸ McCarthy, J. Potential Additions to the National Wild and Scenic Rivers System in Oregon (database). Oregon Wild (then Oregon Natural Resources Council). Portland, OR. (2005).

RECOMMENDATION: TRANSFER WESTERN OREGON BLM FORESTLANDS TO THE NATIONAL FOREST SYSTEM

To end the increasing debate over the fate of O&C lands, and to ensure that over forty thousand square miles of federal forestlands in western Oregon are managed just like the other nearly three-hundred thousand square miles of federal forestlands across the country, all O&C lands (and remaining forested BLM public domain lands in western Oregon) should be transferred from BLM to the National Forest System, to be managed by the Forest Service according to the National Forest Management Act³⁹ and other laws.

ENVIRONMENTAL BENEFITS OF TRANSFERRING O&C LANDS TO THE NATIONAL FOREST SYSTEM

Transferring BLM forestlands to the National Forest System will result in numerous environmental benefits to the land and to present and future generations of Americans.

1. Higher Standards for Environmental Protection.

Once transferred, the O&C lands would generally be managed under the National Forest Management Act of 1976 (NFMA), rather than the O&C Lands Act of 1937, which has often been construed as a timber-first law. (Even if OCLA were repealed, O&C lands would be managed under the Federal Land Policy and Management Act of 1976⁴⁰—enacted contemporaneous with NFMA—but it provides less environmental protection.)

2. More Professional Management. The Forest Service is a more professional and (relatively) more ecologically sensitive land management agency than BLM. While conservationists are forced to sue both agencies to enforce environmental laws, lawsuits against the BLM often involve more egregious violations of law than those against the Forest Service. Nor has the Forest Service ever matched the attempt made by BLM to contrive a crisis and force action by the Endangered Species Committee (“God Squad”) in an attempt to log old-growth forest despite likely causing the extinction of a species.⁴¹ BLM is inbred as a forest management agency. The agency’s only significant forest holdings are in western Oregon, leaving its employees little opportunity for advancement or career variety. In contrast, the Forest Service has the entire National Forest System from and to which to develop new people and new ideas.



Cotton Snake timber sale, Medford District BLM.

Francis Eatherington

³⁹ 16 U.S.C. §§ 1600-1614.

⁴⁰ 43 U.S.C. §§ 1701-1782.

⁴¹ Hart, E. 2001. *The God Squad and the Case of the Northern Spotted Owl* (documentary film). Available at www.lookingglasspictures.com/index2.html.

⁴² USDA-Forest Service. “Northwest Forest Plan Accomplishments” (web page). USDA-Forest Service, Pacific Northwest Region. Available at www.fs.fed.us/r6/nwfp.htm.

3. Improved Watershed Management. Forest Service and BLM lands in western Oregon are located in the same watersheds. Timber sales and other land degrading activities are planned by each agency on its own lands usually with no consideration given to the impacts or activities planned on lands managed by the other. Integrated watershed and landscape management is best done by one agency.

4. Improved Ecosystem Management. Although BLM frequently touts “ecosystem management” as its preferred management scheme, close examination of the agency’s implementation of the Northwest Forest Plan⁴² reveals that timber production still reigns supreme at BLM. In general, BLM is doing a much worse job than the Forest Service at preserving public forests.



Key Elk timber sale, Medford District BLM.

KS Wild

5. Opportunities for Land Consolidation. It is impossible to manage checkerboard lands for optimal biological diversity, recreational opportunities and other public benefits. If O&C checkerboard lands were included in the National Forest System, there would be an improved opportunity for the Forest Service to exchange or acquire other disturbed lands to consolidate landscapes and management.

6. Upgraded Public Lands Status. Not only are O&C lands considered second-class public lands insofar as management and protection are concerned, they are not as well known to (and therefore beloved by) the public as other federal forestlands. This is primarily because maps, which almost always depict federal “reservations” such as the National Forest System, National Park System and National Wildlife Refuge System, do not generally depict “unreserved” public lands managed by BLM (and where lands are primarily checkerboard, depicting them on maps becomes even more problematic).

FISCAL BENEFITS OF TRANSFERRING O&C LANDS TO THE NATIONAL FOREST SYSTEM

There is significant overlap in bureaucracy between the Forest Service and BLM in western Oregon. Three cities (Medford, Roseburg and Eugene) have both National Forest headquarters and BLM District headquarters. The Pacific Northwest Regional Office (Region 6) of the Forest Service is located in Portland. Region 6 includes all national forests and grasslands in Oregon and Washington. BLM’s Oregon State Office in Portland manages BLM holdings in Oregon and Washington. BLM has fewer detached district and resource area offices than the Forest Service has ranger district offices. In fact, several of the Forest Service ranger district offices are in closer proximity to BLM lands than the BLM’s own facilities. A 1985 Administration study found that transferring BLM forestlands to the Forest Service would save \$45-64 million annually. Estimated start-up costs would be between \$64-83 million (all updated to 2006 dollars). Thus, the simple payback to taxpayers for transferring the lands is between one and two years.⁴³

⁴³ Kadera, J. and J. C. Flanigan. Federal agencies propose huge Oregon land swap. *Oregonian* (Jan. 31, 1985): B2.

TABLE 3:
O&C Lands Within the National Forest System

Oregon County	USFS Controversial O&C Public Lands *	USFS Special Act O&C Public Lands **	Total
	<i>Acres</i>	<i>Acres</i>	<i>Acres</i>
Benton		1,720	1,720
Clackamas	35,949	5,688	41,637
Clatsop			
Columbia			
Coos	23,002		23,002
Curry	56,735		56,735
Douglas	95,641		95,641
Jackson	25,332	20,971	46,303
Josephine	109,224	182	109,406
Klamath	20,962		20,962
Lane	95,293		95,293
Lincoln			
Linn	520		520
Marion			
Multnomah			
Polk		1,160	1,160
Tillamook			
Washington			
Yamhill			
<i>TOTAL</i>	<i>462,658</i>	<i>29,721</i>	<i>492,379</i>

* Under the provisions of Public Law 426, approved by the 83rd Congress on June 24, 1954, these lands are declared to be revested O&C railroad grant lands. They were placed under the jurisdiction of the Secretary of Agriculture to be administered as National Forest lands, with all revenues derived from such lands to be dispersed in accordance with the provisions of Title II of the O&C Act of August 28, 1937 (50 Stat. 874), as amended by Public Law 426.

** Certain O&C lands were set aside by various acts of Congress to be administered by the Forest Service without losing their O&C identity. These lands in Benton, Clackamas, Jackson, and Polk Counties are watershed lands, while the land in Josephine County is an administrative site.

Adapted from: BLM. 1998. Public Lands Statistics. Table 1-5. USDI-Bureau of Land Management. Washington, DC. (Available at www.blm.gov/natacq/pls98/98PL1-5.PDF.)

PRECEDENT FOR TRANSFERRING O&C LANDS TO THE NATIONAL FOREST SYSTEM

There is no reason the Forest Service cannot manage O&C lands. In fact, nearly one-half million acres already are managed by the Forest Service, as directed by an act of Congress in 1954 (Tables 3 and 4). The law was precipitated by the BLM planning timber sales on O&C lands that overlapped national forest lands. The Forest Service protested the proposed sales, and Congress resolved the conflict in the Controversial Lands Act by directing that such lands were to be managed by the Forest Service as national forest lands in every way except in regards to disposition of revenues from timber production. Revenues to counties continued to be dispersed under the O&C formula rather than a national forest formula.⁴⁴

TABLE 4:
National Forest System Lands Subject
to O&C Revenue Distribution Formula

<i>National Forest</i>	<i>Acres</i>
Siskiyou	173,086
Umpqua	137,995
Rogue River	60,974
Willamette	51,272
Mount Hood	41,637
Winema	18,772
Siuslaw	7,606
<i>Total</i>	<i>491,342</i>

Source: Williams, G. W. undated. General History of the O&C Lands. USDA-Forest Service, Pacific Northwest Region. Portland, OR. (Available at www5.or.blm.gov/ForestPlan/O_and_C/GeneralHistory-O_and_C_Lands.htm)

ISSUES RELATED TO TRANSFERRING O&C LANDS TO THE NATIONAL FOREST SYSTEM

REVENUE AND FAIRNESS

Under OCLA, the eighteen counties in western Oregon that contain O&C lands have the best deal of any counties in the nation with their payments in lieu of taxes. As noted above, OCLA gives 75 percent of timber sale revenues from O&C lands to counties, proportionate to their O&C holdings. That is equivalent to taxing gross income from private timberland at a 75 percent rate.⁴⁵ The revenues provided are completely discretionary to the counties that receive them, in contrast to the 25 percent of timber sale receipts that counties receive from timber production on standard national forest lands—which are restricted to building roads and supporting schools in the recipient counties. As a result, the eighteen O&C counties in western Oregon became addicted to O&C revenues. The O&C counties have received at least 100 times more money from O&C lands than they would have received had they been private property on the property tax rolls.

⁴⁴ 43 U.S.C. §§ 1181(g)-(i).

⁴⁵ In the early 1960s, the counties astutely waived one-third of their legally allow split (25% of the total) back to BLM for management, relieving growing congressional opposition to the very favorable terms of the Oregon and California Lands Act. It also had the effect of increasing BLM's budget to allow it to build more roads and offer more timber for sale, so the counties net revenues actually increased.

Giving such a generous deal to eighteen counties and no others in the United States certainly raises questions of government equity and fairness. It also results in an inherent conflict of interest for local governments that advocate aggressive federal land management (rampant clearcut logging) to maximize their revenues from O&C lands. If payments in lieu of taxes to counties must be based on logging, revenues to O&C counties should be calculated using the same 25 percent formula that other counties receive from federal forestlands in the National Forest System.

COUNTY PAYMENTS REFORM

Due to massive declines in federal timber revenue sharing to all counties with federal forestlands, but especially the eighteen western Oregon O&C counties, Congress changed the payment structure from a percentage of the varying (and generally declining) gross revenues from timber production to a guaranteed payment based on a recent high average.⁴⁶ This law has wisely stabilized not only federal revenues for O&C counties, but for other countries throughout the nation with federal public lands.

Unfortunately, this law sunset in 2006. If the county payment program is not reauthorized, it is a return to the bad old days of 75 percent timber revenue funding, with the counties encouraging the Bush Administration plans gut the Northwest Forest Plan and raise the levels of old-growth forest logging.

It is time to permanently decouple the education of children and the maintenance of roads from the clearcutting of forests.

OTHER RECOMMENDED TRANSFERS OF BLM LAND TO OTHER FEDERAL AGENCIES

Not all BLM lands in western Oregon are appropriate for transfer to the Forest Service. BLM manages some offshore islands which should be transferred to the U.S. Fish and Wildlife Service (FWS) for inclusion in the Oregon Islands Wilderness and Oregon Islands National Wildlife Refuge, as was done with more than 1,200 rocks, outcroppings and islands that were previously managed by BLM. The agency also manages some onshore coastal non-forest holdings that should be transferred to FWS to be managed as national wildlife refuges or to the Forest Service to become part of the Oregon Dunes National Recreation Area.

CONCLUSION

Running BLM out of western Oregon obviously will not solve all the problems with managing these forestlands, but it will help. Most of the eighteen western Oregon O&C counties (some have progressive administrations that aren't obsessively focused on O&C lands) have hopes of returning to the bad old days, where public forestlands are managed under the problematic Oregon and California Lands Act. But as long as that law remains in force and BLM manages these lands, they will never receive proper protection and management for the broader public interest.

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⁴⁶ Secure Rural Schools and Community Self-Determination Act of 2000, P.L. 106-393 (Oct. 30, 2000); 114 Stat. 1607.

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Andy Kerr (andykerr@andykerr.net) is Czar of The Larch Company (www.andykerr.net). A professional conservationist for over three decades, he has been involved in the enactment of over 25 pieces of state and federal legislation, scores of lawsuits, dozens of endangered species listing petitions and countless administrative appeals of Forest Service and Bureau of Land Management timber sales and other decisions. He is best known for his three decades with Oregon Wild (formerly Oregon Natural Resources Council), the organization best known for having brought you the northern spotted owl. He has lectured at all of Oregon's leading universities and colleges, as well as at Harvard and Yale. He is a dropout of Oregon State University. Kerr has appeared numerous times on national television news and feature programs and has published numerous articles on environmental matters. Kerr authored *Oregon Desert Guide: 70 Hikes* (The Mountaineers Books, 2000) and *Oregon Wild: Endangered Forest Wilderness* (Timber Press, 2004). He serves as Senior Counselor to Oregon Wild and is an advisor to the Sagebrush Sea Campaign. He also consults for non-profit conservation organizations. Clients have included Campaign for America's Wilderness, The Wilderness Society, Conservation Northwest, Idaho Conservation League, Soda Mountain Wilderness Council and others. A fifth-generation Oregonian, Kerr was born and raised in Creswell, a recovered timber town in the upper Willamette Valley. He lives in Ashland, a recovered timber town in the upper Rogue Valley. He lives with one wife, one dog, one cat, one horse, 20 odd tropical fish and no vacancies. In his free time, Kerr likes to canoe, hike, raft, read, and work on projects that move his home and business toward energy self-sufficiency and atmospheric carbon neutrality.



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