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21st-Century National Recreation Areas for Oregon's National Forests and BLM Public Lands

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Abstract

National forest ranger districts were created in an era when “multiple use” meant logging and livestock grazing, with other uses deprioritized. With declining timber and livestock industries and a growing outdoor recreation industry—as well as increased concern for watersheds, ecosystems, and native species—it’s time to replace ranger districts with national recreation areas (NRAs) as the fundamental management unit. This paper recommends the wide-scale establishment of NRAs in Oregon national forests to replace the ranger district management model. As of 2014, Congress had designated 22 NRAs as part of the National Forest System and 18 as part of the National Park System. This paper includes lists of potential new Oregon NRAs for the 21st century. Approximately 31 Forest Service NRAs would replace the more than 50 Forest Service ranger district, 14 Bureau of Land Management resource area and other offices in Oregon. Six BLM NRAs in eastern Oregon would replace eight BLM resource area offices. The paper also examines Oregon’s three existing national forest NRAs and two potential NRAs proposed for Bureau of Land Management (BLM) holdings in western Oregon. Finally, it proposes model NRA legislative language that can also serve as a basis for designating similar congressional conservation designations.

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Introduction

National forest ranger districts are so 20th century. Ranger districts were created in an era when multiple use meant logging and grazing, with other uses deprioritized. But in the 21st century, more money is to be made by helping people enjoy natural values on public lands than by logging, grazing, and mining. With declining timber and livestock industries and a growing outdoor recreation industry—as well as increased concern for watersheds, ecosystems, and native species—it’s time for a 21st-century management structure for Oregon’s national forests. It’s time to replace ranger districts with national recreation areas (NRAs) as the fundamental management unit.

The NRA designation acknowledges current realities. While the designation signals a management emphasis on recreation, this use doesn’t trump all other uses and values in an NRA. The acts of Congress designating most NRAs have generally subordinated recreation to greater long-term conservation values. If established by Congress with proper purposes, direction, and sideboards, NRAs can better conserve and restore natural, scenic, ecosystem, watershed, fish and wildlife, historical, and other public values than can the 20th-century ranger district model while at the same time encouraging appropriate outdoor recreation.

This paper recommends the wide-scale establishment of NRAs in Oregon national forests, effectively replacing the ranger district management model. Currently more than 50 Forest Service ranger district and related offices administer the national forests in Oregon. We propose that they be replaced with 31 NRAs. Such NRAs would

- facilitate stronger levels of conservation protection for National Forest System lands,
- modernize bureaucratic management, and
- promote local economic development based on enjoying—rather than exploiting—nature.

The Piecemeal Recalibration of Multiple Use

When the multiple-use mandates for the Forest Service and the BLM (see Appendix A) were enacted by Congress in 1960 and 1976 respectively, the multiple uses of timber and range (livestock grazing) were favored by the management agencies at the expense of other uses. As of 2015, the American people clearly favor uses of their public lands other than timber and range (for the Forest Service: outdoor recreation, watershed, and wildlife and fish; for the BLM: including, but not limited to recreation, watershed, wildlife and fish, and natural scenic, scientific, and historical values). This trend will continue as America urbanizes and suburbanizes.

While the BLM and the Forest Service have the authority—in fact, the requirement—to periodically rebalance multiple uses, history has shown that the management bureaucracy lags behind in adjusting use “to best meet the needs of the American people.” Congress, in piecemeal fashion, has adjusted “multiple use” multiple times and will continue to do so—by the designation of wilderness areas, wild and scenic rivers, and national recreation areas, and through other special designations in discrete portions of the National Forest System and public lands. With each new NRA, or expansion of an existing NRA, Congress will be rebalancing “multiple use” for the modern era.

We also recommend that six NRAs be designated on BLM lands in eastern Oregon, which are the vast bulk of BLM holdings in Oregon.

National Recreation Areas Within the Federal Estate

NRAs are established by acts of Congress. While Congress has repeated certain concepts and legislative phrasing numerous times in these acts, there is no National Recreation Area Act paralleling the Wilderness Act² or the Wild and Scenic Rivers Act.³ These latter acts detail specifically what a wilderness or a wild and scenic river is and how it is to be managed, and they initially established some wilderness areas and wild and scenic rivers. Congress then enacts subsequent legislation to add areas and streams to either the National Wilderness Preservation System or the National Wild and Scenic Rivers System.

Wilderness and Wild and Scenic Rivers Not Enough

Though wilderness and wild-and-scenic-river designations are the bedrock of a sound public lands conservation network, often neither designation provides full landscape conservation. Many NRAs are underpinned by lands designated as wilderness and streams designated as wild and scenic rivers. The most enduring conservation protection is afforded by overlapping designations of wilderness and wild and scenic rivers with an overarching NRA designation.⁴ The Hells Canyon and Mount Hood NRAs both have wilderness and wild and scenic rivers designated within them. The act that created the Oregon Dunes NRA required a study report to Congress assessing wilderness area potential, but Congress has yet to act upon it. The act that created the Hells Canyon NRA, established wilderness study areas and required a wilderness study report to Congress, which, for the most part, Congress has yet to act upon.

No National Recreation Area “System” exists. NRAs have been established by Congress within both the National Forest System and the National Park System, administered by the U.S. Department of Agriculture (USDA) Forest Service (USFS) and the U.S. Department of the Interior (USDI) National Park Service (NPS) respectively. As of 2014, Congress had designated 22 NRAs as part of the National Forest System (see Table 1; note that 3 of these areas are entirely or partially within national forests in Oregon) and 18 as part of the National Park System (see Table 2). In all or part, these NRAs were carved out of national forests and are often managed as a subpart of a larger national forest.

Legislation is pending in the current 114th Congress to establish two NRAs on public lands in western Oregon administered by the USDI Bureau of Land Management (BLM). No NRAs exist in the National Wildlife Refuge System administered by the USDI Fish and Wildlife Service (FWS).

² 16 U.S.C. §§ 1131-1136.

³ 16 U.S.C. §§ 1271-1287.

⁴ Kerr, Andy, and Mark Salvo. 2008. [Overlapping Wilderness and Wild & Scenic River Designations Provide Maximal Conservation Protection for Federal Public Lands](#). *Environmental Law* 38.

<p align="center">Table 1 National Recreation Areas Within the National Forest System</p>					
National Recreation Area	Administering National Forest	State(s)	NFS Acreage	Other Acreage	Total Acreage
Allegheny	Allegheny	PA	24,145	0	24,145
Arapaho	Arapaho	CO	32,521	3,929	36,450
Ed Jenkins	Chattahoochee	GA	23,166	164	23,330
Flaming Gorge	Ashley	UT, WY	189,825	11,289	201,114
Grand Island	Hiawatha	MI	12,974	305	13,279
Hells Canyon*	Nez Perce, Payette, Wallowa-Whitman	ID, OR	537,770	3,982	541,752
Jemez	Santa Fe	NM	44,670	12,330	57,000
Land Between the Lakes	Land Between the Lakes	KY, TN	170,310	0	170,310
Mount Baker	Mount Baker-Snoqualmie	WA	8,473	0	8,473
Mount Hood**	Mount Hood	OR	34,474	0	34,474
Mount Rogers	Jefferson	VA	118,509	36,307	154,816
Oregon Dunes	Siuslaw	OR	27,232	4,334	31,566
Moosalamoo	Green Mountain	VT	15,170	0	15,170
Pine Ridge	Nebraska	NE	6,680	0	6,680
Rattlesnake	Lolo	MT	59,119	1,881	61,000
Robert T. Stafford	Green Mountain	VT	36,152	0	36,152
Sawtooth	Boise, Challis, Sawtooth	ID	729,428	26,591	756,019
Smith River	Six Rivers	CA	305,169	26,060	331,229
Spring Mountains	Toiyabee	NV	314,367	5,543	319,910
Spruce Knob-Seneca Rocks	Monongahela	WV	57,232	42,562	99,794
Whiskeytown Shasta-Trinity	Shasta-Trinity	CA	176,367	27,220	203,587
Winding Star Mountain	Ouachita	OK	25,890	555	26,445
TOTAL			2,949,643	203,052	3,152,695
<p>* Oregon portion of Hells Canyon NRA = 400,974 NFS acres + 1,902 other acres = 402,876 total acres. The Wallowa-Whitman NF website says the entire Hells Canyon NRA is 652,488 acres, which does not comport with the above number.</p>					
<p>** Mount Hood NRA includes three units: Fifteenmile Creek, Shellrock Mountain, and Bonney Butte-Barlow Butte-Twin Lakes-White River-Boulder Creek.</p>					
<p>Source: USDA Forest Service. 2013. Land Areas of the National Forest System, FS-383, pp. 155–58.</p>					

The Nation's First NRAs for BLM Holdings?

Senator Ron Wyden has introduced (and Senator Jeff Merkley has cosponsored) legislation that would establish the Molalla (24,100 acres) and the Rogue Canyon (94,700 acres) National Recreation Areas on BLM holdings in western Oregon.⁵ If enacted into law, the two would become the nation's first NRAs on BLM lands. (Of course, there are national forest lands in the Molalla River watershed and Rogue Canyon that should also be included in these proposed NRAs.) The proposed Molalla NRA would envelop the proposed Molalla Wild and Scenic River, and the proposed Rogue Canyon NRA would envelop proposed additions to the Wild Rogue Wilderness and the lower Rogue Wild and Scenic River.

⁵ Wyden, Ron. 2015. [Oregon and California Land Grant Act of 2015](#). S. 132, 114th Congress.

Table 2 <i>National Recreation Areas Within the National Park System</i>		
National Recreation Area	State(s)	Acreage
Amistad National Recreation Area	TX	58,500
Bighorn Canyon National Recreation Area	MT, WY	120,296
Boston Harbor Islands National Recreation Area	MA	1,482
Chattahoochee River National Recreation Area	GA	9,791
Chickasaw National Recreation Area	OK	9,899
Curecanti National Recreation Area	CO	924,468
Delaware Water Gap National Recreation Area	NJ, PA	66,741
Gateway National Recreation Area	NY, NY	26,607
Gauley River National Recreation Area	WV	11,507
Glen Canyon National Recreation Area	UT, AZ	1,254,117
Golden Gate National Recreation Area	CA	80,002
Lake Chelan National Recreation Area	WA	61,958
Lake Mead National Recreation Area	NV, AZ	1,549,806
Lake Meredith National Recreation Area	TX	44,978
Lake Roosevelt National Recreation Area	WA	100,390
Ross Lake National Recreation Area	WA	117,575
Santa Monica Mountains National Recreation Area	CA	156,670
Whiskeytown National Recreation Area	CA	52,500
TOTAL		4,647,287
<i>Source:</i> USDI National Park Service, Land Resources Division. December 31, 2014. Listing of Acreage (Summary)		

Potential Forest Service NRAs in Oregon

In no particular order, Table 3 is a wish list. As Thoreau observed in *Walden*: “If you have built castles in the air, your work need not be lost; that is where they should be. Now put the foundations under them.” Approximately 31 Forest Service NRAs would replace the more than 50 Forest Service ranger district, 14 Bureau of Land Management resource area and other offices in Oregon.

Table 3 <i>Potential Forest Service NRAs in Oregon*</i>		
Potential NRA	Administering National Forest	General Description
Lava Lands	Deschutes	That portion of the Deschutes National Forest and adjacent BLM lands that drains into the Great Basin and any remaining lands east of US97 plus the lava flows west of US97 and east of the Deschutes River.
Metolius	Deschutes	All national forest lands within the Metolius River Basin.
Upper Deschutes	Deschutes	That portion of the Deschutes National Forest and adjacent BLM lands that drains into the Deschutes River, save for lands in the Metolius Basin and lands included in the proposed Lava Lands NRA.
Upper Klamath Basin	Fremont-Winema	All Forest Service and BLM lands within the Klamath River Basin in Oregon.
Fremont	Fremont-Winema	That portion of the Fremont-Winema National Forest within the Great Basin and adjacent BLM lands.
Silvies-Malheur**	Malheur	All national forest lands that drain into Harney and Malheur lakes or the Malheur River.
Upper John Day	Malheur	All national forest and adjacent BLM lands that drain into the mainstem or Middle Fork of the John Day River.
South Fork John Day	Malheur	All national forest and adjacent BLM lands that drain into the South Fork John Day River.
North Fork John	Malheur and	All national forest and adjacent BLM lands that drain into the North Fork

Day	Wallowa-Whitman	John Day River plus the remainder of the Heppner Ranger District.
Molalla	Mount Hood	All federal public forestlands (USFS and BLM) within the Molalla River drainage.
Clackamas	Mount Hood	All federal public lands (USFS and BLM) within the Clackamas River Basin.
Mount Hood NRA additions	Mount Hood	All federal public lands (USFS and BLM) drained by the rivers that arise on Mount Hood (Sandy, White, and Hood) as well as Mount Hood National Forest lands in Wasco County.
Ochoco Mountains	Ochoco	The main portion of the Ochoco National Forest, including the Maury Mountains, and adjacent BLM lands.
Smith River NRA additions	Rogue River-Siskiyou	All national forest lands within the Smith River watershed. All similar lands in California have been within the Smith River National Recreation Area since 1990.
Illinois River	Rogue River-Siskiyou	All federal public lands (USFS and BLM) within the Illinois River watershed.
Oregon Redwoods-Chetco River	Rogue River-Siskiyou	All federal public forestlands (USFS and BLM) within the Chetco and Winchuck watersheds.
Rogue Canyon	Rogue River-Siskiyou	Rim to rim, all federal forestlands (USFS and BLM) from the confluence with the Applegate River downstream to the western boundary of the Rogue River-Siskiyou National Forest.
Siskiyou Crest	Rogue River-Siskiyou and Klamath	All Klamath and Rogue River-Siskiyou National Forest lands and adjacent BLM lands that drain into the Klamath or Rogue River basins from the Siskiyou Crest between the Cascade-Siskiyou National Monument and the Oregon Caves National Monument and Preserve.
North Oregon Coast Range	Siuslaw	The entire Siuslaw National Forest and adjacent BLM lands north from the watershed divide of the Siuslaw and Umpqua rivers, save for the Oregon Dunes NRA and additions proposed for it.
South Oregon Coast Range	Siuslaw	The entire Siuslaw National Forest and adjacent BLM lands south from the Siuslaw-Umpqua Divide, save for the Oregon Dunes NRA and additions proposed for it, to the Coquille-Rogue Divide and including Siskiyou National Forest land in the Sixes and Coquille watersheds.
Oregon Dunes NRA additions	Siuslaw	More USFS and BLM sand areas to the north at Sutton Creek and Lily Lake and to the south to include the North Spit Coos Bay.
Blue Mountains	Umatilla	All national forest lands that drain into the Grande Ronde or Umatilla rivers and are west or north of OR82.
Upper Umpqua	Umpqua	Essentially all of the Umpqua National Forest, which is within the Umpqua Basin.
Upper Rogue	Rogue River-Siskiyou	All Rogue River National Forest and BLM lands within the Upper Rogue River watershed.
Wallowa Mountains	Wallowa-Whitman	The national forest and adjacent BLM lands surrounding the Eagle Cap Wilderness.
Burnt-Powder	Wallowa-Whitman	All national forest and adjacent BLM lands that drain into the Burnt or Powder River watersheds and are east of I-84.
Hells Canyon NRA additions	Wallowa-Whitman	All national forest to the west of the current NRA to include Joseph Canyon, Big Sheep Creek, and adjacent BLM lands, including Sheep Mountain.
Upper Willamette	Willamette	All national forest and adjacent BLM lands that drain to the Middle Fork Willamette River, including the Row River drainage in the Umpqua National Forest.
Santiam	Willamette	All national forest and adjacent BLM lands that drain into the Santiam River, including adjacent BLM lands.
Waldo Lake	Willamette	All national forest lands within the North Fork of the Middle Fork Willamette River watershed.
McKenzie	Willamette	All national forest and adjacent BLM lands that drain into the McKenzie River, including adjacent BLM lands.
* Any national forest lands not specifically described would become part of the adjacent appropriate NRA.		

Potential BLM NRAs in Eastern Oregon

Table 4 suggests NRAs that could be designated on BLM lands in southeast Oregon, which are the vast bulk of BLM holdings in Oregon. Six BLM NRAs in eastern Oregon would replace eight BLM resource area offices.

These NRAs should be included within the National Landscape Conservation System (NLCS). The NLCS was created by Secretary of the Interior Bruce Babbitt in 2000. Congress made the NLCS a permanent public land conservation system 2009 to “conserve, protect, and restore ... nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations”.⁶

Table 4 <i>Potential BLM NRAs on Eastern Oregon Public Lands</i>		
Potential NRA	Administering BLM Field Office	General Description
Silvies-Malheur Rivers*	Burns	All BLM lands within the Silvies and Malheur river drainages.
Steens Mountain	Burns	All BLM lands in Harney County not in the Silvies River or Malheur River basins.
Oregon Outback	Lakeview	All BLM lands in the Great Basin not encompassed in other proposed NRAs.
Crooked	Prineville	All BLM lands within the Crooked River Basin, including what is now the Crooked River National Grassland, presently managed by the Forest Service.
Lower Crooked River	Ochoco	
Lower Deschutes-Lower John Day	Prineville	All BLM lands in the lower Deschutes River and lower John Day River basins.
Owyhee	Vale	All BLM lands within the Owyhee River basin.
* Joint with Forest Service		

BLM lands in western Oregon (west of the Cascade Crest and also Klamath County) should be transferred to the National Forest System to be managed by the Forest Service as part of appropriate NRAs envisioned in Table 3. A man can dream, can he not?⁷ In addition, generally isolated BLM holdings (for example, in Deschutes, Baker, Union, and Wallowa counties) that are within or near a proposed Forest Service NRA (Table 3) should be similarly transferred.

A Comparison of Legislative Provisions for Oregon’s Current and Pending NRAs

In the absence of a National Recreation Area Act, national recreation area statutory language is written to address matters of political and policy importance at the time of the establishment of the particular area. NRA designations reflect the politics of the times—if not also the personalities of the politicians championing them. It’s interesting to consider the political context

⁶ 16 U.S.C. 7202(a).

⁷ Kerr, Andy. 2007. [Transferring Western Oregon Bureau of Land Management Forests to the National Forest System](#). Larch Occasional Paper #2. The Larch Company, Ashland, OR and Kerr, Andy, and Mark Salvo. 2008. [Establishing a System of and a Service for U.S. Deserts and Grasslands](#). Larch Occasional Paper #6. The Larch Company, Ashland, OR.

of the establishment of the three NRAs that lie wholly or partly in Oregon. Two were designated in the mid-1970s and one in 2009, with legislative language specifying various levels of conservation. Three quite politically and temperamentally different members of the Oregon congressional delegation guided their respective NRA through the legislative maze with somewhat differing goals.

<i>Table 5</i> A Comparison of Legislative Provisions for Current, Pending, and Potential NRAs in Oregon					
	Oregon Dunes	Hells Canyon	Mount Hood	<i>Pending</i> Rogue Canyon and Molalla	21st-Century Model Legislation
<i>Year Est.</i>	1972	1975	2009	201X?	201X?
<i>Word length</i>	2,268	3,135	728	1,090	~3,000
<i>Provision:</i>					
Statutory purposes	“To provide for the public outdoor recreation use and enjoyment of certain ocean shorelines and dunes, forested areas, fresh water lakes, and recreational facilities in the State of Oregon by present and future generations and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters”	“To assure that the natural beauty, and historical and archeological values of the Hells Canyon area and the seventy-one-mile segment of the Snake River between Hells Canyon Dam and the Oregon-Washington border, together with portions of certain of its tributaries and adjacent lands, are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced”*	“To provide for the protection, preservation, and enhancement of recreational, ecological, scenic, cultural, watershed, and fish and wildlife values”	“For the purposes of protecting, conserving, and enhancing the unique and nationally important recreational, ecological, scenic, cultural, watershed, and fish and wildlife values”	“To provide for the conservation and, if necessary, the restoration of air quality, archeological, botanic, cultural, ecological, fish, historical, hydrological, natural, paleontological, peaceful, quiet, scenic, scientific, water quantity, water quality, and wildlife (including connectivity) values, while providing, for this and future generations, recreational use and public enjoyment in manners compatible with such conservation and restoration”
Allowed uses	Left to the Forest Service	Those “compatible” with the “objectives”	Only those “compatible” with the “purposes”		Those that are compatible with the purposes for which the NRA was designated; emphasis on nonmotorized recreation
Administration	In accordance with laws, rules, and regulations applicable to	In accordance with laws, rules, and regulations applicable to	In accordance with laws, rules, and regulations applicable to	In a manner that furthers purposes in accordance with this	In accordance with specific legislation and all other laws

	national forests and in such a manner as to “best contribute to the attainment of the purposes”	national forests and in a manner “compatible” with the “objectives”	national forests and “consistent with the purposes”	legislation, FLPMA, and any other applicable federal law	pertaining to the National Forest System
Transfer of administrative jurisdiction	Some other federal land transferred to USDA-FS	Not at issue, so not addressed in the legislation	Some BLM federal land transferred to USDA-FS	Not at issue, so not addressed in the legislation	Some BLM federal land transferred to USDA-FS
Withdrawal	Mineral exploitation banned, subject to valid existing rights				
Private inholdings	Subject to federal regulations to protect scenic and other values		Not an issue, because no private lands included	Any private inholdings acquired by the federal government would automatically become part of the NRA.	Not subject to NRA legislation, but acquisition from willing sellers would be facilitated
Land acquisition from willing sellers	Facilitated		Not addressed		Facilitated
Land acquisition from unwilling sellers	Allowed under certain conditions		Not allowed		Prohibited
Water rights	Specifically forfeits what otherwise would have been part of a federal reserved water right		Implicitly creates a federal reserved water right		Explicitly creates a federal reserved water right
Fish and wildlife	Hunting and angling jurisdiction remains with the State of Oregon				Hunting and angling jurisdiction remains with the State of Oregon, except that public safety zones may be created
Timber production	Regulated on private lands within the NRA		Logging only to further purposes of NRA, to “improve the health of the forest,” or to reduce the risk of “uncharacteristic wildfire,” or “de minimus” use for firewood		Generally prohibited except for limited public safety exceptions and in aid of ecological restoration where scientifically justified and consistent with and in furtherance of the purposes, where all logs are a by-product
	On public lands: timber harvesting by “selective cutting” allowed where “compatible” with the act	On public lands: timber harvesting “recognized” as a “traditional and valid” use for the NRA			
	On private lands, regulations may be issued to limit logging.	On private lands, regulations will be issued to limit logging.			
New roads	Not addressed	Left open as an option	Not allowed except under very limited circumstances		Banned, except in small cases to address a greater problem

Existing roads	Not addressed	Not addressed	Not addressed	Reduction in total road mileage urged	Improvement of necessary roads to become more watershed- and wildlife-friendly
Off-road motorized vehicle use	Implied though not mentioned	Can be controlled through special regulations	Must be “consistent” with the “purposes” for which the area was established		<i>Option 1:</i> Explicitly banned <i>Option 2:</i> Allowed if consistent with purposes <i>Option 3:</i> Allowed in prescribed areas under certain conditions
Livestock grazing	Not addressed	Grazing “recognized” as a “traditional and valid” use for the NRA but must be compatible with the purposes	Allowed if consistent with the purposes		Grandfathered in
Grazing permit retirement	Not addressed				Facilitated
Wilderness designation	Wilderness study required	Wilderness designated and wilderness study required	Wilderness designated concurrently with establishment of the NRA		Done in the NRA legislation addressing the same landscape
Wild and scenic rivers designation	Not addressed	Designated concurrently and study required	Designated concurrently		
Management plan	Specifically required		Not addressed		As a forest plan amendment or revision
Public involvement	Specifically addressed		Not addressed		As part of forest plan amendment or revision
Compliance with other existing laws	Implicitly required	Implicitly suggested	Not addressed	Explicitly required	
Native American treaty rights	Not addressed		Explicitly recognized		
*See specific discussion on Hells Canyon National Recreation Area where “objectives”, though not “purposes” under the statute, serve a similar purpose.					

- The Oregon Dunes NRA (ODNRA) managed by the Forest Service was a compromise of what should have been a National Seashore managed by the National Park Service. Had Senator Richard Neuberger not died so early in office, the latter would likely have been created.

- The detailed statutory language of the Hells Canyon NRA (HCNRA) directly addressed the controversies threatening the area in 1975: damming of the Snake River, logging, and road building. It was a year before the National Forest Planning Act—which gave further general direction on how national forests were to be managed—would become law.
- The barely-more-than-a-page Mount Hood NRA (MHNRA) statutory language is evidence that establishing an NRA need not be a long and arduous process. The MHNRA was designed to confer a strong level of conservation protection on certain lands where wilderness and/or wild-and-scenic-river designation was not adequate.

For purposes of comparison, Table 5 summarizes provisions of the legislation creating these three NRAs within the National Forest System. It also shows provisions of pending legislation to create two NRAs proposed for western Oregon BLM lands, and it suggests model language for creating additional NRAs within the National Forest System in the 21st century. After Table 5 are summaries of the legislation establishing the current and pending NRAs. The full text of the statutes and proposed statute can be found in Appendixes B, C, D, and E.

Oregon Dunes National Recreation Area⁸

Within the Siuslaw National Forest, the ODNRA (31,566 acres) was eventually enacted into law in 1972 (see Appendix B for complete text). The elected officials driving the ODNRA were then Oregon 4th District (southwest Oregon) Representative John Dellenback, who served in the House of Representatives from 1967 to 1974, and U.S. Senators Mark Hatfield and (to a lesser degree) Bob Packwood. In the late 1950s, U.S. Senator Richard Neuberger proposed Oregon Dunes as a national seashore that would be managed by the National Park Service. First elected in 1954, Neuberger was an outstanding conservationist in any political era, but, alas, he died in office far too soon, well before he had achieved the conservation legacy he sought and was capable of. After Neuberger's death in 1959—and due to political opposition from both shortsighted local politicians and entrenched off-road vehicle enthusiasts—more than a decade would pass before an Oregon Dunes NRA, with management retained by the Forest Service, resulted. Dellenback and Hatfield were conservative when it came to conservation, and the ODNRA act reflects this fact.

The statutory purposes of the ODNRA are

to provide for the public outdoor recreation use and enjoyment of certain ocean shorelines and dunes, forested areas, fresh water lakes, and recreational facilities in the State of Oregon by present and future generations and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters.

The “Secretary” of Agriculture (actually the Forest Service) would manage the area as other National Forest System lands, “in such manner as in his judgment will best contribute the attainment of the purposes.” An “inland sector” of nonfederal land was established “in order to promote such management and use of the lands, waters, and other properties within such sector

⁸ As the entire text of the statute may be found in Appendix B, citations of quoted text are omitted for this subsection.

as will best protect the values which contribute to the purposes” of the act. Other federal lands owned by the Coast Guard and the Army Corps of Engineers were transferred to the Forest Service, with the former agencies retaining use as necessary.

Land acquisition in the inland sector was authorized but “only with the consent of the owner,” except that private timberlands could be obtained without consent of the owner if the Forest Service found that “such lands or interests are essential for recreation use or for access to or protection of recreation developments within the purposes” of the act.

Owners of an “improved property” (a detached one-family dwelling and outbuildings) in the inland sector could sell their land to the Forest Service while retaining occupancy until the death of the owner.

Hunting and fishing continued to be regulated by the State of Oregon, and any new mineral exploitation on federal lands was prohibited. If in play before the date of enactment, water could be withdrawn from certain lakes and aquifers, and domestic and industrial wastes could be transported across the NRA with restrictions.

A 15-member advisory council representing various stakeholders would be established. A formal wilderness study by the Forest Service was required with a report to Congress. Federal cooperation with state and local governments was authorized, as was money—“for the acquisition of lands, waters, and interests therein such sums as are necessary, not to exceed \$5,750,000” and “[f]or development of the recreation area, not more than \$12,700,000 is authorized to be appropriated.” Initially the limit under the act for acquisition was \$2,500,000, but this was increased in 1976 to \$5,750,000.

Hells Canyon National Recreation Area⁹

Within the Wallowa-Whitman (also in Idaho, on the Nez Perce and Payette) National Forest(s), the HCNRA (652,488 acres, with 498,888 acres in Oregon) was enacted into law in 1975 (see Appendix C for complete text). The elected officials driving the HCNRA were U.S. Senator Bob Packwood (R-OR), who served in the Senate from 1969 until 1995, and U.S. Senator Frank Church (D-ID), who served from 1957 until 1981. Packwood and Church were true heroes of Hells Canyon. Both had to overcome the opposition of the member of Congress who represented the area in their state (and the opposing party): Representative Al Ullman (D-OR) and Representative James McClure (R-ID).

The overriding policy and political issue was whether to dam the Snake River, which flows through one of the deepest gorges on the face of the earth. From the 1950s until a U.S. Supreme Court case in 1967, the issue was only whether Hells Canyon would be dammed by public entities or private corporations. The Federal Power Commission (FPC, now the Federal Energy Regulatory Commission) had come down in favor of private power, and advocates of public power had petitioned the Supreme Court for review. Writing for the majority, Justice William O. Douglas remanded the case back to the FPC, saying that the first legal question was not the

⁹ As the entire text of the statute may be found in Appendix C, citations of quoted text are omitted for this subsection.

manner or method of damming Hells Canyon but whether the best dam might be no dam at all. Justice Douglas stated that the test was not

*solely whether the region will be able to use the additional power. The test is whether the project will be in the public interest. And that determination can be made only after an exploration of all issues relevant to the “public interest,” including future power demand and supply, alternate sources of power, the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish for commercial and recreational purposes, and the protection of wildlife.*¹⁰

The fate of Hells Canyon was ultimately decided in Congress rather than by an administrative agency or in the courts. The act of Congress that prevented dams in Hells Canyon also addressed land and water management of the landscape.

The statutory purposes of the HCNRA are

to assure that the natural beauty, and historical and archeological values of the Hells Canyon area and the seventy-one-mile segment of the Snake River between Hells Canyon Dam and the Oregon-Washington border, together with portions of certain of its tributaries and adjacent lands, are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced.

Congress elaborated on the purposes by also defining “objectives”:

- (1) the maintenance and protection of the freeflowing nature of the rivers within the recreation area;*
- (2) conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit;*
- (3) preservation, especially in the area generally known as Hells Canyon, of all features and peculiarities believed to be biologically unique including, but not limited to, rare and endemic plant species, rare combinations of aquatic, terrestrial, and atmospheric habitats, and the rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith;*
- (4) protection and maintenance of fish and wildlife habitat;*
- (5) protection of archeological and paleontologic sites and interpretation of these sites for the public benefit and knowledge insofar as it is compatible with protection;*
- (6) preservation and restoration of historic sites associated with and typifying the economic and social history of the region and the American West; and*
- (7) such management, utilization, and disposal of natural resources on federally owned lands, including, but not limited to, timber harvesting by selective cutting, mining, and grazing and the continuation of such existing uses and developments as are compatible with the provisions of this subchapter.*

¹⁰ Udall v. FPC, 387 US 428, June 5, 1967.

However, “[r]anching, grazing, farming, timber harvesting, and the occupation of homes and lands associated therewith, as they exist on December 31, 1975, are recognized as traditional and valid uses of the recreation area.”

The HCNRA act also designated wilderness¹¹ and forbade any water development projects in the NRA or that would have a “direct and adverse effect on the values for which the waters of the area are protected.” The law did exempt water projects upstream from Hells Canyon and prevented the establishment of any minimum flow of the Snake River below Hells Canyon. Also, 67 miles of the Snake River was designated a wild and scenic river and another segment of the Snake was to be studied for potential wild and scenic river status.

A lot of issues regarding how the HCNRA would be managed were left to a later management plan. Within five years of the date of enactment, the Forest Service had to prepare a comprehensive management plan for the recreation area that would “provide for a broad range of land uses and recreation opportunities.” The management plan also had to

- protect historic, archeological, and paleontological resources;
- consider upgrading and creating new roads or other means of transit to provide access to scenic views;
- study and report to Congress on the “suitability or unsuitability for preservation as wilderness” three wilderness study areas (and to manage so as not to impair their suitability as wilderness) and other lands that might be worthy of wilderness status; and
- provide for public participation and cooperation with other governments in preparing the plan.

Regarding the continuation of ongoing activities:

Such activities as are compatible with the provisions of this subchapter, but not limited to, timber harvesting by selective cutting, mining, and grazing may continue during development of the comprehensive management plan, at current levels of activity and in areas of such activity on December 31, 1975. Further, in development of the management plan, the Secretary shall give full consideration to continuation of these ongoing activities in their respective areas.

Any private lands, or interests in lands (including scenic easements), can be acquired by the Forest Service by purchase with the consent of the owner, or by donation or exchange. The use of eminent domain (condemnation) is allowed without the consent of the owner if certain stringent conditions are met; however, such does not apply to state-owned lands. Land exchanges

¹¹ 16 U.S.C. 460gg. Consists of 130,095 acres on the Wallowa-Whitman National Forest and 1,038 acres on the Vale District of the BLM. Includes three units: West Face (109,149 acres), McGraw Creek (22,930 acres), and Seven Devils, in Idaho. Also includes 83,811 acres in Idaho on the Nez Perce and Payette National Forests, for a total of 214,944 acres. Some additional lands were designated as wilderness by Congress in 1984. In 1978, to facilitate construction of the Hells Canyon Rim Road, Congress—at the behest of Representative Al Ullman and with the acquiescence of Senators Bob Packwood and Mark Hatfield—shrank the wilderness between P O Saddle and Lookout Mountain. The original 1975 wilderness boundary was congruous with the Hells Canyon Scenic Area (an administrative classification replaced by the Hells Canyon National Recreation Area Act of 1975), a line 1/4 mile west of the hydrologic divide between the Imnaha River and Snake River drainages. Approximately 1,120 acres were lost from the wilderness when the boundary was moved. P.L. 95-625 (Nov. 10, 1978), 16 U.S.C., § 460 gg nt.

can be made using any other suitable Forest Service land within the state in which the exchange would occur.

Federal lands in the HCNRA are withdrawn from further mineral exploitation. Private mineral interests on federal public lands can also be acquired without the consent of the owner.

Rules and regulations shall be promulgated by the Forest Service that include, but are not limited to

- (a) standards for the use and development of privately owned property within the recreation area, which rules or regulations the Secretary may, to the extent he deems advisable, implement with the authorities delegated to him in section 460gg–6 of this title, and which may differ among the various parcels of land within the recreation area;*
- (b) standards and guidelines to insure the full protection and preservation of the historic, archeological, and paleontological resources in the recreation area;*
- (c) provision for the control of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of any Federal land within the recreation area;*
- (d) provision for the control of the use and number of motorized and nonmotorized river craft: Provided, That the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area; and*
- (e) standards for such management, utilization, and disposal of natural resources on federally owned lands, including but not limited to, timber harvesting by selective cutting, mining, and grazing and the continuation of such existing uses and developments as are compatible with the provisions of this subchapter.*

Hunting and fishing remain under the jurisdictions of the respective states, except that the Forest Service “may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons for public safety, administration, or public use and enjoyment.”

\$10 million was authorized to be appropriated for “acquisition of lands and interests in lands,” another \$10 million for the “development of recreation facilities,” and \$1.5 million for the “inventory, identification, development, and protection of the historic and archeological sites.”

Mount Hood National Recreation Area¹²

Within the 1.1 million-acre Mount Hood National Forest, the Mount Hood National Recreation Area (34,474 acres in three units—Fifteenmile Creek, Shellrock Mountain, and Bonney Butte-Barlow Butte-Twin Lakes-White River-Boulder Creek) is a small subset. The elected official driving the MHNRA (established in 2009; see Appendix D for the full text) was U.S. Senator Ron Wyden (D-OR), who has served in the Senate since 1995.

The statutory purposes of the MHNRA are

¹² As the entire text of the statute may be found in Appendix D, citations of quoted text are omitted for this subsection.

to provide for the protection, preservation, and enhancement of recreational, ecological, scenic, cultural, watershed, and fish and wildlife values.

The Forest Service must administer the MHNRA

- (i) in accordance with the laws (including regulations) and rules applicable to the National Forest System; and*
- (ii) consistent with the purposes described . . . ; and*
- (B) only allow uses of the Mount Hood National Recreation Area that are consistent with the purposes described*

Where the MHNRA overlaps a wilderness area, the Wilderness Act is the controlling statute.

Insofar as timber is concerned:

- The cutting, sale, or removal of timber within the Mount Hood National Recreation Area may be permitted—*
- (1) to the extent necessary to improve the health of the forest in a manner that—*
 - (A) maximizes the retention of large trees—*
 - (i) as appropriate to the forest type; and*
 - (ii) to the extent that the trees promote stands that are fire-resilient and healthy;*
 - (B) improves the habitats of threatened, endangered, or sensitive species; or*
 - (C) maintains or restores the composition and structure of the ecosystem by reducing the risk of uncharacteristic wildfire;*
 - (2) to accomplish an approved management activity in furtherance of the purposes established by this section, if the cutting, sale, or removal of timber is incidental to the management activity; or*
 - (3) for de minimus personal or administrative use within the Mount Hood National Recreation Area, where such use will not impair the purposes established by this section.*

Insofar as roads are concerned:

- No new or temporary roads shall be constructed or reconstructed within the Mount Hood National Recreation Area except as necessary—*
- (1) to protect the health and safety of individuals in cases of an imminent threat of flood, fire, or any other catastrophic event that, without intervention, would cause the loss of life or property;*
 - (2) to conduct environmental cleanup required by the United States;*
 - (3) to allow for the exercise of reserved or outstanding rights provided for by a statute or treaty;*
 - (4) to prevent irreparable resource damage by an existing road; or*
 - (5) to rectify a hazardous road condition.*

The MHNRA is withdrawn, subject to valid existing rights, from further mineral exploitation.

A small portion of BLM land on the edge of the MNNRA and Mount Hood National Forest was transferred to the MHNRA and MHNF.

The Pending Rogue Canyon and Molalla National Recreation Areas¹³

The legislation to create a Rogue Canyon NRA (94,700 acres) and a Molalla NRA (24,100 acres) was reported out of the Senate Energy and Natural Resources Committee in the 113th Congress (see Appendix E for the full text). It has been reintroduced in the 114th Congress (2015–16) by Senators Ron Wyden and Jeff Merkley.

Unfortunately, the provisions to establish the two NRAs are included in legislation that addresses management of all BLM lands in western Oregon, and not always in a good way. Nonetheless, the national recreation area provisions are relatively clean.

The purposes of the potentially first-in-the-nation BLM NRAs would be

protecting, conserving, and enhancing the unique and nationally important recreational, ecological, scenic, cultural, watershed, and fish and wildlife values of the areas.

The NRAs would have to be managed

*(i) in a manner that furthers the purposes for which the Conservation Emphasis Area was established; and
(ii) in accordance with—
(I) this subsection;
(II) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and
(III) any other applicable Federal laws.*

BLM could “only allow uses of a Conservation Emphasis Area that are consistent with the purposes and values for which the [national recreation] Area is established.”

The lands would be protected from any new potential mining, and no “protective perimeter or buffer zone around the [NRAs]” would be established.

Motorized vehicle use in the NRAs would be

limited to roads allowed by the [BLM] for such use, provided that the [BLM] may allow off-road vehicle use in designated portions of the areas designated by this section if such use is consistent with the purposes and values for which the area was designated.

Timber could be cut, sold, or removed from the NRAs

to the extent necessary to improve forest health in ways that also:

¹³ As the entire text of the proposed statute may be found in Appendix E, citations of quoted text are omitted for this subsection.

(I) improve the habitats of threatened or endangered species or species considered sensitive by the Secretary over the long term after completion of the vegetation management project; or
(II) in the case of harvests in moist forest sites, is conducted—
(aa) through variable density and clump based thinning;
(bb) in a manner that retains legacy trees; and
(III) in the case of dry forests, through partial cutting in a manner that retains legacy trees.

“Forest health” in this context

means conditions that enable forested land—
(A) to be durable, resilient, and less prone to uncharacteristic wildfire, insect, or pathogen events, while—
(i) supporting ecosystem services and populations of native species; and
(ii) allowing for natural disturbances;
(B) to maintain or develop species composition, ecosystem function and structure, hydrologic function, and sediment regimes that are within an acceptable range that considers—
(i) historic variability; and
(ii) anticipated future conditions.

However, logging under the above conditions would have to “**also** be in furtherance of the purposes for which the Conservation Emphasis Area was established” [emphasis added].

In general no new roads would be allowed in the NRAs, any “temporary” road must be decommissioned promptly, and BLM would be mandated to reduce the road network “to reduce impacts to water quality from sediment delivered to streams by forest roads.”

Model Legislative Language for Establishing 21st-Century NRAs in Oregon

Appendix F shows model legislative language for establishing 21st-century NRAs within the National Forest System in Oregon. The model language generally builds upon earlier statutes and pending legislation for NRAs in Oregon. By substituting “conservation” for “recreation,” the model NRA legislative language can also serve as a basis for establishing a BLM National Conservation Area.

Please keep in mind these important concepts:

- *It all gets down to the “purposes.”* Specification of purposes is of primary importance because the NRA will be managed for those purposes, and only uses compatible with those purposes will be allowed.
- *Other environmental laws will still apply.* The NRA statute will be on top of land and resource protections for national forests, species, water, public participation, and so on.

- *The treatment of off-road vehicles will be specific to the politics of each proposed NRA.* Three options are offered: (1) explicit ban in entire NRA, (2) allowed if compatible with the purposes of the NRA, or (3) allowed in prescribed portions of the NRA.
- *Wilderness and wild-and-scenic-river designations are necessary overlapping protections.* To limit the ability of the managing agency to abuse its discretion, it is necessary and desirable to include wilderness and wild-and-scenic-river designations both within and near the NRA.
- *There is a fine political balance between permitting administrative discretion and prohibiting abuse of administrative discretion.* Sometimes one wants to leave the loophole (for political reasons or to leave legitimate use of agency discretion) and sometimes not.
- No matter how good the legislative language, it is certain that citizen oversight, if not also litigation, will be required to ensure the managing agency does what's right and required by the legislative language.

Conclusion

The congressional mandates for multiple use on USDA-FS and BLM lands allow—and actually require—that the balance of various multiple uses be adjusted to “best meet the needs of the American people.” It would be nice to be able to amend these mandates to reflect early- to mid-21st-century needs, values, and sensibilities. However, as no national consensus in Congress exists to recalibrate multiple use on all USFS and BLM lands, Oregon conservationists had best concentrate on elevating the conservation status of national forest and public lands across Oregon. Getting national recreation areas established should be a central piece of that effort.

As a final note, some Oregon landscapes are so spectacular that NRA status does not do them justice. The option of national park or national monument status—administered by the National Park Service—should not be lightly dismissed. However, that's the subject of another paper.

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About the Author

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He is best known for his two decades with Oregon Wild (then the Oregon Natural Resources Council), the organization best known for having brought you the northern spotted owl. Kerr began his conservation career during the Ford administration.

Through 2013, Kerr has been intimately involved in the establishment or expansion of 46 wilderness areas and 47 wild and scenic rivers, 13 congressionally legislated special management areas, 15 Oregon scenic waterways, and one presidentially proclaimed national monument. He has testified before congressional committees on several occasions.

He has lectured at all of Oregon's leading universities and colleges, as well as at Harvard and Yale. Kerr has appeared numerous times on national television news and feature programs and has published numerous articles on environmental matters. He is a dropout from Oregon State University.

Kerr authored [*Oregon Desert Guide: 70 Hikes*](#) (The Mountaineers Books, 2000) and [*Oregon Wild: Endangered Forest Wilderness*](#) (Timber Press, 2004).

Appendix A

The Multiple-Use and Sustained-Yield Mandates Guiding the Forest Service and the BLM

The mandate guiding USDA Forest Service management of National Forest System lands is codified in the Multiple-Use Sustained-Yield Act of 1960.¹⁴ The act defines five uses of national forest lands in wording contorted to ensure that “timber” falls in the middle of the alphabetical list (“outdoor recreation, range, timber, watershed, and wildlife and fish”).

*It is the policy of the Congress that the national forests are established and shall be administered for **outdoor recreation, range, timber, watershed, and wildlife and fish** purposes. The purposes of sections 528 to 531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title. Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests. 16 U.S.C. 528 [emphasis added]*

The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas. The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of sections 528 to 531 of this title. 16 U.S.C. 529

In the effectuation of sections 528 to 531 of this title the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the national forests. 16 U.S.C. 530

As used in sections 528 to 531 of this title the following terms shall have the following meanings:

*(a) “Multiple use” means: The management of all the various renewable surface resources of the national forests so that **they are utilized in the combination that will best meet the needs of the American people**; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for **periodic adjustments in use to conform to changing needs and conditions**; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various*

¹⁴ Pub. L. 86-517, June 12, 1960, 74 Stat. 215.

resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(b) “Sustained yield of the several products and services” means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land. 16 U.S.C. 531 [emphasis added]

The mandate guiding USDI Bureau of Land Management (BLM) administration of public lands is codified in the Federal Land Policy and Management Act (FLPMA)¹⁵ passed by Congress in 1976, which among many other things provided for “multiple use” and “sustained yield.” Here are the FLPMA definitions:

*The term “multiple use” means the management of the public lands and their various resource values so that **they are utilized in the combination that will best meet the present and future needs of the American people**; making the most judicious use of the land for some or all of these resources or related services over areas large enough to **provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions**; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, **including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values**; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. 43 U.S.C. 1702(c) [emphasis added]*

The term “sustained yield” means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use. 43 U.S.C. 1702(h)

¹⁵ Pub. L. 94-579, October 21, 1976, 90 Stat. 2744 et seq.

Appendix B
Act Establishing Oregon Dunes National Recreation Area (1972)

Pub. L. 92–260, § 1, Mar. 23, 1972, 86 Stat. 99-102

16 U.S. Code Chapter 1, Subchapter LXXXIV - OREGON DUNES NATIONAL RECREATION AREA

§ 460z. Establishment

§ 460z-1. Administration, protection, and development

§ 460z-2. Inland sector; establishment as buffer sector

§ 460z-3. Boundary map; revision

§ 460z-4. Transfer of Federal property

§ 460z-5. Land acquisition in inland sector

§ 460z-6. Land acquisition in recreation area; donation and exchange; railway right-of-way; retention rights of owners of improved property

§ 460z-7. Hunting, fishing, and trapping

§ 460z-8. Mining restriction

§ 460z-9. Water utilization; transportation of wastes; easements

§ 460z-10. Advisory Council

§ 460z-11. Area review; report to the President; wilderness designation

§ 460z-12. Federal-State cooperation

§ 460z-13. Authorization of appropriations

16 U.S. Code § 460z - Establishment

In order to provide for the public outdoor recreation use and enjoyment of certain ocean shorelines and dunes, forested areas, fresh water lakes, and recreational facilities in the State of Oregon by present and future generations and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters, there is hereby established, subject to valid existing rights, the Oregon Dunes National Recreation Area (hereinafter referred to as the “recreation area”).

16 U.S. Code § 460z–1 - Administration, protection, and development

The administration, protection, and development of the recreation area shall be by the Secretary of Agriculture (hereinafter called the “Secretary”) in accordance with the laws, rules, and regulations applicable to national forests, in such manner as in his judgment will best contribute the attainment of the purposes set forth in section [460z](#) of this title.

16 U.S. Code § 460z–2 - Inland sector; establishment as buffer sector

The portion of the recreation area delineated as the “Inland Sector” on the map referenced in section 460z–3 of this title is hereby established as an inland buffer sector in order to promote such management and use of the lands, waters, and other properties within such sector as will best protect the values which contribute to the purposes set forth in section 460z of this title.

16 U.S. Code § 460z–3 - Boundary map; revision

The boundaries of the recreation area, as well as the boundaries of the inland sector included therein, shall be as shown on a map entitled “Proposed Oregon Dunes National Recreation Area” dated May 1971, which is on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture, and to which is attached and hereby made a part thereof a detailed description by metes and bounds of the exterior boundaries of the recreation area and of the inland sector. The Secretary may by publication of a revised map or description in the Federal Register correct clerical or typographical errors in said map or descriptions.

16 U.S. Code § 460z–4 - Transfer of Federal property

Notwithstanding any other provision of law, any Federal property located within the boundaries of the recreation area is hereby transferred without consideration to the administrative jurisdiction of the Secretary for use by him in

implementing the purposes of this subchapter, but lands presently administered by the United States Coast Guard or the United States Corps of Engineers may continue to be used by such agencies to the extent required.

16 U.S. Code § 460z-5 - Land acquisition in inland sector

Within the inland sector established by section 460z-2 of this title the Secretary may acquire the following classes of property only with the consent of the owner:

- (a) improved property as hereinafter defined;
- (b) property used for commercial or industrial purposes if such commercial or industrial purposes are the same such purposes for which the property was being used on December 31, 1970, or such commercial or industrial purposes have been certified by the Secretary or his designee as compatible with or furthering the purposes of this subchapter;
- (c) timberlands under sustained yield management so long as the Secretary determines that such management is being conducted in accordance with standards for timber production, including but not limited to harvesting reforestation, and debris cleanup, not less stringent than management standards imposed by the Secretary on comparable national forest lands: Provided, That the Secretary may acquire such lands or interests therein without the consent of the owner if he determines that such lands or interests are essential for recreation use or for access to or protection of recreation developments within the purposes of this subchapter. In any acquisition of such lands or interests the Secretary shall, to the extent practicable, minimize the impact of such acquisition on access to or the reasonable economic use for sustained yield forestry of adjoining lands not acquired; and
- (d) property used on December 31, 1970, primarily for private, noncommercial recreational purposes if any improvements made to such property after said date are certified by the Secretary of Agriculture or his designee as compatible with the purposes of this subchapter.

16 U.S. Code § 460z-6 - Land acquisition in recreation area; donation and exchange; railway right-of-way; retention rights of owners of improved property

(a) Land acquisition

Within the boundaries of the recreation area lands, waters, and interests therein owned by or under the control of the State of Oregon or any political subdivision thereof may be acquired only by donation or exchange.

(b) Railway right-of-way

No part of the Southern Pacific Railway right-of-way within the boundaries of the recreation area may be acquired without the consent of the railway, so long as it is used for railway purposes: Provided, That the Secretary may condemn such easements across said right-of-way as he deems necessary for ingress and egress.

(c) Retention rights of owners of improved property

Any person owning an improved property, as hereafter defined, within the recreation area may reserve for himself and his assigns, as a condition of the acquisition of such property, a right of use and occupancy of the residence and not in excess of three acres of land on which such residence is situated. Such reservation shall be for a term ending at the death of the owner, or the death of his spouse, whichever occurs later, or, in lieu thereof, for a definite term not to exceed twenty-five years: Provided, That the Secretary may exclude from such reserved property any lands or waters which he deems necessary for public use, access, or development. The owner shall elect, at the time of conveyance, the term of the right to be reserved. Where any such owner retains a right of use and occupancy as herein provided, such right may during its existence be conveyed or leased in whole, but not in part, for noncommercial residential purposes. The Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such date of the right retained by the owner. At any time subsequent to the acquisition of such property the Secretary may, with the consent of the owner of the retained right of use and occupancy, acquire such right, in which event he shall pay to such owner the fair market value of the remaining portion of such right.

(d) "Improved property" defined

The term "improved property" wherever used in this subchapter shall mean a detached one-family dwelling the construction of which was begun before December 31, 1970, together with any structures accessory to it and the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary finds necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use.

16 U.S. Code § 460z-7 - Hunting, fishing, and trapping

The Secretary shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction within the boundaries of the recreation area in accordance with applicable laws of the United States and the State of Oregon, except that the Secretary may designate zones where, and establish periods when, no hunting, fishing, or trapping

shall be permitted for reasons of public safety, administration, or public use and enjoyment. Except in emergencies, any regulation of the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department.

16 U.S. Code § 460z-8 - Mining restriction

The lands within the recreation area, subject to valid existing rights, are hereby withdrawn from location, entry, and patent under the United States mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

16 U.S. Code § 460z-9 - Water utilization; transportation of wastes; easements

(a) Water utilization

The Secretary is authorized and directed, subject to applicable water quality standards now or hereafter established, to permit, subject to reasonable rules and regulations, the investigation for, appropriation, storage, and withdrawal of ground water, surface water, and lake, stream, and river water from the recreation area and the conveyance thereof outside the boundaries of the recreation area for beneficial use in accordance with applicable laws of the United States and of the State of Oregon if permission therefor has been obtained from the State of Oregon before March 23, 1972: Provided, That nothing herein shall prohibit or authorize the prohibition of the use of water from Tahkenitch or Siltcoo[s] Lakes in accordance with permission granted by the State of Oregon prior to March 23, 1972, in connection with certain industrial plants developed or being developed at or near Gardiner, Oregon.

(b) Transportation and storage of wastes

The Secretary is authorized and directed, subject to applicable water quality standards now or hereafter established, to permit, subject to reasonable rules and regulations, transportation and storage in pipelines within and through the recreation area of domestic and industrial wastes in accordance with applicable laws of the United States and of the State of Oregon if permission therefor has been obtained from the State of Oregon before March 23, 1972.

(c) Easements and rights for the disposal of wastes

The Secretary is further authorized, subject to applicable water quality standards now or hereafter established, to grant such additional easements and rights, in terms up to perpetuity, as in his judgment would be appropriate and desirable for the effective use of the rights to water and the disposal of waste provided for herein and for other utility and private purposes if permission therefor has been obtained from the State of Oregon, subject to such reasonable terms and conditions as he deems necessary for the protection of the scenic, scientific, historic, and recreational features of the recreation area.

16 U.S. Code § 460z-10 - Advisory Council

(a) Establishment; membership

The Secretary shall establish an advisory council for the Oregon Dunes National Recreation Area, and shall consult on a periodic and regular basis with such council with respect to matters relating to management and development of the recreation area. The members of the advisory council, who shall not exceed fifteen in number, shall serve for individual staggered terms of three years each and shall be appointed by the Secretary as follows:

- (i) a member to represent each county in which a portion of the recreation area is located, each such appointee to be designated by the respective governing body of the county involved;
- (ii) a member appointed to represent the State of Oregon, who shall be designated by the Governor of Oregon;
- (iii) not to exceed eleven members appointed by the Secretary from among persons who, individually or through association with national or local organizations, have an interest in the administration of the recreation area; and
- (iv) the Secretary shall designate one member to be Chairman and shall fill vacancies in the same manner as the original appointment.

(b) Private viewpoints

The Secretary shall, in addition to his consultation with the advisory council, seek the views of other private groups and individuals with respect to administration of the recreation area.

(c) Payment of expenses

The members shall not receive any compensation for their services as members of the council, as such, but the Secretary is authorized to pay expenses reasonably incurred by the council in carrying out its responsibilities.

16 U.S. Code § 460z-11 - Area review; report to the President; wilderness designation

Within three years from March 23, 1972, the Secretary shall review the area within the boundaries of the recreation area and shall report to the President, in accordance with section 1132 (b) and (d) of this title, his recommendation

as to the suitability or unsuitability of any area within the recreation area for preservation as a wilderness, and any designation of any such area as a wilderness shall be accomplished in accordance with section 1132 (b) and (d) of this title.

16 U.S. Code § 460z-12 - Federal-State cooperation

The Secretary shall cooperate with the State of Oregon or any political subdivision thereof in the administration of the recreation area and in the administration and protection of lands within or adjacent to the recreation area owned or controlled by the State or political subdivision there. Nothing in this subchapter shall deprive the State of Oregon or any political subdivision thereof of its right to exercise civil and criminal jurisdiction within the recreation area consistent with this subchapter, or of its right to tax persons, corporations, franchises, or other non-Federal property, including mineral or other interests, in or on lands or waters within the recreation area.

16 U.S. Code § 460z-13 - Authorization of appropriations

There are hereby authorized to be appropriated for the acquisition of lands, waters, and interests therein such sums as are necessary, not to exceed \$5,750,000. For development of the recreation area, not more than \$12,700,000 is authorized to be appropriated.

Note to 460z-13

(Pub. L. 92-260, § 15, Mar. 23, 1972, 86 Stat. 102; Pub. L. 94-578, title III, § 316, Oct. 21, 1976, 90 Stat. 2737.)
Amendments

1976—Pub. L. 94-578 substituted “There are hereby authorized to be appropriated for the acquisition of lands, waters, and interests therein such sums as are necessary, not to exceed \$5,750,000” for “Money appropriated from the Land and Water Conservation Fund shall be available for the acquisition of lands, waters, and interests therein within the recreation area, but not more than \$2,500,000 is authorized to be appropriated for such purposes.”

Appendix C
Act Establishing Hells Canyon National Recreation Area (1975)

Pub. L. 94–199, § 1, Dec. 31, 1975, 89 Stat. 1117-1122

16 U.S. Code Chapter 1, Subchapter XCI - HELLS CANYON NATIONAL RECREATION AREA

- § 460gg. Establishment
- § 460gg-1. Wilderness designation
- § 460gg-2. Federal power and water resources projects
- § 460gg-3. Present and future use of Snake River
- § 460gg-4. Administration, protection, and development
- § 460gg-5. Management plan for recreation area
- § 460gg-6. Acquisition of property
- § 460gg-7. Rules and regulations
- § 460gg-8. Lands withdrawn from location, entry, and patent under United States mining laws
- § 460gg-9. Hunting and fishing
- § 460gg-10. Ranching, grazing, etc., as valid uses of area
- § 460gg-11. Civil and criminal jurisdiction of Idaho and Oregon
- § 460gg-12. Development and operation of facilities and services; cooperation with Federal, State, etc., agencies
- § 460gg-13. Authorization of appropriations

16 U.S. Code § 460gg - Establishment

(a) In general

To assure that the natural beauty, and historical and archeological values of the Hells Canyon area and the seventy-one-mile segment of the Snake River between Hells Canyon Dam and the Oregon-Washington border, together with portions of certain of its tributaries and adjacent lands, are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced, there is hereby established the Hells Canyon National Recreation Area.

(b) Boundaries; publication in Federal Register

The Hells Canyon National Recreation Area (hereinafter referred to as the “recreation area”), which includes the Hells Canyon Wilderness (hereinafter referred to as the “wilderness”), the components of the Wild and Scenic Rivers System designated in section 3 of this Act, and the wilderness study areas designated in section 460gg–5 (d) of this title, shall comprise the lands and waters generally depicted on the map entitled “Hells Canyon National Recreation Area” dated May 1978, which shall be on file and available for public inspection in the office of the Chief, Forest Service, United States Department of Agriculture. The Secretary of Agriculture (hereinafter referred to as “the Secretary”), shall, as soon as practicable, but no later than eighteen months after December 31, 1975, publish a detailed boundary description of the recreation area, the wilderness study areas designated in section 460gg–5 (d) of this title, and the wilderness established in section 460gg–1 of this title in the Federal Register.

16 U.S. Code § 460gg–1 - Wilderness designation

(a) Map designation

The lands depicted as the “Hells Canyon Wilderness” on the map referred to in section 460gg (b) of this title are hereby designated as wilderness.

(b) Application of Wilderness Act

The wilderness designated by this subchapter shall be administered by the Secretary in accordance with the provisions of this subchapter or in accordance with the provisions of the Wilderness Act [16 U.S.C. 1131 et seq.], whichever is the more restrictive, except that any reference in such provisions of the Wilderness Act to the effective date of that Act shall be deemed to be a reference to the effective date of this subchapter. The provisions of section 460gg–6 (b) and section 460gg–8 of this title shall apply to the wilderness. The Secretary shall make such boundary revisions to the wilderness as may be necessary due to the exercise of his authority under subsection 3(b) of this Act.

16 U.S. Code § 460gg–2 - Federal power and water resources projects

(a) Licenses by Federal Energy Regulatory Commission

Notwithstanding any other provision of law, or any authorization heretofore given pursuant to law, the Federal Energy Regulatory Commission may not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project work under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), within the recreation area: Provided, That the provisions of the Federal Power Act (41 Stat. 1063) shall continue to apply to any project (as defined in such Act), and all of the facilities and improvements required or used in connection with the operation and maintenance of said project, in existence within the recreation area which project is already constructed or under construction on December 31, 1975.

(b) Assistance detrimental to protected waters

No department or agency of the United States may assist by loan, grant, license, or otherwise the construction of any water resource facility within the recreation area which the Secretary determines would have a direct and adverse effect on the values for which the waters of the area are protected.

16 U.S. Code § 460gg-3 - Present and future use of Snake River

(a) Waters upstream from boundaries of area

No provision of the Wild and Scenic Rivers Act [16 U.S.C. 1271 et seq.], nor of this subchapter, nor any guidelines, rules, or regulations issued hereunder, shall in any way limit, restrict, or conflict with present and future use of the waters of the Snake River and its tributaries upstream from the boundaries of the Hells Canyon National Recreation Area created hereby, for beneficial uses, whether consumptive or nonconsumptive, now or hereafter existing, including, but not limited to, domestic, municipal, stockwater, irrigation, mining, power, or industrial uses.

(b) Flow requirements

No flow requirements of any kind may be imposed on the waters of the Snake River below Hells Canyon Dam under the provisions of the Wild and Scenic Rivers Act [16 U.S.C. 1271 et seq.], of this subchapter, or any guidelines, rules, or regulations adopted pursuant thereto.

16 U.S. Code § 460gg-4 - Administration, protection, and development

Except as otherwise provided in section 460gg-1 of this title and section 3 of this Act, and subject to the provisions of section 460gg-7 of this title, the Secretary shall administer the recreation area in accordance with the laws, rules, and regulations applicable to the national forests for public outdoor recreation in a manner compatible with the following objectives:

- (1) the maintenance and protection of the freeflowing nature of the rivers within the recreation area;
- (2) conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit;
- (3) preservation, especially in the area generally known as Hells Canyon, of all features and peculiarities believed to be biologically unique including, but not limited to, rare and endemic plant species, rare combinations of aquatic, terrestrial, and atmospheric habitats, and the rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith;
- (4) protection and maintenance of fish and wildlife habitat;
- (5) protection of archeological and paleontologic sites and interpretation of these sites for the public benefit and knowledge insofar as it is compatible with protection;
- (6) preservation and restoration of historic sites associated with and typifying the economic and social history of the region and the American West; and
- (7) such management, utilization, and disposal of natural resources on federally owned lands, including, but not limited to, timber harvesting by selective cutting, mining, and grazing and the continuation of such existing uses and developments as are compatible with the provisions of this subchapter.

16 U.S. Code § 460gg-5 - Management plan for recreation area

(a) Development and submission

Within five years from December 31, 1975, the Secretary shall develop and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a comprehensive management plan for the recreation area which shall provide for a broad range of land uses and recreation opportunities.

(b) Consideration of historic, archeological and paleontological resources; inventory; recommendation of areas for listing in National Register of Historic Places; recommendation for protection and research of resources

In the development of such plan, the Secretary shall consider the historic, archeological, and paleontological resources within the recreation area which offer significant opportunities for anthropological research. The Secretary shall inventory such resources and may recommend such areas as he deems suitable for listing in the National

Register of Historic Places. The Secretary's comprehensive plan shall include recommendations for future protection and controlled research use of all such resources.

(c) Scenic roads and other means of transit

The Secretary shall, as a part of his comprehensive planning process, conduct a detailed study of the need for, and alternative routes of, scenic roads and other means of transit to and within the recreation area. In conducting such study the Secretary shall consider the alternative for upgrading existing roads and shall, in particular, study the need for and alternative routes of roads or other means of transit providing access to scenic views of and from the Western rim of Hells Canyon.

(d) Wilderness areas; review by Secretary; recommendations of President to Congress; notice of hearings and meetings

The Secretary shall review, as to their suitability or unsuitability for preservation as wilderness, the areas generally depicted on the map referred to in section 460gg of this title as the "Lord Flat-Somers Point Plateau Wilderness Study Area", and the "West Side Reservoir Face Wilderness Study Area", and the "Mountain Sheep Wilderness Study Area" and report his findings to the President. The Secretary shall complete his review and the President shall, within five years from December 31, 1975, advise the United States Senate and House of Representatives of his recommendations with respect to the designation of lands within such area as wilderness. In conducting his review the Secretary shall comply with the provisions of section 1132 (d) of this title and shall give public notice at least sixty days in advance of any hearings or other public meeting concerning the wilderness study area. The Secretary shall administer all Federal lands within the study areas so as not to preclude their possible future designation by the Congress as wilderness. Nothing contained herein shall limit the President in proposing, as part of this recommendation to Congress, the designation as wilderness of any additional area within the recreation area which is predominately of wilderness value.

(e) Public participation in reviews and preparation of plan; cooperation of other Federal agencies

In conducting the reviews and preparing the comprehensive management plan required by this section, the Secretary shall provide for full public participation and shall consider the views of all interested agencies, organizations, and individuals including but not limited to, the Nez Perce Tribe of Indians, and the States of Idaho, Oregon, and Washington. The Secretaries or Directors of all Federal departments, agencies, and commissions having a relevant expertise are hereby authorized and directed to cooperate with the Secretary in his review and to make such studies as the Secretary may request on a cost reimbursable basis.

(f) Continuation of ongoing activities

Such activities as are compatible with the provisions of this subchapter, but not limited to, timber harvesting by selective cutting, mining, and grazing may continue during development of the comprehensive management plan, at current levels of activity and in areas of such activity on December 31, 1975. Further, in development of the management plan, the Secretary shall give full consideration to continuation of these ongoing activities in their respective areas.

16 U.S. Code § 460gg-6 - Acquisition of property

(a) Authority of Secretary; manner of acquisition

The Secretary is authorized to acquire such lands or interests in land (including, but not limited to, scenic easements) as he deems necessary to accomplish the purposes of this subchapter by purchase with donated or appropriated funds with the consent of the owner, donation, or exchange.

(b) Acquisition without consent of owners; limitations; scenic easements

The Secretary is further authorized to acquire by purchase with donated or appropriated funds such lands or interests in lands without the consent of the owner only if

- (1) he deems that all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and
- (2) the total acreage of all other lands within the recreation area to which he has acquired fee simple title or, lesser interests therein without the consent of the owner is less than 5 per centum of the total acreage which is privately owned within the recreation area on December 31, 1975: Provided, That the Secretary may acquire scenic easements in lands without the consent of the owner and without restriction to such 5 per centum limitation: Provided further, That the Secretary may only acquire scenic easements in lands without the consent of the owner after the date of publication of the regulations required by section 460gg-7 of this title when he determines that such lands are being used, or are in imminent danger of being used, in a manner incompatible with such regulations.

(c) Donation of Oregon land; donation or exchange of Idaho land

Any land or interest in land owned by the State of Oregon or any of its political subdivisions may be acquired only by donation. Any land or interest in land owned by the State of Idaho or any of its political subdivisions may be acquired only by donation or exchange.

(d) "Scenic easement" defined

As used in this subchapter the term "scenic easement" means the right to control the use of land in order to protect esthetic values for the purposes of this subchapter, but shall not preclude the continuation of any farming or pastoral use exercised by the owner as of December 31, 1975.

(e) Offers to sell land; hardship from delay

The Secretary shall give prompt and careful consideration to any offer made by a person owning land within the recreation area to sell such land to the United States. The Secretary shall specifically consider any hardship to such person which might result from an undue delay in acquiring his property.

(f) Exchange of land; equalization payments

In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property, or interests therein, located within the recreation area and, notwithstanding any other provision of law, he may convey in exchange therefor any federally owned property within the same State which he classifies as suitable for exchange and which is under his administrative jurisdiction: Provided, That the values of the properties so exchanged shall be approximately equal, or if they are not approximately equal, they shall be equalized by the payment of cash to the grantor or to the United States as the circumstances require. In the exercise of his exchange authority, the Secretary may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(g) Acquisition of mineral interests

Notwithstanding any other provision of law, the Secretary is authorized to acquire mineral interests in lands within the recreation area, with or without the consent of the owner. Upon acquisition of any such interest, the lands and/or minerals covered by such interest are by this subchapter withdrawn from entry or appropriation under the United States mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(h) Transfer of Federal property to Secretary

Notwithstanding any other provision of law, any Federal property located within the recreation area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the purposes of this subchapter. Lands acquired by the Secretary or transferred to his administrative jurisdiction within the recreation area shall become parts of the national forest within or adjacent to which they are located.

16 U.S. Code § 460gg-7 - Rules and regulations

The Secretary shall promulgate, and may amend, such rules and regulations as he deems necessary to accomplish the purposes of this subchapter. Such rules and regulations shall include, but are not limited to—

- (a) standards for the use and development of privately owned property within the recreation area, which rules or regulations the Secretary may, to the extent he deems advisable, implement with the authorities delegated to him in section [460gg-6](#) of this title, and which may differ among the various parcels of land within the recreation area;
- (b) standards and guidelines to insure the full protection and preservation of the historic, archeological, and paleontological resources in the recreation area;
- (c) provision for the control of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of any Federal land within the recreation area;
- (d) provision for the control of the use and number of motorized and nonmotorized river craft: Provided, That the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area; and
- (e) standards for such management, utilization, and disposal of natural resources on federally owned lands, including but not limited to, timber harvesting by selective cutting, mining, and grazing and the continuation of such existing uses and developments as are compatible with the provisions of this subchapter.

16 U.S. Code § 460gg-8 - Lands withdrawn from location, entry, and patent under United States mining laws

Notwithstanding the provisions of section 1133 (d)(2) of this title and subject to valid existing rights, all Federal lands located in the recreation area are hereby withdrawn from all forms of location, entry, and patent under the mining laws of the United States, and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

16 U.S. Code § 460gg-9 - Hunting and fishing

The Secretary shall permit hunting and fishing on lands and waters under his jurisdiction within the boundaries of the recreation area in accordance with applicable laws of the United States and the States wherein the lands and waters are located except that the Secretary may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons for public safety, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department.

16 U.S. Code § 460gg–10 - Ranching, grazing, etc., as valid uses of area

Ranching, grazing, farming, timber harvesting, and the occupation of homes and lands associated therewith, as they exist on December 31, 1975, are recognized as traditional and valid uses of the recreation area.

16 U.S. Code § 460gg–11 - Civil and criminal jurisdiction of Idaho and Oregon

Nothing in this subchapter shall diminish, enlarge, or modify any right of the States of Idaho, Oregon, or any political subdivisions thereof, to exercise civil and criminal jurisdiction within the recreation area or of rights to tax persons, corporations, franchises, or property, including mineral or other interests, in or on lands or waters within the recreation area.

16 U.S. Code § 460gg–12 - Development and operation of facilities and services; cooperation with Federal, State, etc., agencies

The Secretary may cooperate with other Federal agencies, with State and local public agencies, and with private individuals and agencies in the development and operation of facilities and services in the area in furtherance of the purposes of this subchapter, including, but not limited to, restoration and maintenance of the historic setting and background of towns and settlements within the recreation area.

16 U.S. Code § 460gg–13 - Authorization of appropriations

(a) Acquisition of lands

There is hereby authorized to be appropriated the sum of not more than \$10,000,000 for the acquisition of lands and interests in lands within the recreation area.

(b) Development of recreation facilities

There is hereby authorized to be appropriated the sum of not more than \$10,000,000 for the development of recreation facilities within the recreation area.

(c) Inventory, identification, development and protection of historic and archeological sites

There is hereby authorized to be appropriated the sum of not more than \$1,500,000 for the inventory, identification, development, and protection of the historic and archeological sites described in section 5 of this Act.

Appendix D
Act Establishing Mount Hood National Recreation Area (2009)

Pub. L. 111–11, title I, § 1204, Mar. 30, 2009, 123 Stat. 1013

16 U.S. Code Chapter 1, Subchapter CXXXII - MOUNT HOOD NATIONAL RECREATION AREA

16 U.S. Code § 460uuu - Mount Hood National Recreation Area

(a) Designation

To provide for the protection, preservation, and enhancement of recreational, ecological, scenic, cultural, watershed, and fish and wildlife values, there is established the Mount Hood National Recreation Area within the Mount Hood National Forest.

(b) Boundary

The Mount Hood National Recreation Area shall consist of certain Federal land managed by the Forest Service and Bureau of Land Management, comprising approximately 34,550 acres, as generally depicted on the maps entitled “National Recreation Areas—Mount Hood NRA”, “National Recreation Areas—Fifteenmile Creek NRA”, and “National Recreation Areas—Shellrock Mountain”, dated February 2007.

(c) Map and legal description

(1) Submission of legal description

As soon as practicable after March 30, 2009, the Secretary shall file a map and a legal description of the Mount Hood National Recreation Area with—

- (A) the Committee on Energy and Natural Resources of the Senate; and
- (B) the Committee on Natural Resources of the House of Representatives.

(2) Force of law

The map and legal description filed under paragraph (1) shall have the same force and effect as if included in this subtitle, except that the Secretary may correct typographical errors in the map and the legal description.

(3) Public availability

The map and legal description filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Forest Service.

(d) Administration

(1) In general

The Secretary shall—

(A) administer the Mount Hood National Recreation Area—

- (i) in accordance with the laws (including regulations) and rules applicable to the National Forest System; and*
- (ii) consistent with the purposes described in subsection (a); and*
- (B) only allow uses of the Mount Hood National Recreation Area that are consistent with the purposes described in subsection (a).*

(2) Applicable law.

Any portion of a wilderness area designated by section 1202 [1] that is located within the Mount Hood National Recreation Area shall be administered in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.).

(e) Timber

The cutting, sale, or removal of timber within the Mount Hood National Recreation Area may be permitted—

(1) to the extent necessary to improve the health of the forest in a manner that—

(A) maximizes the retention of large trees—

- (i) as appropriate to the forest type; and*
- (ii) to the extent that the trees promote stands that are fire-resilient and healthy;*
- (B) improves the habitats of threatened, endangered, or sensitive species; or*
- (C) maintains or restores the composition and structure of the ecosystem by reducing the risk of uncharacteristic wildfire;*

(2) to accomplish an approved management activity in furtherance of the purposes established by this section, if the cutting, sale, or removal of timber is incidental to the management activity; or

(3) for de minimus personal or administrative use within the Mount Hood National Recreation Area, where such use will not impair the purposes established by this section.

(f) Road construction

No new or temporary roads shall be constructed or reconstructed within the Mount Hood National Recreation Area except as necessary—

(1) to protect the health and safety of individuals in cases of an imminent threat of flood, fire, or any other catastrophic event that, without intervention, would cause the loss of life or property;

(2) to conduct environmental cleanup required by the United States;

(3) to allow for the exercise of reserved or outstanding rights provided for by a statute or treaty;

(4) to prevent irreparable resource damage by an existing road; or

(5) to rectify a hazardous road condition.

(g) Withdrawal

Subject to valid existing rights, all Federal land within the Mount Hood National Recreation Area is withdrawn from—

(1) all forms of entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under all laws relating to mineral and geothermal leasing.

(h) Transfer of administrative jurisdiction

(1) In general

Administrative jurisdiction over the Federal land described in paragraph (2) is transferred from the Bureau of Land Management to the Forest Service.

(2) Description of land

The land referred to in paragraph (1) is the approximately 130 acres of land administered by the Bureau of Land Management that is within or adjacent to the Mount Hood National Recreation Area and that is identified as “BLM Lands” on the map entitled “National Recreation Areas—Shellrock Mountain”, dated February 2007.

Appendix E

Pending Legislation to Establish Rogue Canyon and Molalla National Recreation Areas

Excerpts from the proposed “Oregon and California Land Grant Act of 2015,”¹⁶ introduced by Senator Ron Wyden and cosponsored by Senator Jeff Merkley, in particular from Section 10:

(d) NATIONAL RECREATION AREAS.—For the purposes of protecting, conserving, and enhancing the unique and nationally important recreational, ecological, scenic, cultural, watershed, and fish and wildlife values of the areas, the following areas in the State of Oregon are designated as recreation areas for management by the Secretary in accordance with subsection (h):

(1) ROGUE CANYON NATIONAL RECREATION AREA.— The approximately 94,700 acres of Bureau of Land Management land, within the boundary generally depicted on the map entitled ‘O&C Land Grant Act of 2014: Rogue Canyon National Recreation Area’ and dated November 3, 2014, which is designated as the ‘Rogue Canyon National Recreation Area’.

(2) MOLALLA NATIONAL RECREATION AREA.— The approximately 24,100 acres of Bureau of Land Management land, within the boundary generally depicted on the map entitled ‘O&C Land Grant Act of 2014: Molalla National Recreation Area’ and dated November 3, 2014, which is designated as the ‘Molalla National Recreation Area’....

(h) ADMINISTRATION.—

(1) MAPS AND LEGAL DESCRIPTIONS.—

(A) IN GENERAL.—As soon as practicable after the date of enactment of the Oregon and California Land Grant Act of 2015, the Secretary shall prepare a map and legal description of each Conservation Emphasis Area.

(B) EFFECT.— The maps and legal descriptions prepared under subparagraph (A) shall have the same force and effect as if included in this Act, except that the Secretary may correct any minor errors in the maps and legal descriptions.

(C) PUBLIC AVAILABILITY.— The maps and legal descriptions prepared under subparagraph (A) shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

(2) ADMINISTRATION.—

(A) APPLICABLE LAW.— The Secretary shall administer each Conservation Emphasis Area—

(i) in a manner that furthers the purposes for which the Conservation Emphasis Area was established; and

(ii) in accordance with—

(I) this subsection;

(II) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(III) any other applicable Federal laws.

(B) USES.— The Secretary shall only allow uses of a Conservation Emphasis Area that are consistent with the purposes and values for which the Conservation Emphasis Area is established.

(C) WITHDRAWAL.—Subject to valid existing rights, all Federal surface and subsurface land within a Conservation Emphasis Area is withdrawn from—

(i) all forms of entry, appropriation, or disposal under the public land laws;

(ii) location, entry, and patent under the mining laws; and

(iii) operation under the mineral leasing and geothermal leasing laws.

(3) ADJACENT MANAGEMENT.—Nothing in this section creates any protective perimeter or buffer zone around an area designated under this section.

(4) USE OF MOTORIZED VEHICLES.— The use of motorized vehicles within the Conservation Emphasis Areas shall be limited to roads allowed by the Secretary for such use, provided that the Secretary may allow off-road vehicle use in designated portions of the areas designated by this section if such use is consistent with the purposes and values for which the area was designated.

(5) FOREST MANAGEMENT.—

¹⁶ Wyden, Ron. 2015. [Oregon and California Land Grant Act of 2015](#). S.132, 114th Congress.

- (A) IN GENERAL.—Subject to subparagraph (B), in the Conservation Emphasis Area (other than a special management area designated by subsection (e)), the cutting, sale, or removal of timber may be permitted—
- (i) to the extent necessary to improve forest health in ways that also—
 - (I) improve the habitats of threatened or endangered species or species considered sensitive by the Secretary over the long term after completion of the vegetation management project; or
 - (II) in the case of harvests in moist forest sites, is conducted—
 - (aa) through variable density and clump based thinning;
 - (bb) in a manner that retains legacy trees; and
 - (III) in the case of dry forests, through partial cutting in a manner that retains legacy trees;
 - (ii) is also in furtherance of the purposes for which the Conservation Emphasis Area was established;...
- (i) ROADS.—
- (1) IN GENERAL.— The Secretary, to the maximum extent practicable, shall decrease the total mileage of system roads that are operational in the Conservation Emphasis Areas to a quantity less than the quantity of mileage in existence on the date of enactment of the Oregon and California Land Grant Act of 2015. The Secretary shall prioritize decreasing the mileage of the road network in order to reduce impacts to water quality from sediment delivered to streams by forest roads.
- (2) TEMPORARY ROADS.—If the Secretary constructs a temporary road as part of a vegetation management project, the Secretary shall close and decommission the temporary road not later than the earlier of—
- (A) the date that is 2 years after the date on which the activity for which the temporary road was constructed is completed; and
 - (B) the date that is 1 year after the date on which the vegetation management project is completed.
- (3) NO NEW ROADS.— The Secretary shall prohibit any new system or nonsystem road within the Conservation Emphasis Areas and key watersheds under the NWFP after the date of enactment of the Oregon and California Land Grant Act of 2015 except as necessary, where no practicable alternative exists and subject to the availability of appropriations. The Secretary shall also prohibit the construction of any new road in any roadless area or areas with wilderness characteristics.
- (4) ROADS IN RIPARIAN AREAS.—Requirements in section 4(b) apply to riparian reserves in the Conservation Emphasis Areas.

[Relevant Definitions:]

- (6) CONSERVATION EMPHASIS AREA.— The term ‘Conservation Emphasis Area’ means the land allocated for various purposes in section 10, except for subsection (f), and generally depicted on the map entitled ‘O & C Land Grant Act of 2014: Conservation Emphasis Areas’ and dated November 3, 2014 and the land generally depicted on the map entitled ‘O & C Land Grant Act of 2014: Late Successional Old-Growth Forest Heritage Areas’ and dated November 3, 2014.
- (13) FOREST HEALTH.— The term ‘forest health’ means conditions that enable forested land—
- (A) to be durable, resilient, and less prone to uncharacteristic wildfire, insect, or pathogen events, while—
 - (i) supporting ecosystem services and populations of native species; and
 - (ii) allowing for natural disturbances;
 - (B) to maintain or develop species composition, ecosystem function and structure, hydrologic function, and sediment regimes that are within an acceptable range that considers—
 - (i) historic variability; and
 - (ii) anticipated future conditions.

Appendix F

Model Legislative Language for 21st-Century NRAs on Oregon’s Federal Public Lands

This appendix contains model language for establishing a national recreation area within the National Forest System administered by the Forest Service, with some adjacent BLM land being transferred to Forest Service management. With some modest modification, the language can also apply to establishing NRAs on public lands administered by the BLM, or even to establishing NRAs jointly managed by the BLM and the Forest Service.

This model language is also generally suitable for establishing a congressionally legislated national monument on BLM and/or USFS land, a BLM national conservation area, or the like and can be adapted to more specialized congressional designations such as national scenic area, outstanding natural area, scenic-research area, and scenic recreation area.¹⁷

For your specific intended application, a few technical changes may be in order—for example, clarifying for site specificity but not changing the meaning of the provision. Start with this boilerplate language, but review carefully to ensure that it will achieve what you want.

The basis for this model is the legislative language enacted into law in 2009 that established the Mount Hood National Recreation Area Appendix D). It has been modified and expanded to address matters not at issue for the MHNRA and also tweaked to overcome a few weaknesses in that particular statute.

The proposed model language is in the left column in *Courier* font. Commentary is in the right column. Brackets—[XXX]—indicate mandatory text to fill in. Braces—{XXX}—indicate optional language that may be necessary, such as when an NRA would include both Forest Service and BLM land and/or administration.

The model language is formatted as one section of a multi-section bill. It could also be its own bill, one title in a multi-title bill, or even one subsection of a section in a bill. It all gets down to where it is placed in a bill:

1, 2, 3 or 101, 102, 103	Section
(a), (b), (c)	Subsection
(1), (2), (3)	Paragraph
(A), (B), (C)	Subparagraph
(i), (ii), (iii)	Clause

Whatever the format, if enacted into law, it is enacted into law. By the way, text in SMALL CAPITALS is a convention used as a guide to understanding the legislation and finding relevant

¹⁷ Kerr, Andy. 2012. [Special Congressional Conservation Designations in Oregon](#) and Kerr, Andy. 2015. [National What-Have-You Areas: Congressional Conservation of Our Public Lands](#). The Larch Company, Ashland, OR and Washington, DC.

provisions. Such text may or may not end up in what is enacted into law or codified into the United States Code (USC), which is the ultimate goal and authority.

Another convention is that references to “the Secretary” usually mean actually to the managing agency, either the Forest Service or the BLM.

Don’t sweat putting numbers along the side or otherwise perfecting the document to look like a real bill in Congress. Once you’ve convinced a senator or member of Congress to introduce it, this sponsor will ask the legislative counsel in her or his respective body to whip it into proper form.

If you would like to start out with a clean Microsoft Word version of the model language, please contact the author.

<p>Table of Contents</p> <ul style="list-style-type: none"> (a) Designation (b) Purposes (c) Extent (d) Map and Legal Description (e) Administration (f) Transfer of Administrative Jurisdiction (g) Mineral Withdrawal (h) Mineral Patent (i) Common Variety Minerals (j) Mineral Regulations (k) Non-Federal Lands (l) Water Rights (m) Fish and Wildlife (n) Non-Motorized Recreation (o) Timber Management (p) Roads (q) Off-Road Vehicle Use (r) Livestock Grazing (s) Voluntary Grazing Lease or Permit Donation (t) Wilderness Areas (u) Wild and Scenic Rivers (v) Additional Protections (w) Management Plan (x) Advisory Committee (y) Compliance with Existing Laws (z) Scientific Advisory Panel (aa) Native American Treaty Rights (bb) Land Exchange (cc) Definitions 	
<p>SEC. XX. [INSERT] NATIONAL RECREATION AREA.</p>	
<p>(a) DESIGNATION.— There is established the [INSERT NAME] National Recreation Area within {and adjacent to} the [INSERT] National Forest.</p>	<p>If the proposed NRA is just a BLM area, strike the references to national forest and say “on public</p>

	lands administered by the XXX District Office, Bureau of Land Management.”
(b) PURPOSES.— The purposes of the Area described in subsection (a) are to provide for the conservation and, if necessary, the restoration of air quality, archeological, botanic, natural carbon storage and sequestration, cultural, dark sky, ecological, native fish, geological historical, hydrological, natural, paleontological, peaceful, quiet ambiance, scenic, scientific, water quantity, water quality, watershed, wilderness and native wildlife (including connectivity) values, while providing, for this and future generations, the recreational use and public enjoyment in manners compatible with such conservation and restoration.	It may not be appropriate to include every purpose named here. Avoid purposes such as custom and culture, logging, grazing, ranching, mining, motorized use, etc.
(c) EXTENT.— The Area shall consist of all Federal land managed by the Forest Service {and Bureau of Land Management}, comprising approximately XXX,XXX acres, within the national recreation area boundary line on the map entitled “[INSERT] National Recreation Area, dated XXXX, 201X.	At the request of the legislation’s chief sponsor(s), the Forest Service and/or BLM will prepare an official map that will be incorporated by reference into the legislation. The map counts as much as any word in the bill. The map should depict not only the <i>exterior</i> NRA boundary, but also the federal land generally within it at the time of enactment. The map should <i>not</i> depict an NRA boundary that is drawn around any non-federal inholdings in the proposed NRA, in a way that would appear to exclude them from the NRA. If later, any non-federal inholding comes into federal ownership, then it is automatically covered by the NRA legislation.
(d) MAP AND LEGAL DESCRIPTION.—	This is standard

<p>(1) SUBMISSION OF LEGAL DESCRIPTION.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and a legal description of the Area with—</p> <p>(A) the Committee on Energy and Natural Resources of the Senate; and</p> <p>(B) the Committee on Natural Resources of the House of Representatives.</p> <p>(2) FORCE OF LAW.— The map and legal description filed under paragraph (1) shall have the same force and effect as if included in this subtitle, except that the Secretary may correct typographical errors in the map and the legal description.</p> <p>(3) PUBIC AVAILABILITY.— The map and legal description filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Forest Service {and Bureau of Land Management}.</p>	<p>boilerplate, and you shouldn't need to change a word.</p>
<p>(e) ADMINISTRATION.—</p> <p>(1) IN GENERAL.— The Secretary shall—</p> <p>(A) administer the Area—</p> <p>(i) in accordance with the laws (including regulations) and rules applicable to the National Forest System; and</p> <p>(ii) consistent with the purposes described in subsection (b);</p> <p>(iii) applicable law (including regulations); and</p> <p>(iv) using the best available science.</p> <p>(B) WILDERNESS AND WILD AND SCENIC RIVERS WITHIN THE AREA.</p> <p>(A) Any portion of a wilderness area that is located within the Area shall be administered in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.).</p> <p>(B) Any portion of a wild and scenic river that is located within the Area shall be administered in accordance with both the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and this section; provided in the event of any conflict between the two, the more restrictive provision will apply.</p>	<p>The Wild and Scenic Rivers Act of 1968 says: “Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Wilderness Act [16 U.S.C. 1131 et seq.], shall be subject to the provisions of both the Wilderness Act and this chapter with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of the Wilderness Act and this chapter the more restrictive provisions shall apply.” 16 USC 1282(b)</p>
<p>(f) TRANSFER OF ADMINISTRATIVE JURISDICTION.—</p> <p>(1) IN GENERAL.— Administrative jurisdiction over the Federal land described in paragraph (2) is</p>	<p>This subsection is necessary only if one wants to transfer other</p>

<p>transferred from the Bureau of Land Management to the Forest Service and the lands shall become part of the [INSERT] National Forest.</p> <p>(2) DESCRIPTION OF LAND.— The land referred to in paragraph (1) is the approximately XX,XXX acres of land administered by the Bureau of Land Management that is within or adjacent to the Area and that is identified as ‘‘BLM Lands’’ on the map entitled ‘‘[INSERT] National Recreation Area, dated [INSERT MONTH AND YEAR].</p>	<p>federal lands, such as BLM, to the Forest Service.</p>
<p>(g) MINERAL WITHDRAWAL.—Subject to valid existing rights, all Federal land within the Area is withdrawn from—</p> <p>(1) location, entry, and patent under the mining laws;</p> <p>(2) disposition under all laws relating to mineral and geothermal leasing; and</p> <p>{(3) all forms of entry, appropriation, or disposal under the public land laws.}</p>	<p>Clause (3) is only necessary for BLM public lands, as the Federal Lands and Policy Act allows the BLM to sell its lands. The National Forest Management Act prohibits the Forest Service from selling any of the National Forest System.</p>
<p>(h) MINERAL PATENT— Patents may not be issued under the mining laws of the United States after the date of enactment of this Act, for locations and claims made before the date of enactment of this Act, on Federal lands located within the exterior boundaries of the area.</p>	<p>While there is, for now, a non-controversial appropriations bill ‘‘rider’’ that is renewed each year that prohibits patenting (sale to private ownership at between \$2.50- to \$5.00/acre) of mining claims, it doesn’t hurt to have it permanent in this legislation.</p>
<p>(i) COMMON VARIETY MINERALS.—Subject to valid existing rights, except for extraction of common variety minerals such as stone, sand, and gravel for use in construction and maintenance of roads and other facilities within the area, all other mineral development on federally owned lands within the recreation area is prohibited.</p>	<p>This provision limits common materials mining to uses within the NRA.</p>
<p>(j) MINERAL REGULATIONS. The Secretary is authorized and directed to issue supplementary regulations to promote and protect the purposes for which the recreation area is designated.</p>	<p>This section is not recommended until existing mining claims are a really big problem.</p>
<p>(k) NON-FEDERAL LANDS.—</p> <p>(1) Non-federal lands and interests in lands within boundary on the map defined in subsection (c) are not subject to the provisions of this Act,</p>	<p>Private land would expressly not be subject to any provision of the NRA statute save this</p>

<p>except as provided in this subsection.</p> <p>(2) ACQUISITION.— The Secretary may acquire non-federal lands within the boundary defined in subparagraph (1) only by donation, exchange, or purchase from willing owners of such interests.</p> <p>(3) NO CONDEMNATION.— The Secretary may not exercise the power of eminent domain on non-federal lands and interests defined in subparagraph (1).</p> <p>(4) ACCESS.— The Secretary shall continue to provide private landowners customary access to inholdings in the Conservation Area.</p>	<p>one.</p>
<p>(1) WATER RIGHTS.— Nothing in this section affects any valid or vested water right in existence on the date of enactment of this Act.</p>	<p>This is called “reassurance language.” The federally reserved water right created by enactment of the NRA statute is a junior right to any senior right. The quantification of the federally reserved water right would be done during a state adjudication.</p>
<p>(m) FISH AND WILDLIFE.—. The Secretary shall permit hunting and fishing on land and waters within the Area in accordance with applicable Federal and State laws, except that the Secretary may, in consultation with the Oregon Department of Fish and Wildlife, designate zones in which, and establish periods during which, no hunting or fishing shall be permitted for reasons of public safety, administration, or compliance by the Secretary with any applicable law (including regulations).</p>	<p>This is boilerplate language that allows the Secretary to limit hunting around congested portions of the NRA, such as campgrounds.</p>
<p>(n) NON-MOTORIZED RECREATION.— The Secretary shall provide for traditional forms of non-motorized recreation, including walking, hiking, mountain biking, horseback riding, hunting, angling, and birding in a manner consistent with the purposes of the Area defined in subsection (b).</p>	<p>This is “reassurance language” for the benefit of stakeholder interests.</p>
<p>(o) TIMBER MANAGEMENT.— The cutting, sale, or removal of timber within the Area may be permitted, as long as it is consistent with the purposes in subsection (b) and utilizes the best available science—</p> <p>(1) to the extent necessary to improve forest health in a manner that—</p> <p>(A) for dry forest types</p> <p>(i) maximizes the retention of large and/or old trees—</p>	<p>This being Oregon, this probably needs inclusion. Such is not necessary in generally tree-free landscapes managed by the BLM in eastern Oregon.</p> <p>The larger the proposed</p>

<p>(1) as appropriate to the forest type; and (2) to the extent that the trees cut promote stands that are fire-resilient and healthy; (B) for moist forest types is limited to stands— (i) previously subjected to timber management; and (ii) whose trees are 80 years or less in age; (C) for all forest types: (1) improves the habitats of threatened, endangered, or sensitive species; (2) maintains or restores the composition and structure of the forest ecosystem by reducing the risk of uncharacteristic wildfire; and (3) does not retard the establishment of complex natural early seral forest; or (C) is to accomplish an approved management activity in furtherance of the purposes in subsection (b), if the cutting, sale, or removal of timber is incidental to the management activity; or (D) for de minimus personal or administrative use within the Area.</p>	<p>NRA, the more necessary the “firewood” provision at the end.</p>
<p>(p) ROADS.— (1) NEW ROADS.— No new or temporary roads shall be constructed or reconstructed within the Area except as necessary— (A) to protect the health and safety of individuals in cases of an imminent threat of flood, fire, or any other catastrophic event that, without intervention, would cause the loss of life or property; (B) to conduct environmental cleanup required by the United States; (C) to allow for the exercise of reserved or outstanding rights provided for by a statute or treaty; (D) to prevent irreparable resource damage by an existing road; or (E) to rectify a hazardous road condition. (2) ROAD RATIONALIZATION.— The Secretary shall inventory and evaluate both system and non-system roads in the Area and take steps to: (A) decommission roads unnecessary for administrative or public use; and (B) make necessary roads more watershed- and wildlife-friendly.</p>	<p>New roads are generally banned, unnecessary roads are to be decommissioned, and necessary roads are to be made more watershed- and wildlife-friendly.</p>
<p>CHOOSE <u>ONE</u>: (q) OFF-ROAD VEHICLE USE.— The Secretary shall limit use of motorized vehicles in the Area to roads. (q) OFF-ROAD VEHICLE USE.— The use of motorized vehicles within the Area shall be limited to roads</p>	<p>Off-road vehicle (ORV) use within an NRA is probably one of the most difficult political choices conservationists have to make. If a proposed NRA</p>

<p>allowed by the Secretary for such use, provided that the Secretary may allow off-road vehicle use in designated portions of the Area if such use is consistent with the purposes in described in subsection (c).</p> <p>(q) OFF-ROAD VEHICLE USE.—</p> <p>(1) The use of motorized vehicles within the Area shall be limited to roads allowed by the Secretary for such use, provided that the Secretary may allow off-road vehicle within the boundaries of the zones labeled “Off-Road Vehicle Zones” as depicted on the map described in subsection (c).</p> <p>(2) The Secretary shall, as part of the management plan required in subsection (s), condition off-road vehicle use in terms of season of the year, hours of the day, size and kinds of vehicles, operator qualifications, noise levels and other factors she considers important to:</p> <p>(A) protect both the safety of motorized vehicle users and other Area visitors; and</p> <p>(B) avoid damage to the purposes and values for which the area was established.</p>	<p>is quite large and the ORV constituency for the lands quite strong, it may not be politically feasible to flatly ban motorized off-road use. Three options are offered below (choose one):</p> <ol style="list-style-type: none"> <i>1. explicit ban in entire NRA</i> <i>2. allowed if compatible with the purposes of the NRA</i> <i>3. allowed in prescribed portions of the NRA</i> <p>If ORV use is to be explicitly allowed, make sure that the permissible areas are mapped and thereby incorporated by reference into the statute, rather than left to the discretion of the Secretary.</p>
<p>(r) LIVESTOCK GRAZING.—. The grazing of livestock in the Area, where established before the date of enactment of this Act, shall be permitted to continue—</p> <p>(A) subject to—</p> <p>(i) such reasonable regulations, policies, and practices as the Secretary considers necessary; and</p> <p>(ii) applicable law; and</p> <p>(B) in a manner compatible with the purposes and values described in subsection (b).</p>	<p>This provision would “grandfather” in existing livestock grazing, but also (if (A)(i) is included) condition it. This provision must be read in concert with the following provision that would facilitate the retirement of federal grazing permits from willing permittees or lessees.</p>
<p>(s) VOLUNTARY GRAZING LEASE OR PERMIT DONATION.—</p> <p>(1) ACCEPTANCE BY SECRETARY.— The Secretary shall accept the donation of any valid existing permits or leases authorizing grazing on National Forest System {or public land}, all or a portion of which is within the Area.</p> <p>(2) TERMINATION.—With respect to each permit or lease donated under paragraph (1), the Secretary shall—</p>	<p>A voluntary “golden saddle” option should be provided.</p>

<p>(A) terminate the grazing permit or lease; and</p> <p>(B) except as provided in paragraph (3), ensure a permanent end to grazing on the land covered by the permit or lease.</p> <p>(3) COMMON ALLOTMENTS.—</p> <p>(A) IN GENERAL.—If the land covered by a permit or lease donated under paragraph (1) is also covered by another valid existing permit or lease that is not donated under paragraph (1), the Secretary shall reduce the authorized grazing level on the land covered by the permit or lease to reflect the donation of the permit or lease under paragraph (1).</p> <p>(B) AUTHORIZED LEVEL.— To ensure that there is a permanent reduction in the level of grazing on the land covered by a permit or lease donated under paragraph (1), the Secretary shall not allow grazing use to exceed the authorized level established under subparagraph (A).</p> <p>(4) PARTIAL DONATION.—</p> <p>(A) IN GENERAL.—If a person holding a valid grazing permit or lease donates less than the full amount of grazing use authorized under the permit or lease, the Secretary shall—</p> <p>(i) reduce the authorized grazing level to reflect the donation; and</p> <p>(ii) modify the permit or lease to reflect the revised level of use.</p> <p>(2) AUTHORIZED LEVEL.— To ensure that there is a permanent reduction in the authorized level of grazing on the land covered by a permit or lease donated under subclause (1), the Secretary shall not allow grazing use to exceed the authorized level established under that subclause.</p>	
<p>(t) WILDERNESS AREAS.—</p>	<p>This provision is a placeholder for overlapping wilderness within the NRA. Often, new or expanded wilderness will be concurrently designated on lands partially or completely within the NRA. As the legislative form varies whether one is adding to an existing wilderness or establishing a new wilderness, model language is not included here.</p>

<p>(u) WILD AND SCENIC RIVERS.—</p>	<p>This provision is a placeholder for overlapping wild and scenic rivers within the NRA. Often, new or expanded wild and scenic rivers will be concurrently designated on lands partially or completely within the NRA. As the legislative form varies whether one is adding to an existing wild and scenic river or establishing a new wild and scenic river, model language is not included here.</p> <p>(If the proposed WSR is not entirely within the NRA, be sure that all segments designated as scenic or recreational are specifically withdrawn from mineral exploitation, as such is not automatically the case under the Wild and Scenic Rivers Act.)</p>
<p>(v) Additional Protections.—</p> <p>(1) Licensing by Federal Energy Regulatory Commission.— The Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works in or directly affecting the Area.</p> <p>(2) Other Agencies.—</p> <p>(A) IN GENERAL.—No department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project in the area, except to maintain or repair water resources projects in existence on the date of enactment of this Act.</p> <p>(B) EFFECT.—Nothing in this subsection prohibits any department or agency of the United States in assisting by loan, grant, license, or otherwise, a water resources project—</p>	<p>This language prevents incompatible water or energy projects.</p>

<p>(i) the primary purpose of which is ecological or aquatic restoration;</p> <p>(ii) that provides a net benefit to water quality and aquatic resources; and</p> <p>(iii) is consistent with the purposes described in subsection (b).</p>	
<p>(w) MANAGEMENT PLAN.—</p> <p>(1) Within three years of the date of enactment of this Act, the Secretary shall approve a comprehensive management plan for the Area.</p> <p>(2) PUBLIC REVIEW.—A draft of the plan described in paragraph (1) shall be made available for public comment for a period of not less than 90 days.</p> <p>(3) PRIMARY MANAGEMENT GOALS.— The Secretary shall ensure that the comprehensive management plan is:</p> <p>(A) consistent with the purposes in subsection (b), and</p> <p>(B) uses the best available science.</p> <p>(4) ADDITIONAL MANAGEMENT GOALS.—The comprehensive management plan will also ensure that:</p> <p>(A) RIPARIAN CONSERVATION AND RESTORATION.— Riparian zones and their associated upland areas be managed so as to meet state water quality standards within ten years after approval of the plan;</p> <p>(B) BEAVER CONSERVATION AND RESTORATION.— Beaver are restored throughout their historic in the area in population densities sufficient to optimize water retention and other watershed and habitat functions;</p> <p>(C) FOREST CONSERVATION AND RESTORATION.— Forests of all age classes have natural structure, function, composition and connectivity; and</p> <p>(D) INVASIVE SPECIES AND NOXIOUS WEEDS.— Measures are prescribed to control, reduce or eliminate nonnative invasive species, in accordance with any applicable laws and subject to such terms and conditions as the Secretary determines to be desirable and appropriate.</p> <p>(5) TRIBAL CONSULTATION.— In the development of the management plan required in paragraph (1), the Secretary shall consult with the [INSERT] Tribe[s] and shall continue to periodically consult as to the ongoing management of the area.</p>	<p>If primarily a BLM generally tree-free proposed NRA, you may want to add:</p> <p>(XX) DESERT, STEPPE AND GRASSLAND CONSERVATION AND RESTORATION.— Deserts, steppes and grasslands of all age classes have natural structure, function, composition and connectivity; and</p>
<p>(x) ADVISORY COMMITTEE.</p> <p>(1) ESTABLISHMENT.— The Secretary of Agriculture [and/or the Interior and the Secretary of the Interior] shall {JOINTLY} establish an advisory committee for the Area, whose purpose shall be to advise the Secretary[IES] with respect to the preparation and implementation of the management plan required by section (s).</p> <p>(2) REPRESENTATION.— To the extent practicable, the</p>	<p>A threshold question is whether an advisory committee is appropriate at all.</p> <p>If the NRA includes more than one management agency or is located in</p>

advisory committee shall include the following members:

(3) MEMBERS.— The advisory council shall consist of voting members, to be appointed by the Secretary, as follows:

(A) A private landowner within the exterior boundary of the Area, appointed from nominees submitted by [INSERT] County[IES], Oregon.

(B) A person who is a grazing permittee or lessee on public lands within the Area, appointed from nominees submitted by [INSERT] County[IES], Oregon.

(C) A person from the timber industry with an interest in the Area, appointed from nominees submitted by [INSERT] County[IES], Oregon.

(D) A person interested in fish and recreational fishing in the Area, appointed from nominees submitted by the Governor of Oregon.

(E) A member of the [INSERT] Tribe[s], appointed from nominees submitted by the [INSERT] Tribe[s].

(F) Two persons who are recognized environmental representatives, one of whom shall represent the State as a whole, and one of whom is from the local area, appointed from nominees submitted by the Governor of Oregon.

(G) A person who participates in what is commonly called dispersed recreation, such as hiking, camping, nature viewing, nature photography, bird watching, mountain biking horse back riding, or trail walking, appointed from nominees submitted by the Regional Forester of the Pacific Northwest Region of the Forest Service [Oregon State Director of the Bureau of Land Management].

(H) A person who participates in what is commonly called mechanized or consumptive recreation, such as hunting, fishing, or motorized driving, appointed from nominees submitted by the Pacific Northwest Region of the Forest Service [Oregon State Director of the Bureau of Land Management].

(I) A representative(s) of the [INSERT] Watershed Council(s) appointed from nominees submitted by the [INSERT] Watershed Council(s).

(J) A person who has no financial interest in the Area to represent statewide interests, appointed from nominees submitted by the Governor of Oregon.

(K) Two representatives with expertise in the natural sciences, including ecological and/or hydrological restoration, selected from a college or university.

(L) A representative of the County[IES] of [INSERT], Oregon.

(M) A representative of each of the following

more than one Oregon county, make appropriate adjustments to the text. If more than one Native American tribe is involved, each should have its own representative.

As you perfect the member representation for a particular NRA, it never hurts to count the votes. However, conservationists should rely more on the statutory purposes, directions, and sideboards (including wilderness and wild-and-scenic-river designations) of the NRA to achieve their ends more than being in the majority of an *advisory* body.

A purpose of an advisory council is to ensure that various stakeholder interests have a voice in the development of the management plan.

In any case, the advice of an advisory council is advisory and the “Secretary” is still required to obey the statutory requirements pertaining to the NRA.

<p>cities: [INSERT], [INSERT], and [INSERT].</p> <p>(c) CONSULTATION.— In reviewing nominees submitted under paragraph (3) for possible appointment to the advisory council, the Secretary shall consult with the respective community of interest that the nominees are to represent to ensure that the nominees have the support of their community of interest.</p> <p>(4) TERMS.—</p> <p>(A) STAGGERED TERMS.— Members of the advisory committee shall be appointed for terms of 3 years, except that, of the members first appointed, one-third of the members shall be appointed for a term of 1 year and one-third of the members shall be appointed for a term of 2 years.</p> <p>(B) REAPPOINTMENT.— A member may be reappointed to serve on the advisory committee upon the expiration of the member's current term.</p> <p>(C) VACANCY.— A vacancy on the advisory committee shall be filled in the same manner as the original appointment.</p> <p>(5) QUORUM.— A quorum shall be two thirds of the members of the advisory committee. The operations of the advisory committee shall not be impaired by the fact that a member has not yet been appointed as long as a quorum has been attained.</p> <p>(6) CHAIRPERSON AND PROCEDURES.— The advisory committee shall elect a chairperson and establish such rules and procedures as it deems necessary or desirable.</p> <p>(7) SERVICE WITHOUT COMPENSATION.— Members of the advisory committee shall serve without pay.</p> <p>(8) TERMINATION.— The advisory committee shall cease to exist on the date upon which the management plan is officially adopted by the Secretaries, or later at the discretion of the Secretaries.</p> <p>(9) ADMINISTRATIVE SUPPORT.— The Secretary shall provide the advisory council with necessary administrative support and shall designate an appropriate officer of the Bureau of Land Management to serve as the Secretary's liaison to the council.</p> <p>(10) STATE LIAISON.— The Secretary shall appoint one person, nominated by the Governor of Oregon, to serve as the State government liaison to the advisory council.</p> <p>(11) APPLICABLE LAW.— The advisory committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).</p>	
<p>(y) COMPLIANCE WITH EXISTING LAWS.— Nothing in this section modifies any obligation—</p> <p>(1) of the Secretary to prepare or implement a</p>	<p>If the BLM is to be a manager, replace (1) or add a new (2) with: “of</p>

<p>land and resource management plan in accordance with the provisions of 16 U.S.C. 1604;</p> <p>(2) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);</p> <p>(3) under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);</p> <p>(4) under the National Environmental Policy Act (42 U.S.C. 4321 et seq.; or</p> <p>(5) under other law, except as expressly provided in this Act in regard to other law.</p>	<p>the Secretary of the Interior to prepare or implement a resource management plan in accordance with section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).” If the BLM is to be joint manager, add this provision as new number (2).</p>
<p>(z) Scientific Advisory Panel.—</p> <p>(1) Establishment.— There is established a XXXX Scientific Advisory Panel.</p> <p>(2) Purpose.— The purpose of the scientific advisory panel established in subparagraph (1) is to aid the Secretary in:</p> <p>(A) developing of the comprehensive management required in subsection (u); and</p> <p>(b) reporting to Congress required in subsection (x).</p> <p>(3) Membership.—The membership shall be comprise of seven members appointed by the Secretary because of their professional academic expertise in:</p> <p>(A) forest ecology;</p> <p>(B) fire ecology;</p> <p>(C) hydrology;</p> <p>(D) fish ecology;</p> <p>(E) wildlife ecology; and</p> <p>(F) geology.</p>	<p>This is optional.</p>
<p>(aa) NATIVE AMERICAN TREATY RIGHTS.— Nothing in this subtitle alters, modifies, enlarges, diminishes, or abrogates the treaty rights of any Indian tribe, including the off-reservation reserved rights.</p>	<p>This is a savings clause that ensures that the new NRA statute does not affect any Native American treaty rights.</p>
<p>(bb) LAND EXCHANGE.—</p> <p>(1) IN GENERAL. For the purpose of protecting and consolidating Federal land within the Area, the Secretary—</p> <p>(A) shall offer to convey to the Landowner the [INSERT] offered parcel in exchange for the [INSERT] selected parcel; and</p> <p>(B) if the Landowner accepts the offer—</p> <p>(i) the Secretary shall convey to the Landowner all right, title, and interest of the United States in and to the Bureau of Land Management land; and</p> <p>(ii) the Landowner shall convey to the Secretary</p>	<p>This provision is drafted for one specific legislated land exchange. If there is more than one, the language can be amended or the subsection duplicated.</p> <p>General authority is also provided to exchange Forest Service (and</p>

<p>all right, title, and interest of the Landowner in and to the [INSERT] offered parcel.</p> <p>(2) SURVEYS.—</p> <p>(A) IN GENERAL.— The exact acreage and legal description of the [INSERT] offered parcel and the [INSERT] selected parcel shall be determined by surveys approved by the Secretary.</p> <p>(A) COSTS.— The responsibility for the costs of any surveys conducted under paragraph (1), and any other administrative costs of carrying out the land exchange, shall be determined by the Secretary and the Landowner.</p> <p>(3) CONDITIONS.— The conveyance of the [INSERT] selected parcel and the [INSERT] offered parcel under this section shall be subject to—</p> <p>(A) valid existing rights;</p> <p>(A) title to the [INSERT] parcel being acceptable to the Secretary and in conformance with the title approval standards applicable to Federal land acquisitions;</p> <p>(C) such terms and conditions as the Secretary may require;</p> <p>and</p> <p>(D) except as otherwise provided in this section, any laws (including regulations) applicable to the conveyance and acquisition of land by the Forest Service {Bureau of Land Management}.</p> <p>(4) APPRAISALS.—</p> <p>(A) IN GENERAL.— The [INSERT] offered parcel and the [XXXX] selected parcel shall be appraised by an independent appraiser selected by the Secretary.</p> <p>(B) REQUIREMENTS.—An appraisal conducted under paragraph (1) shall be conducted in accordance with—</p> <p>(i) the Uniform Appraisal Standards for Federal Land Acquisitions; and</p> <p>(ii) the Uniform Standards of Professional Appraisal Practice.</p> <p>(5) APPROVAL.— The appraisals conducted under this subsection shall be submitted to the Secretary for approval.</p> <p>(6) REJECTION.— Notwithstanding the requirement of the Secretary to offer a parcel specified in subparagraph (1)(A), the Secretary may choose to not offer a parcel if a determination is made that the exchange is substantially harmful to the interests of the United States.</p> <p>(2). OTHER LAND EXCHANGES.— The Secretary is authorized to exchange National Forest System [public lands] within the Area for non-federal holdings within the Area if such exchange is found to further the purposes in subsection (b).</p>	<p>BLM) land outside the NRA for non-federal parcels inside the NRA.</p>
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<p>(cc) DEFINITIONS.— In this Act:</p> <p>(1) AREA.— The term ‘area’ means the National Recreation Area designated in subsection (a).</p> <p>(2) DECOMMISSION.— The term ‘decommission’, with respect to a road, means to restore any natural drainage, watershed function, or other ecological process that has been disrupted or adversely impacted by the road by—</p> <p>(A) removing or hydrologically disconnecting the road prism;</p> <p>(B) reestablishing vegetation on the former road prism; and</p> <p>(C) using the best available science to restore the integrity and form of associated hill slopes, channels, and floodplains.</p> <p>(3) DRY FOREST.— The term “dry forest” mean a forest stand that—</p> <p>(A) would have historically experienced relatively frequent wildfires;</p> <p>(B) these wildfires would have been predominantly low or mixed in severity; and</p> <p>(C) dominated by 1 or more of the following plant association groups:</p> <p>(i) The Moist Grand Fir (<i>Abies grandis</i>) plant association group.</p> <p>(ii) The Moist White Fir (<i>Abies concolor</i>) plant association group.</p> <p>(iii) The Ponderosa Pine (<i>Pinus ponderosa</i>) series.</p> <p>(iv) The Oregon White Oak (<i>Quercus garryana</i>) series.</p> <p>(v) The dry Douglas-fir (<i>Pseudotsuga menziesii</i>) series.</p> <p>(vi) The Jeffrey Pine (<i>Pinus jeffreyi</i>) series.</p> <p>(vii) The Lodgepole Pine (<i>Pinus contorta</i>) series.</p> <p>(viii) The western juniper (<i>Juniperus occidentalis</i>) series.</p> <p>(ix) The Dry Grand Fir (<i>Abies grandis</i>) plant association group.</p> <p>(x) The Dry White Fir (<i>Abies concolor</i>) plant association group.</p> <p>(4) FOREST HEALTH.— The term “forest health” means conditions that enable forested land—</p> <p>(A) to be durable, resilient, and less prone to uncharacteristic wildfire, insect, or pathogen outbreaks, while—</p> <p>(i) supporting ecosystem services and populations of native species; and</p> <p>(ii) allowing for natural disturbances;</p> <p>(B) to maintain or develop species com- position, ecosystem function and structure, hydrologic function, and sediment regimes that are within an acceptable range that considers—</p>	<p>If there is any word or phrase in the legislation you don’t want to leave up to the administering agency to interpret (or misinterpret), be sure to define it in the legislation.</p> <p>The “forest health” definition is lifted from S.1301.IS (113th Congress), the Oregon Eastside Forest Restoration, Old Growth Protection and Jobs Act.</p> <p>The definition of a road comes from: USDI Bureau of Land Management. 2006. Roads and Trails Terminology. Technical Note 422. Denver, CO. BLM/WO/ST-06/006+9113. 67 pp.</p>
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(i) historic variability; and
(ii) anticipated future conditions; and
(C) to be resistant and resilient to uncharacteristic events.

(5) LANDOWNER.— The term “Landowner” or “landowners” means the owner of private lands or interests in lands in the Area.

(6) LARGE AND/OR OLD TREE.— The term “large and/or old tree” means any tree, living or dead, standing or fallen, that is at least 20 inches diameter at breast height and/or 150 years of age or older, or in cases where a deficit of such trees exist in an area, the larger and older such trees that are present.

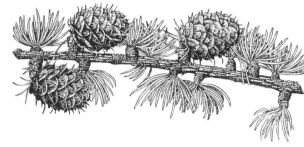
(7) LIVESTOCK.— The term “livestock” does not include beasts of burden used for recreational purposes.

(8) MOIST FOREST.— The term “moist forest” mean a forest stand that—
(A) would have historically experienced infrequent wildfires at intervals that are greater than 100 years;
(B) these wildfires would have included significant areas of partial or complete stand-replacement intensity; and
(C) dominated by 1 or more of the following plant association groups:
(i) The Western Hemlock (*Tsuga heterophylla*) series.
(ii) The Sitka Spruce (*Picea sitchensis*) series.
(iii) The Western Red cedar (*Thuja plicata*) series.
(iv) The Pacific Silver Fir (*Abies amabilis*) series.
(v) The Mountain Hemlock (*Tsuga mertensiana*) series.
(vi) The Subalpine Fir (*Abies lasiocarpa*) series.
(vii) The Engelmann Spruce (*Picea engelmannii*) series.
(viii) The Tanoak (*Lithocarpus densiflorus*) series.
(xi) The Redwood (*Sequoia sempervirens*) series.
(xii) The Port Orford-Cedar (*Chamaecyparis lawsoniana*) series.
(xiii) The Shasta Red Fir series.
(xiv) The moist Douglas-fir (*Pseudotsuga menziesii*) series.
(xv) The Moist Grand Fir (*Abies grandis*) plant association group.
(xvi) The Moist White Fir (*Abies concolor*) plant association group.

(9) OFFERED PARCEL.— The term “offered parcel” means

<p>public land depicted on the map specified in subsection (c).</p> <p>(10) ROAD.— The term 'road' means a linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use.</p> <p>(11) SELECTED PARCEL.— The term "selected parcel" means public land depicted on the map specified in subsection (c).</p> <p>(12) STATE.— The term ''State'' means the State of Oregon.</p>	
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