

August 28, 2014

Wyden Tries End Run on O&C Bill

Shortly before Congress adjourned for the August recess, Senator Ron Wyden (D-OR) introduced a new version of his O&C legislation. This new version, entitled the Oregon and California Land Grant Act of 2014, includes a number of significant changes compared to the 2013 version. One obvious difference is the inclusion of a minor tax cut provision for forest landowners, which was inserted to trigger a referral to the Senate Finance Committee, which Wyden chairs. This maneuver is intended to bypass the Senate Energy and Natural Resources Committee, which despite a late August push by Senator Wyden, failed to take action on his original bill. The new version also adds 250,000 acres of Public Domain lands to the 2.1 million acres of O&C lands already identified in the older version. However, by failing to include the nearly 500,000 acres of “controverted” O&C lands managed by the Forest Service, the acreage still falls well short of the House-passed O&C Trust Act sponsored by Oregon Congressmen Peter DeFazio (D), Kurt Schrader (D) and Greg Walden (R).

Unfortunately, this new version still misses the mark in meeting three essential components that the industry, counties, Oregon Governor John Kitzhaber, and the House delegation have insisted on: 1) an adequate volume of timber to be sold on a sustained basis and evenly distributed across all O&C Districts, 2) sufficient county timber revenues to fund essential services, and 3) certainty from litigation that often shuts down timber harvests on O&C lands.

Key stakeholders have identified numerous concerns with the legislation, including AFRC, Associated Oregon Loggers, and Douglas Timber Operators who noted in an [August 27 letter](#) that the legislation, if enacted, “would actually reduce current, inadequate harvest levels” from the BLM lands and threaten existing timber industry jobs. The letter also noted that this was “due to the inclusion of overly prescriptive regulations, ambiguities, and undefined terms, and a legal framework that fails to adequately address the current lawsuits and even creates avenues for new litigation.”

Elected county officials, the House delegation, and Governor Kitzhaber have also weighed in with their concerns both publicly and privately and are requesting that the bill undergo an objective, independent analysis to determine likely harvest levels, the geographic distribution of those harvest levels, and projected county revenues. The House O&C Trust Act was subjected to that type of an analysis by Kitzhaber’s O&C Task Force. This independent review would examine the prescriptive regulations and extensive set-asides found in the Wyden bill and develop an accurate estimate of the likely sustained yield harvest levels, dollars returning back to the counties, and jobs created for Oregon’s rural communities. The Wyden office has ignored numerous requests for an objective analysis for the last eight months. They recently dismissed the requests as part of a “campaign” by “hardliners” and “extreme” timber industry and county representatives.

We understand that Senator Wyden's office is drafting additional changes to his latest O&C bill. While we are hopeful that the Senator will engage with the House delegation and Governor to make meaningful changes to his legislation, recent public comments from the Senator and his staff signal they may be heading in the opposite direction.

The O&C Counties and AFRC's members, key stakeholders in this process, have made it clear that they stand ready to assist the Senator's office to develop a workable O&C bill. */Tom Partin*

Fire Borrowing Again?

On August 22, Secretary of Agriculture Tom Vilsack sent a letter to the Chairwoman and Ranking Member of the Senate Energy and Natural Resources, Mary Landrieu (D-LA) and Lisa Murkowski (R-AK) respectively informing them that in accordance with Public Law 111-88, Title V, Flame Act of 2009, the Forest Service is within 30 days of depleting available FLAME funds, thus beginning the process of fire borrowing.

Vilsack outlined the respective actions to be taken should borrowing be needed. Action 1) utilize \$62 million from the fire repayment for suppression fund, and Action 2) begin increment 1 of the fire transfer strategy which would tap \$100 million primarily from Wildland Fire Management and Restoration of Improvements. Should more funds be needed, the agency would then proceed into increment 2 for \$300 million which would again tap heavily into Restoration of Improvements (\$110 million), CWKV (\$91 million), and Timber Salvage (\$35 million).

To date, there have been 38,001 wildland fires reported, burning a total acreage of 2,702,995 making this year the lowest number of acres burned over the last 10 year period. The average number of fires per year started by this date over the last 10-year period is 54,133 and acreage burned has averaged 5,778,022 acres. This has led many to question why the agency has exhausted fire suppression funding when we are at a 10-year low. */Tom Partin*

Want Water? Manage our National Forests

The impacts of California's historic drought are becoming clear with each dry month. The U.C. Davis Center for Watershed Sciences recently estimated the ongoing drought is costing our state a staggering \$2.2 billion and the loss of over 17,000 jobs. As our elected officials look for solutions, it's critical they look to the forests and reconsider well-intentioned policies that are reducing the quality and quantity of our limited water resources.

California's watersheds are a primary source of our water supplies and the headwaters of these watersheds are located in our national forests and rural counties. The current "hands-off" approach to management of our federally-owned forests is resulting in several unintended consequences. Due to a century of fire suppression, these forests have become overgrown, dense and more vulnerable to wildfire, insects, and disease. When coupled with climate change, the increasing intensity of wildfires is destroying the very ecosystems and watersheds our federal laws and regulations were thought to protect and preserve.

Some environmental groups believe that "nature should take its course" when it comes to our forests. They commonly sue the federal government to prevent implementation of forest restoration projects, including those designed to contain the threat of fires in the future. This constant threat of litigation

prevents the federal government from actively managing our national forests and watersheds. Over time, these lawsuits come with a cost. Each summer, Californians are witnessing species, watersheds, forest resources, and recreational opportunities destroyed or greatly impacted.

These groups have been extremely successful in decreasing restoration on federal forest lands. Over the past 20 years, we've seen the impact of this policy shift in many of our rural, forested communities that have not economically recovered from over regulation related to the northern and California spotted owl and other species. Now our federal forests are growing more trees than they can naturally sustain, and this has serious implications for our environment.

In California, there are 8.3 million acres of suitable productive forestland on the national forests. The annual net growth on these acres is 3.73 billion board feet of timber and of that, 846 million board feet dies each year from overcrowding. This means that 23 percent of forest growth goes to waste and becomes fuel for future wildfires. Forest thinning and watershed restoration currently utilize only nine percent of annual net growth of our federal forests, it's no wonder that we have seen such a drastic loss of water yield into our watersheds and state water systems.

There is a growing body of research that addresses forestry, water loss, and climate change issues. Everyone understands that trees consume a lot of water, but we are beginning to quantify the impacts when forests are overgrown. Northern Arizona University's Ecological Restoration Institute found that thinning thick and unnaturally dense forests could increase runoff for urban water users by up to 12 percent in some years.

A study on the Sierra Nevada Watershed Ecosystem Enhancement Project details the influence of forest vegetation and the need for management activities in addressing an ever decreasing water supply. Jamie Workman, from the Environmental Defense Fund, and Helen Poulos, a fire ecologist at Wesleyan University, estimated that excess trees in the 7.5 million acres of Sierra Nevada conifer forest are responsible for the loss of more than 15 billion gallons per day, or 17 million acre-feet of water per year. Workman writes this is "more than enough water to meet the needs of every Californian for a year."

Active forest management, including timber harvests and thinning, can improve forest health and should be included in any comprehensive strategy to conserve our water resources. There are several solutions on the table for restoring management activities, with most of them pending further action in Congress. Among them, Congress should pass legislation to end the practice of "fire borrowing," where the Forest Service is forced to fund growing suppression costs by raiding accounts that would help contain catastrophic fires in the first place.

To truly increase the pace and scale of forest and water management projects, it's critical that Congress provide federal agencies relief from counterproductive laws and regulations that encourage endless lawsuits. Federal environmental laws should be updated to reflect the latest science and forest practices that make it possible to remove trees without damaging wildlife habitat and other values. Reforming these laws will draw the ire of powerful interests in Washington, but it's time to reconsider our approach to forest management if we are truly determined to protect and conserve our natural resources amidst historic drought. */Bill Wickman*

Siuslaw Designation by Prescription

The Farm Bill that passed earlier this year gives the Forest Service the authorization to use a timber harvest implementation tool called Designation by Prescription (DxP) on all timber sale contracts. Prior to this year, DxP was only permitted on timber sold under stewardship contracts. DxP is an “end-result” oriented way of designating which trees in a timber sale unit shall be cut and which shall be retained. Up until now, the Forest Service either hand marked 100% of all timber designated for removal (or retention) or used a tool call Designation by Description (DxD), which typically requires an operator to hand measure both the DBH of standing trees and the spacing distances between trees to be cut. Through DxP, the operator is simply given a prescription of what the stand should look like after harvest as measured by such things as target trees per acre or basal area per acre. Ultimately, time and money for both the Forest Service and the operator can be saved if the tool is used properly.

Nationwide implementation of DXP has not yet occurred because the Washington Office has not issued direction to the field for its use even though DxP has been used extensively since 1999 under the stewardship program. However, Districts can utilize this new authority on a case by case basis.

The first two standard timber sale contracts to use the DxP authority in Region 6 were advertised this month on the Siuslaw National Forest. The Cloverdale Timber Sale on the Hebo Ranger District and the Paradise Timber Sale on the Central Coast Ranger District have units where the agency has opted not to paint trees or require an operator to pull a tape measure in the woods for tree spacing, but rather allow the logger to read a simple silvicultural prescription and implement it on the ground (DxP). This practice is nothing new for the Siuslaw as they have been using DxP on harvest units sold through stewardship contracts for over a decade. However, they still marked a one-acre “demonstration plot” for each prescription that is being used at the request of the Regional Office.

Region 6 is currently permitting the use of DxP on a case-by-case basis; meaning that the Forest and/or District wanting to use the DxP tool must get approval from the Regional Office for each timber sale contract they wish to use it on. The Siuslaw requested “blanket approval” for all of their FY15 timber sales and are currently awaiting a response from the Regional Office.

DxP will not be the best tool to use on every unit of every sale, and that decision is one that must be made at the local level by a forester who is familiar with the sale. AFRC will continue to encourage the Forest Service to use DxP where appropriate as it has been found to save money, decrease layout time, and produce superior results. The decision as to which designation method is used should be based on which produces the best result at the lowest cost whether that be 100% marking or end result DxP. /*Andy Geissler*

DNR Trust Land Transfer Program

Land exchanges, sales, or other means of transferring the ownership parcels is not uncommon for today’s forest land management companies. The Washington Department of Natural Resources (DNR) is no different. They have participated in a variety of transactions with other land managers, in order to better position the agency to manage their land assets. However, DNR has one tool that is somewhat unique to it to deal with lands with low potential for income production, the Trust Land Transfer Program, which was created by the legislature and began in 1989.

This program allows the agency to identify trust lands with “low potential for income production due to factors including steep unstable slopes, critical fish and wildlife habitat, public use demands, environmental and social concerns, and other issues that complicate income production.....” One metric that is used to screen candidate parcels “in aggregate” is that they should have a high timber to land value. This is to ensure a greater part of the legislative appropriation is deposited to the school construction fund in the current biennium. The program is funded through the Legislature and each biennium a proposal is created.

A list of potential transfer parcels is developed by DNR with an estimate of their value broken out by timber and land values. The list, along with maps, is presented to the Board of Natural Resources as an informational package. It is then forwarded to the Governor’s Office for presentation to the Legislature, where it is reviewed to determine the final proposal list and an appropriation funding level. Upon approval, legislation establishes the property transfer list and identifies which parcels will be fee transfer and which will be long term leases. Funding is provided through a section of the Capital Budget Bill.

Once approved and funded, DNR then conducts market appraisals prior to the transfer. For parcels being transferred through fee ownership the Board of Natural Resources approves the transfers. At the point of transfer the timber value is deposited in the Common School Construction Account (CSCA) for K-12 schools. The land value is deposited into the Real Property Replacement Account (RPRA) to be used to purchase replacement properties. Since the beginning of the program through January 2013, the Legislature has appropriated \$798,570,000. Expenditures for 1989-2011 were \$738,080,000, with \$613,975,157 deposited into the CSCA and \$110,508,400 into the RPRA.

One interesting aspect of the program is that only Common School Trust lands can be disposed of through this program. However, not all parcels proposed for transfer are initially Common School Trust; they can be any one of a number of trusts lands including County trusts. The method used to deal with this situation is through an inter-trust transfer. Non-Common School Trust Lands are exchanged for Common School Trust lands in a nearby landscape on an equal dollar for dollar value basis. The “new” Common School Trust parcels are then transferred and the values are distributed to the CSCA and the RPRA. This should keep the beneficiaries of the non-Common School Trusts whole and compensates the Common School Trust for the disposed land. Through January 2013, there have been 111,218 acres of fee transfers and 5,237 acres of lease transfers for a total of 116,455 acres. For the same time period there has been 49,683 acres of replacement properties purchased. A report on the [2013-2015 Biennium Trust Land Transfer program](#) is available from DNR.

Additional information on the program is available on the [DNR website](#). There currently is one proposal open for public comment, located on the Kitsap Peninsula, which will [transfer parcels into the Stavis Natural Resource Conservation Area](#). /Matt Comisky

Washington Water Quality Standards Litigation

On July 18, AFRC, Northwest Pulp and Paper Association, and the Washington Forest Protection Association were granted defendant intervenor status in Western Washington District Court in a case brought by the Northwest Environmental Advocates against the Environmental Protection Agency (EPA). Plaintiffs allege EPA violated the Endangered Species Act by failing to consult with the U.S. Fish and Wildlife Service prior to approving Washington State’s water quality standards, as well as Clean Water Act (CWA) violations.

In his order granting intervenor status, Judge Richardo Martinez noted the associations' members' economic interests in protecting their National Pollutant Discharge Elimination System (NPDES) permits and the status of the Washington Forest Practices Rules as Best Management Practices under the CWA.

The Washington Cattlemen's Association, represented by the Western Resources Legal Center, is also seeking intervention based on its members' interests in their surface water rights and NPDES permits.
/Ann Forest Burns

Proposed Blue Mountain Forest Plan

On August 13, AFRC submitted comments pointing out the serious flaws in the proposed Blue Mountain Forest Plan revisions for the Malheur, Umatilla and Wallowa–Whitman National Forests. Although the revisions have been literally years in the works, the [draft](#) published on March 14 is so seriously flawed it has been met with criticism and condemnation from all sides.

AFRC's [comments](#) point out a number of problems with the proposal. The land base available for active, restorative management is whittled down by seemingly endless exceptions, withdrawals, and prohibitions with only 1,720,000 acres out of the total land base of 4,900,000 being identified as suitable for timber production. Although the forests have an annual growth of 1.3 billion board feet, the Allowable Sale Quantity is set at a mere 152 million board feet. Much of the science cited in the plan is derived from the decades old Interior Columbia Basin Ecosystem Management Project, ignoring more current, relevant scientific research. Opportunities for salvage harvest are greatly reduced and restricted, which will lead to delays in forest restoration. Although the three forests have not been administratively combined, the draft treats them as one, ignoring the vast differences in growing regimes and management issues on each forest.

Among those calling for the proposal to be scrapped or substantially revised is Congressman Greg Walden who sent a letter on August 18 to Regional Forester Jim Pena calling on the Forest Service to work more closely with local communities to address their concerns. On August 1, based on work performed by the forestry consulting firm Mason, Bruce and Girard, the Eastern Oregon Counties Association voted to comment negatively on the proposal because of its failure to adequately address impacts to the public. The Blue Mountain Forest Partners collaborative also wrote a letter calling for more effective use of the collaborative process in devising a viable plan for the three forests.

In the face of these expressions of concern and in light of the serious flaws in the current draft, AFRC is hopeful that the Forest Service will not move forward with a plan that is bound to lead to litigation and needless delays in implementation. */Ann Forest Burns*

AFRC Welcomes Jim Pena

On August 3, Jim Pena became the new Regional Forester for the Pacific Northwest Region (R-6). Jim comes with a very distinguished background having led the National Forest System programs of Forest Management, Range Management, Engineering, Recreation/Heritage/ Volunteer Program, Natural Resource Management and Watershed/Fish/Wildlife/Air/Rare Plants.

Other positions that he has held include Deputy Regional Forester for Region 5, Acting Director of Human Capital Management, agency liaison to Undersecretary of Natural Resources and Environment,

and heading up the reengineering team for Human Resources, and the National Fire Management Review team.

Jim is a graduate of Humboldt State University with a bachelor's of Science degree in forest resource management.

AFRC would like to welcome Jim back to Oregon where he began his Forest Service career more than 35 years ago as a forester trainee on the Rogue River National Forest. */Tom Partin*

Six Rivers New Forest Supervisor

Merv George has been selected as the new Forest Supervisor for the Six Rivers National Forest in Region 5. He replaces Tyrone Kelley, who is now the Pacific Southwest Region's Director of Engineering.

Merv was born and raised in Humboldt County, graduating from Eureka High School and Humboldt State University with a BA in Native American Studies. He spent four years on the Hoopa Valley Tribal Council and a term as the Hoopa Valley Tribal Chairman. He was also the executive director for California Indian Forest & Fire Management Council and Klamath River Inter-Tribal Fish & Water Commission.

Merv joined the Forest Service in 2008 as the Regional Tribal Relations Program Manager for the Pacific Southwest Region. In this position, he worked with all 18 national forests and Indian tribes in California. He came to the Six Rivers in June 2011, as the Acting Deputy Forest Supervisor and got the permanent deputy position in January 2012. He also served as the Acting Forest Supervisor for the Lassen National Forest earlier this year.

AFRC is looking forward to working with Merv in his new role and to help turn the anemic timber sale program on the Six Rivers around. */Rick Svilich*