

Oregon's O&C Lands

The "O & C" lands refer to the revested Oregon and California Railroad grant lands, and the reconveyed Coos Bay Wagon Road grant lands are managed predominantly by the Bureau of Land Management, having been returned to federal ownership in 1916 and 1919. Oregon's O & C forest lands are only located in western Oregon counties that stretch from the Columbia River to northern California. Since these lands are not owned by a state, a county, or a private landowner, they cannot contribute to a state's revenue base or to any county's tax base in the usual manner. Totaling some 2.6 million acres in Oregon, these O & C lands are vital to the economic well-being of these counties.

Westward expansion of the 1800's involved major railroad construction, connecting the eastern states with the western territories. Congress subsidized this construction by issuing land grants in exchange for the building of these rail routes. Once the east-west routes were finished, Congress asked the railroads to connect to, and build, a north-south route through Oregon.

In the 1860s, Congress granted rights to about 4 million acres of timbered land in western Oregon to the Oregon and California Railroad Company, also known as the O & C Railroad, in exchange for the construction of a railroad from Portland to the California border. As construction progressed, the O & C Railroad was granted alternating sections of land 20 miles wide on each side of the rail line.

The grant required the railroad, upon completion, to offer the grant lands for sale, to ordinary settlers, in parcels no larger than 160 acres, at a cost of no more than \$2.50/acre. Congress hoped this would further facilitate settlement and development of the west, while providing a way for the railroad to get paid.

By the time construction was complete, the financially strapped O & C Railroad had been absorbed by the Southern Pacific Railroad. Different land fraud scams sprang up, including large tracts of land being sold to corporate interests, and sale prices most people could not afford. By 1902 the value of the unsold lands had increased to the point that the railroad decided they would keep the remaining lands. The Oregonian reported that more than three-quarters of O & C land sales had violated federal law.

Following a two-year investigation, President Teddy Roosevelt's administration took action to recover the grant lands that remained in the hands of the Southern Pacific Railroad - well over 2 million acres. A court battle ensued, resulting in a 1915 Supreme Court ruling that the grant terms had been violated, but the railroad had been built as promised, so the railroad company should not be forced to completely forfeit the lands. Congress responded in 1916 with a solution that took back the lands, but gave the railroad the equivalent of what it would have received had it sold the original grant lands for \$2.50 per acre. That meant that over 2 million acres went out of private ownership and back into federal ownership. These lands - in a mostly checkerboard pattern - are known as the O & C lands today.

Lands owned by the federal government pay no property taxes, so when the federal government took back the O & C lands, 18 affected Oregon counties lost their right to tax over 2 million acres in the state. Interim attempts to provide a long-term solution failed, until in 1937, Congress passed the O&C Act of 1937 (Title 43 § 1181a), still in use today. The Act mandated that O & C lands be dedicated to "permanent timber production" under principles of sustained yield forestry, "for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities..." The goal was to

produce timber in perpetuity, with half the revenues from timber sales shared with the counties. This created what Congress intended - a steady revenue stream that helped pay for essential county services - and employed tens of thousands with family wage jobs.

The Act further stated the annual cut "shall not exceed one-half billion feet board measure" until BLM "determined and declared" its first "annual productive capacity", after which "not less than one-half billion feet board measure...shall be sold annually..." But the BLM does not declare an "annual productive capacity." Instead, the agency created a "possible productive capacity", and then has not even declared that.

The O & C lands are not National Forests; they are not managed by the U.S. Forest Service for multiple use. The Bureau of Land Management manages O & C lands, and is restricted by Congress from valuing these lands for anything other than timber production.

While the 25 percent of National Forest timber revenue sent to counties can only pay for roads and schools, O & C revenues go into a county's General Fund, and can be spent on whatever the county needs.

In some of the O & C counties more than 50 percent of the general fund budget is supplied by O & C revenue. The O & C revenues are truly an essential component of community stability in western Oregon.

During the past 20+ years timber production has been severely curtailed due to government trade and environmental programs, and environmentalists' lawsuits filed with an overriding activist judiciary. Timber revenues shared with counties dried up. The O & C Act was never repealed, or modified to permit the BLM to value these lands for the environment or wildlife. On June 26, 2007 the U.S. Supreme Court ruled, in *National Association of Homebuilders v. Defenders of Wildlife* (No. 06-340), "...that ESA Section 7(a)(2)'s consultation requirements apply only to discretionary federal actions. They do not apply to non-discretionary federal agency actions undertaken pursuant to specific statutory mandates." Since Congress, through the O & C Act, gave the BLM no discretion in how it can value the O & C lands it manages, the BLM has no lawful authority, according to the Supreme Court of the United States, to value those lands for any ESA-related criteria (such as spotted owl habitat).

Federal legislators, county leaders and concerned citizens are all still grappling with the challenge of what to do with the O&C lands. The ideal solution would fund essential county government, provide "permanent (sustained yield) forest production," while protecting wildlife and the environment, contribute to the economic stability of local communities and industries, and provide recreational opportunities for all. We can achieve this through local government asserting its Congressionally-mandated coordinated planning authority with the Bureau of Land Management and other federal agencies. Public awareness of the economic contribution these lands have made to our counties and communities, and adherence to Congress' intent and mandates for management of these lands, are both critical to making wise choices for the future.