

Rep. DeFazio’s Logging Trust Legislation a Collection of Crimes Against Nature, Good Government, Public Interest and/or the Federal Taxpayers

In September 2013, Rep. Peter DeFazio (D-4th-OR) persuaded the Republican majority in the U.S. House of Representatives to pass his “O&C Trust, Conservation and Jobs Act.” His legislation is part of H.R. 1526—the most anti-public lands, anti-conservation, anti-wildlife, anti-water quality legislation to ever be considered by Congress in the modern era. Even at the height of the Pacific Northwest timber wars, even the most pro-timber federal Oregon politicians—even those who had sawdust coursing through their veins—introduced nothing as horrible.

The chart immediately below summarizes the disposition of federal public forestland acres proposed in the DeFazio legislation. The second chart summarizes the DeFazio bill’s provisions particularly damaging to nature, good government, public interest and/or federal taxpayers.

DeFazio Legislation on Western Oregon Federal Public Forestlands					
<i>The Excellent, Good, the Bad, and the Ugly</i>					
Land Type	Conservation Status Elevated	To Forest Service	To Tribes	To Logging Trust*	TOTAL
	<i>Excellent</i>	<i>Good</i>	<i>Bad</i>	<i>Ugly</i>	
	<i>Wilderness and/or Wild and Scenic River</i>	<i>Generally forests >125 years old</i>	<i>0-400+/- year old forests</i>	<i>< 125 years old</i>	
BLM Oregon and California (O&C) Lands	71,000	845,000	34,000	1,260,000	2,210,000
BLM Public Domain (PD) Lands	5,400	111,000	0	107,000	223,400
BLM Coos Bay Wagon Road (CBWR) Lands	0	20,000	0	53,000	73,000
USFS O&C Lands*	2,500	n/a	0	250,000	252,500
USFS Non-O&C Lands	23,000				
Total	101,900	976,000	34,000	1,670,000	2,781,900
Percentage of All Lands	3.7%	35.1%	1.2%	60.0%	100.0%
Percentage of Lands to Excellent or Good					38.7%
Percentage of Lands to Bad or Ugly					61.3%
* The acres of USFS O&C lands going into the logging trust have not been identified; the ball park estimate is 250,000 acres.					
<i>Prepared by Andy Kerr, The Larch Company based on acreages provided by Erik Fernandez, Oregon Wild. (October 22, 2013)</i>					

Particular Crime Against Nature, Good Government, Public Interest and/or Federal Taxpayers	Explanation	O&CTCJA Reference
Effectively privatizes 1.7 million acres of federal public forestlands in Western Oregon by placing them in a logging trust.	While technically still in federal ownership, the lands would exempt from almost all federal environmental laws that apply to all other federal public lands, including these lands currently. The purpose of the logging trust is to produce maximum logging revenues for the benefit of the O&C counties.	§311
Generally requires 1.7 million acres of logging trust lands to be managed as private timberlands, save for certain limitations.	While nominally remaining as federal public lands, such lands are effectively privatized in that most federal laws that currently apply will no longer apply.	§314(a)
Exempt the 1.7 million acres of logging trust lands from the National Environmental Policy Act	The provision deems that decisions regarding management of the lands are not federal actions, a legal fiction.	§312(a)(2)
Exempt the 1.7 million acres of logging trust lands from “consultation” (Sec.7) of the Endangered Species Act.	The provision deems that decisions regarding management of the lands are not federal actions, a legal fiction.	§312(a)(2)
Shield the 1.7 million acres of logging trust lands from the “take” provision (Sec. 9) of the Endangered Species Act as it pertains to the ESA-protected northern spotted owl.	The 1.7 million acres of logging trust lands will be legislatively deemed to comply with the take provision of the ESA as it pertains to the northern spotted owl, a legal fiction.	§314(k)
Make citizen-enforcement of the Clean Water Act more difficult on the 1.7 million acres of trust lands.	Private actors aren’t required to comply with the Administrative Procedure Act of 1946 as are federal land managers. APR requires government officials to not act in an arbitrary and capricious manner or contrary to law.	§312(a)(2)
Transfer over 100,000 acres of BLM Public Domain lands to the logging trust.	Public domain lands are lands managed by BLM that never left the federal estate and do not share any common history with O&C lands. The vast majority of what BLM manages nationally are PD lands. The O&C Counties never have had any special statutory considerations for revenue from these lands until the DeFazio bill came along.	311(c)(1)
Transfer ~250,000 acres of National Forest System lands managed by the US Forest Service to the logging	These lands were included the original O&C land grant, but in 1954 became fully part of the National Forest System (NFS), save that the revenue-sharing formula would remain as O&C rather than as other NFS lands. It includes	311(c)(1)

trust.	lands along Fall Creek and around Mount June and Hardesty Mountain on the Willamette National Forest, vast roadless areas on the Siskiyou National Forest (including the North Kalmiopsis, South Kalmiopsis Shasta Costa areas), headwaters of the Clackamas and Molalla Rivers near Portland, as well as other ecologically and hydrologically important low-elevation forestlands.	
Transfer 34,000 acres of BLM lands to two Native American tribes, where they will be intensively logged.	It is reasonable to assume that the vast majority all of the federal public forestlands transferred to tribes will be intensively logged for tribal revenue. 6,600 acres of these lands are stands of forest greater than 125 years of age and 4,000 acres are stands with a predominant tree age of less than 125 years, but which contain several old-growth trees per acre that survived the stand-replacing event (see “Log old growth forests” almost immediately below”).	§392 and §396
Puts all stands of forests (the bill calls them “stands of timber”) that have a predominant stand age of 125 years or less into a logging trust.	To address the current deficit of old-growth forests, the Northwest Forest Plan envisions that many younger stands of forest will be allowed to growth into older stands of forest. Such would not occur under this bill. Many of these stands are native natural virgin forest.	§311(d)(1)
Log old-growth forests.	<p>Much old growth forest is left vulnerable to clearcutting and other logging. The logging trust would sacrifice old growth in four ways:</p> <p>(1) An additional 198,000 acres of mixed-age forest that BLM classified as having a stand age of less than 125 years—but in fact includes a mix of ancient trees far older than 125 years that survived the stand-replacing event that BLM counts from—will be clearcut.</p> <p>(2) 291,500 acres of native mature forest (80-125 years old), which has—and is gaining each year it is not logged—old growth characteristics.</p> <p>(3) The current Late Successional Reserves (LSRs) system would be totally fragmented, which is intended to re-establish large blocks of old-growth forest. Though they include many stands less than 125 years now such are necessary remedy the current deficit of old-growth forest.</p> <p>(4) 6,600 acres of forests over 125 years of age to Native American tribes, where they will in all likelihood be clearcut. In addition, 4,000 acres of stands less than 125 years old, but with a significant component of old-growth trees would also be transferred.</p>	314(h)(2)

	Furthermore, outside the trust, protection remains uncertain for the over 800,000 acres of 125+ year old stands transferred to the Forest Service. First, stands >125 years, but not meeting the definition of “old growth” would receive no explicit protection under the bill. Second, even stands qualifying as old growth are protected only from “harvest” but not protected from any of the other myriad threats they may face, e.g., from road construction, mining, fuel reduction logging, OHV developments, salvage logging, viewshed “enhancement,” burn-outs, firelines, etc.	
Further fragments an already generally fragmented landscape by transferring stands of forest under 125 years of age to the logging trust and leaving the rest in effective federal ownership.	Each section of federal public forestland on the checkerboard would be further fragmented into a crazy quilt of starkly differing management determined solely by stand age in 2013.	§311(d)(2)
The logging trust lands would be managed by a board of trustees stacked with logging and county interests.	<p>The Governor of Oregon would appoint seven trustees. All must reside in an O&C county, two must come from the timber industry, two must come from the O&C counties, one must be an statewide elected official or representing an Indian tribe; one must be a scientist, and one from the general public, but with experience in specific fields, none of which include conservation, recreation or the like. You count the votes.</p> <p>However, the stacking doesn’t make any effective difference because the fiduciary obligations imposed on the trustees would require seven clones of John Muir to vote to clearcut the crap out of everything and spray herbicides where beneficial to maximizing revenues to the O&C counties, regardless of the ecological consequences or the destabilizing effects on communities.</p>	§313 §302(7)
Exempts water pollution from roads for requirements of the Federal Water Pollution Control Act	Such roads only must comply with the Oregon Forest Practices Act (no lower regulatory bar exists).	§312(c)(3)
Shields board of trustees from most judicial review.	Only an O&C trust county or an adjacent timberland owner (think shared roads) may sue the board of trustees. Though nominally still public lands, the public may not sue to enforce the new statute.	§312(g)(2) §334(d)
Requires any lawsuit to be brought in Court of Appeals in Washington DC.	This bypasses the US District Court for Oregon (generally the triers of fact and the first stop in the judicial process) and the Ninth Circuit Court of Appeals, the judicial circuit that includes Oregon.	§312(g)(1)

Requires industrial timber rotations for one half of the 1.7 million acres of logging trust lands.	Since it must maximize revenues for the O&C counties and since time is money, expect to see rotation ages similar to those of large private industrial timberland owners, which in western Oregon are on the order of 40 years (and trending shorter all the time).	§314(c)(2)
Requires half of the 1.7 million acres of logging trust lands to be managed on 100-year rotations.	While the legislation says on a “100-120 year rotation”, the fiduciary obligation imposed upon the trust and trust officers to maximize revenues for the O&C counties means 100 year rotations are both the floor and the ceiling. 100 years is not old if you are a tree in Western Oregon.	§314(c)(1)
Requires the liberal use of pesticides on the 1.7 million acres of logging trust lands.	While the board would have to hold at least two public meetings while developing an “Integrated, Pest, Disease and Weed Management Plan” and said “plan shall optimize the ability of the O&C Trust to re-establish forest lands after harvest with the Oregon Forest Practices Act and to create diverse early seral-stage forests,” the fiduciary obligations imposed on the board of trustees would require them to always choose spraying herbicides to rapidly re-establish conifer crop trees, as there would be no money in it for the counties to create “diverse early seral stage forests.” Additionally, such diversity is impossible to achieve after clearcutting.	314(f)
Riparian management areas would be half the size they are now under the Northwest Forest Plan	DeFazio likes to point out that his proposed stream buffers are much bigger than required under the Oregon Forest Practices Act (no lower regulatory bar exists). The more relevant comparison is that DeFazio’s buffers are only half as wide as the buffers established under the Northwest Forest Plan that were determined scientifically necessary for both fish and to aid migration of terrestrial species. Other parts of the Aquatic Conservation Strategy of the Northwest Forest Plan (key watersheds, watershed analysis, and watershed restoration) would not apply. The DeFazio bill also allows road construction (and associated tree felling) in those smaller buffers.	§314(i)
The remaining lands transferred to the Forest Service and the National Forest System would, for the most part, be subject to logging.	Supposedly to balance the transfer of 1.7 million acres of federal public forestlands permanently sacrificed to a logging trust, an estimated 0.976 million acres of federal public forestlands would be transferred to the National Forest System, where they would be managed under the Northwest Forest Plan, which allows clearcutting on Matrix lands and thinning in Late Successional Reserves. The bill does not prohibit the Forest Service from later increasing logging levels on their new lands.	§322(b)(1)
The “old growth” protection provision of the bill won’t likely result in much old-growth forest	While the bill requires that “old growth” as defined by a special panel won’t be logged, the panel could choose to adopt an extremely narrow definition of “old growth.”	§322(c) §324

being protected.			
Includes a poison pill with the nominal wilderness and wild and scenic river designations.	If any of the new law is overturned by a court (which could only be on constitutional grounds), any Wilderness or Wild and Scenic River protections are automatically revoked.		§381(b)
Prevents the designation of new national monuments on the 1.7 million acres of logging trust lands (even though they are supposedly still public lands) and the 1.0 million acres of remaining federal public forestlands.	Neither could Cascade-Siskiyou National Monument be expanded, nor new monuments established.		§375
Effectively directs the Forest Service to mechanically thin (log) trees in the new Wildernesses or Wild and Scenic Rivers.	If the Forest Service finds that the wildfire risk in the supposedly protected areas “threatens areas outside the boundary,” the areas may be logged.		§374
Would effectively preclude future congressional consideration of roadless areas suitable for inclusion in the National Wilderness Preservation System and free-flowing streams eligible for inclusion in the National Wild and Scenic Rivers System.	The blunt chainsaw approach of converting all stands of forests generally under 125 years of age will fragment (degrade) several roadless areas and free-flowing streams on both Forest Service and Bureau of Land Management federal public forestlands.		§301-§398

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