**O&C LANDS CONSERVATION AND MANAGEMENT TRUST**

**Outline of Key Elements**

OVERVIEW

A new management concept for the O&C Lands would involve transferring management authority and responsibility to a trust, established for the benefit of the 18 O&C Counties. Land title would remain with the United States but the lands would be managed pursuant to state laws applicable to nonfederal lands. Transferring legislation would create a trust document defining the trust, its legal obligations, and the restrictions under which it would operate. The trust would be governed by a board of trustees, with members representing a broad range of interests. The trustees would be the decision-making body whose direction would be implemented by employees and contractors. The lands and surface resources would be managed as nonfederal lands, subject to the terms of the trust, which would include minimum and maximum allowable timber harvest levels.

The key requirement would be specified annual payments to counties each year, increased by the rate of inflation each year in the future. All management costs for the subject lands would be paid from trust timber sale proceeds. If revenues in excess of the amount necessary to make county payments were available within the harvest maximums, such revenues could be used to fund land and water environmental restoration projects approved by the board of trustees.

The trust would have the authority to participate in land exchanges, to reduce the complexity and cost of management inherent in the current checkerboard land ownership pattern. Land exchanges to benefit the environment by creating larger blocks of habitat lands would also be permitted, so long as they did not hamper the ability of the trust to satisfy its primary obligation to the beneficiaries. All land exchanges would have to be approved by the board of trustees, and could not be injurious to the interests of the trust beneficiaries. The Secretary of the Interior would have final approval authority over any land sales or exchanges.

ISSUES TO ADDRESS IN LEGISLATION

 **Minimum Financial Requirements:**

Subject to the maximum timber harvest constraint, the trust must provide revenue sufficient to pay all management expenses and make annual payments to counties equal to $110 million per year beginning in year 4 of a transition period (see below), increased by the rate of inflation (measured by the change in the CPI, Portland Region) each year thereafter. Payments to each of the counties would be according to the same formula that currently applies under the O&C Act (43 USC §§1181 et seq.)

Payments to the counties during the first three years of the transition period would come from loans as part of bridge financing (see below) provided by the United States.

**Required Timber Harvests:**

The trust must approve harvest plans and take all steps with management expected of a fiduciary to cause timber sales meeting the following maximum and minimum requirements:

 10 year rolling average annual minimum not less than 500 mmbf (long log scale), including merchantable thinning.

10 year rolling average annual maximum not to exceed 725 mmbf (long log scale), including merchantable thinning.

The trust board would have no discretion to act outside of these requirements.

**Excess Revenues**

Within the timber harvest maximums, the board would, in addition to paying annual management expenses, and making required annual payments to the counties, be free to generate and maintain a reserve fund in amount the board, in its discretion, deems prudent. The reserve fund could be used by the board for any management expense, or capital improvement cost, or to make payments to the counties during periods of reduced revenue (down markets for timber, for example).

Within the timber harvest maximums, and in addition to the amount necessary for management expenses, payments to counties, and the building and maintenance of the reserve fund, the board would be authorized to generate and expend additional revenues solely for use on land and water ecosystem restoration projects anywhere within the State of Oregon. All such expenditures would be in the form of grants to private parties, organizations, governmental bodies or others with qualifying projects.

**Lands Subject to Trust:**

Title would remain in the United States, but all authority to manage the surface would be transferred to the trust, for the following lands:

All “controverted” O&C lands managed by the Forest Service (see 43 USC §1181g), and all O&C lands managed by the BLM in the Salem, Eugene, Roseburg, Medford and Coos Districts and the Klamath Resource Area of the Lakeview District (see 43 USC §1181a), excluding:

 Lands within the National Landscape Conservation System as of January 1, 2011.

 Lands designated as Areas of Critical Environmental Concern as of January 1, 2011.

 Areas proposed for designation as wilderness at any time prior to January 1, 2011.

 Lands lying west of Highway 101.

 Lands lying east of Highway 97.

 All parks and other developed recreation areas.

Neither BLM managed public domain lands nor the Coos Bay Wagon Road Lands would be included. Both categories of land would remain under management by the BLM.

**Minerals:**

Mineral and other subsurface rights would be retained by the United States or other current owners, except for access to sources of rock and gravel on the subject lands for use on roads acquired or constructed by the trust.

**Roads:**

Responsibility for all BLM or Forest Service roads on the subject lands would be transferred to the trust.

All reciprocal right of way agreements or other right of way or easement obligations existing as of January 1, 2011, would remain applicable to the trust.

**Public Access:**

Public access would be preserved consistent with current policy. The trust would be allowed to limit or control access for reasons of public safety or to protect the resources on the subject lands.

**Land Sales or Exchanges:**

The trust would be directed to actively consider and analyze possible land sales, acquisitions and exchanges, the purpose of which would be to simplify management or make management more efficient, or to create larger blocks of wildlife habitat or create additional habitat in desired locations. The trust board would be authorized to recommend any such sales, acquisitions or exchanges, so long as completion of such land transfers would not impair the ability of the trust to meet its obligation to the trust beneficiaries to make the specified annual payments, and satisfy the minimum timber harvest requirements.

Any sales or exchanges of land would be subject to approval by the Secretary of the Interior or the Secretary of Agriculture, depending on whether the lands originated as BLM managed lands, or Forest Service managed lands. All acquired lands would be taken in the name of the United States, but made subject to management by the trust as original subject trust lands.

**General Legal Constraints:**

All federal environmental and other laws would apply as they do to any other nonfederal lands.

All Oregon state laws would apply in the manner applicable to privately owned timberlands.

Oregon state law applicable to trusts would apply, except insofar as modified by the federal legislation creating the trust. Any county beneficiary of the trust would be eligible to sue to enforce the terms of the trust, with attorney fees reimbursed if the litigation was successful.

The trust would be treated as the beneficial owner for purposes of all legal proceedings, and have standing to bring and defend all litigation relating to the lands or resources, except for actions affecting title to the lands, in which cases the United States would be a proper party.

Export of unprocessed logs harvested from trust lands would not be allowed. Those who export logs from other privately owned lands would be disqualified from purchasing logs or timber from trust lands.

Timber or logs would be sold on a high bid basis. The trust Board would be free to establish other terms for sale contracts.

Audited financial statements would be required of the trust annually for review by the beneficiaries, with copies provided to congress.

At the end of each 50-year period, the federal government would audit and analyze the financial and environmental performance of the trust. The federal government would have the option of either continuing the trust arrangement, or terminating the trust authority over the lands and substituting instead a cash payment to the counties in an amount sufficient to generate each year thereafter interest payments equal to the payments then being made by the trust to the counties and annually increasing by the rate of inflation.

**Board of Trustees Requirements**

The board of trustees would be modeled loosely on the Resource Advisory Committees that operate under the Secure Rural Schools legislation.

The Board would be made up of 9 members appointed by the governor of Oregon as follows:

Board members would be representative of the interests of the following

 3 categories:

 (a) 3 persons, at least one of whom represents the commercial timber industry, and two others who represent—

 (i) developed outdoor recreation, off highway vehicle users, or commercial recreation activities;

 (ii) the commercial timber industry; or

(iii) nonindustrial private forest land owners within one or more of the O&C Counties.

 (b) 3 persons, at least one of whom represents a nationally or regionally recognized environmental organization, and two others who represent—

 (i) nationally or regionally recognized environmental organizations;

 (ii) dispersed recreational activities; or

(iii) nationally or regionally recognized wildlife, hunting or fishing interests.

 (c) 3 persons, at least one of whom is a county commissioner from an O&C County, and two others who—

 (i) hold State elected office (or a designee);

 (ii) hold office as a county commissioner in an O&C County; or

(iii) represent American Indian tribes within one or more O&C Counties.

The members of the board would have to reside within one of the O&C Counties and, to extent practicable, the Governor should ensure broad geographic representation in appointing board members.

In appointing the first board, the Governor would have to stagger initial appointment lengths, so that 3 appointees have a 1-year term, 3 have a 3-year term, and 3 have a 5-year term. Thereafter, all appointments would be for 5-year terms.

Any vacancy on the board would have to be filled within 45 days with an appointment by the Governor for the unexpired term of the departing board member.

In the event that the board fails to perform one or more of its essential functions (see below) for a period of 12 months due to an inability to satisfy the requirements for making decisions as set forth below or for any other reason that is within the control of the board or it members, the appointments of all board members would be automatically deemed revoked and ended, and the Governor would be required, within 30 days, to appoint all new board members to fill the unexpired terms of those departing.

A majority of the board would select the chairperson for the board each year.

The board would establish procedures for carrying out its duties. The board would meet at least quarterly.

A quorum present would be required to constitute an official meeting of the board. A quorum would consist of six members, including at least two members from each category.

All actions and decision by the board would require approval by a majority of members of the board from each of the three categories.

Essential functions of the board would be to take all steps expected of a fiduciary to approve and implement a management plan that would result in timber sales averaging at least 500 mmbf per year but not more than 725 mmbf per year, and to make the required, specified annual payments to the counties.

Board members would be compensated annually at an amount equal to one half the average annual salary for commissioners within the O&C Counties. Reasonable travel and related expenses of board members would be paid or reimbursed.

**Displaced Federal Employees**

For any employee of the BLM or Forest Service whose employment is displaced by the creation of the trust, the following options would be available during the transition period:

 Preference for trust employee positions requiring the existing skill set of the displaced federal employee.

 Preference for any employee positions anywhere within the BLM and Forest Service requiring the skill set possessed by the displaced federal employee, or for which the displaced employee can be reasonably trained at federal expense.

 For employees who are within 3 years of qualifying for full retirement at the end of the transition period, an early retirement without loss of retirement benefits.

 A severance package with salary and medical insurance consistent with current agency practice.

See generally, the Presidio Trust Act, 16 U.S.C. § 460bb appendix (originally enacted as Title I of H.R. 4236, P.L. 104-333, 110 Stat. 4097, on November 12, 1996)

**Transition Period**

There would be a transition period of four years. During the transition period the following would occur:

Year 1: The trust would be formed, the board appointed, and sufficient staff employed to prepare for beginning management in year 2, including preparation of plans and a harvest schedule for lands that would come under the trust’s jurisdiction in year 2.

Year 2: Management authority would transfer to the trust for all subject BLM lands located in the BLM’s Coos and Roseburg Districts and all subject Forest Service lands located in Coos and Douglas Counties. The trust would proceed to implement its management plan adopted in year 1 for these lands, and to revise and expand its plan as necessary to prepare for year 3.

Year 3: Management authority would transfer to the trust for all subject BLM lands located in the BLM’s Medford and Lakeview Districts, and all subject Forest Service lands located in Klamath, Jackson, Josephine and Curry Counties. The trust would proceed to implement its management plan adopted in years 1 and 2 for these lands, and to revise and expand its plan as necessary to prepare for year 4.

Year 4: Management for all of the remaining subject lands would be transferred to the trust.

**Bridge Financing**

During the first three years of the transition period the trust would receive loans from the US Treasury totaling $260 million. The loans would be paid off as part of trust management expenses over a ten-year period, beginning in year 5, the year after the end of the 4-year transition period.

In year 1 of the transition period, the trust would be loaned a sum of $80 million, of which no more than $10 million would be available for management expenses, with the balance (approximately $70 million) payable by the trust to the 18 O&C Counties.

In year 2, the trust would be loaned the sum of $100 million, of which no more than $25 million would be available for management expenses, with the balance (approximately $75 million) payable to the 18 O&C Counties.

In year 3, the trust would be loaned an additional $80 million, all of which would be for payments to the 18 O&C Counties. All trust management expenses would be paid from timber harvest proceeds.

In year 4, management expenses and payments to the O&C Counties of $110 million would come entirely from timber sales.

The next year (year 5), management expenses would include a repayment to the US Treasury in the amount of $26 million, and like payments would be made each year as part of trust management expenses until the $260 million debt is repaid.

**BLM and Forest Service Budget Reductions**

During the transition period, the BLM and Forest Service budgets would be reduced as follows:

In year 1, the BLM O&C budget would be reduced by $30 million and the Forest Service budget reduced by $10 million.

In year 2, the BLM budget would be reduced by an additional $30 million and the Forest Service budget would be reduced by an additional $10 million.

In year 3, the BLM budget would be reduced by an additional $30 million and Forest Service budget would be reduced by an additional $10 million.

In year 4, the BLM and Forest Service budgets would be reduced again, so that the total of all reductions over the transition period is proportional to the reduction in those agencies’ management expenses for all the transferred subject lands.