

*Center for Biological Diversity \* Conservation Northwest \* Earthjustice \*  
Northwest Environmental Defense Center \* Oregon Wild \*  
Western Environmental Law Center*

Governor John Kitzhaber  
State Capitol Building  
900 Court St. NE, Suite 254  
Salem 97301-4047

January 11, 2013

Dear Governor Kitzhaber:

On behalf of our tens of thousands members and supporters, we write to you today regarding the Northwest Forest Plan and its protections for threatened and endangered species on non-federal lands in the Pacific Northwest, as well as its protections for Oregon's rivers and streams. As you know, the Northwest Forest Plan is a landmark framework for science-based conservation of forests, wildlife, fish, and clean water, and it has been highly successful in safeguarding conservation values while still allowing for environmentally sustainable logging projects. As you consider proposals to increase logging on federal public lands in Western Oregon as a means of funding county governments, we urge you to evaluate the need to offset any reduction in protection on federal public forestlands with increased conservation measures on non-federal lands, including state and private timberlands.

The future success of a number of Habitat Conservation Plans, state forest management rules, and the Northwest Forest Plan itself are predicated on these public "O&C" lands, administered by the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service, being managed to high conservation standards. Proposals have been made in recent years to weaken environmental safeguards on federal public forestlands in Western Oregon in order to generate relatively small amounts of revenue to support county governments. If conservation standards are reduced as part of a proposal to fund Western Oregon county governments through logging, conservation requirements for private and state lands in the Northwest region will need to be revisited and increased.

**The Northwest Forest Plan Gives Federal Lands A Primary Conservation Role.**

As you know, the Northwest Forest Plan was an effort to resolve decades of bitter conflict and controversy over unsustainable logging practices in the Pacific Northwest, including on Western Oregon BLM lands. The plan represents the largest effort ever undertaken anywhere in the world to create a science-based management framework to balance economic uses of natural resources with conservation. While the plan has understandably never been popular with the logging industry, it has been highly successful in achieving several important goals.

- The plan has consistently been upheld by the courts on both National Forest and BLM lands, providing clear, stable management guidelines for those lands.

- The plan has provided certainty, regulatory stability and diminished conservation obligations for owners of state and private lands regarding their role in protecting threatened and endangered species, old-growth forests, and other environmental values.
- Where the agencies have focused on restoration, such as the on the Siuslaw and Gifford Pinchot National Forests and some BLM districts, conflict and controversy have given way to collaboration and compromise, and the Northwest Forest Plan has provided substantial, predictable, and sustainable federal timber supplies. Across the region, agencies typically meet timber program goals at the levels funded by Congress.
- The plan has succeeded in slowing the loss of habitat for northern spotted owls, coho salmon, marbled murrelet and other imperiled species, and putting publicly owned forest lands on a path towards recovery of old-growth forests and species that depend upon them.
- An unintended but important consequence of the Northwest Forest Plan has been a dramatic increase in carbon storage, and continued conservation of forests under the plan should be a cornerstone of any credible plan to address climate change in the Pacific Northwest.

### **The O&C Lands Are An Integral Part of the Northwest Forest Plan.**

The O&C lands play a critical role in the conservation structure of the Northwest Forest Plan.

- They are strategically located between the major habitat blocks in the Western Cascades, Coast Range, and Klamath/Siskiyou Mountains. Conservation of these lands provides opportunities for wildlife dispersal and connectivity essential for long-term viability of fish & wildlife populations.<sup>1</sup>
- These lands increase habitat availability and population size, which in turn reduces extinction risk.<sup>2</sup>
- The lands help fill gaps where the distribution of National Forest lands is limited, such as the Oregon Coast Range.<sup>3</sup>

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<sup>1</sup> The 1993 report of the Scientific Analysis Team said, “[r]educed long-term distribution of spotted owl habitat linking the Oregon Coast Range, Klamath Mountains, and Oregon Cascades West Physiographic Provinces is highly likely to reduce chances of spotted owls moving among these provinces.” (SAT, Ch 2 p.69 (citations omitted)).

<sup>2</sup> In designating critical habitat for the spotted owl in 1992, FWS said, “[t]he majority of owls and owl habitat (about 85 percent) are currently found on Federal lands. These lands are particularly important in the State of Oregon because very little owl habitat remains on non-Federal lands in that state. The Oregon and California lands managed by the Bureau are more crucial to owl conservation than many other lands.” 57 Fed. Reg. 1838 (Jan 15, 1992).

<sup>3</sup> The SAT Report said, “the Oregon Coast Range Physiographic Province has been identified as an area of concern, where the density of northern spotted owls is one-eighth of that recorded in other coastal areas. Habitat conditions on lands administered the Bureau of Land Management within the Oregon Coast Range Province are critical for maintaining a well-distributed, connected network of nesting, roosting, and foraging habitat.” (SAT, Ch 2 p.69 (citations omitted)).

- O&C lands provide some representation of low elevation habitat to balance the disproportionate amount of high-elevation habitat on the National Forests.<sup>4</sup>

The Scientific Analysis Team (SAT) Report that Jack Ward Thomas *et al.* submitted to Congress in 1993 discussed the possibility of separating the Forest Service and BLM in terms of spotted owl management. The authors concluded that even if protection on Forest Service lands were significantly increased, such efforts would not adequately compensate for the loss of owl habitat on BLM lands, because BLM lands —

presently and potentially[] provide integral links between the Klamath, Oregon Coast Range, and Oregon Cascades West Physiographic Provinces ... and bridge gaps between National Forests in the physiographic provinces of Oregon. ... There are simply no mitigating options that fully compensate for the habitat that may be lost on Bureau of Land Management administered lands.<sup>5</sup>

Clearly, the inclusion of Western Oregon BLM and O&C lands in the conservation structure of the Northwest Forest Plan has been critical to its overall success. In *Seattle Audubon Society v. Lyons*,<sup>6</sup> Judge Dwyer rejected the contention that the Northwest Forest Plan violated the O&C Act, stating that BLM must fulfill its conservation duties under other environmental statutes in managing the O&C lands. He also rejected the contention that the agency need not comply with other environmental laws because it has no power under its enabling statute to modify its management activities based on the other environmental statutes. BLM “for many years has exercised broad authority to manage the O & C[] lands: the BLM is steward of these lands, not merely regulator. Management under the O & C [Act] must look not only to annual timber production but also to protecting watersheds, contributing to economic stability, and providing recreational facilities.”<sup>7</sup> Moreover, Judge Dwyer concluded that the agencies could not, given the current conditions of the forests, meet their obligations under federal environmental laws “without planning on an ecosystem basis.”<sup>8</sup>

### **Without The Northwest Forest Plan, Non-Federal Lands Will Face Increased Logging Restrictions.**

Previous proposals to increase logging on BLM and O&C lands have acknowledged the interdependency of federal and non-federal ownerships across the landscape. Under the provisions of the settlement agreement between the Bush administration and the logging industry regarding BLM logging, the parties assumed that reduced conservation efforts on BLM lands would mean that “a larger burden would fall on the Forest Service to meet

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<sup>4</sup> “The BLM’s holdings are largely situated in the foothills of the Cascade and Coast mountain ranges between the private- ownership dominated lower elevation lands and the USFS managed higher elevation lands. BLM lands provide important public ownership connections between the Willamette and Umpqua, and Umpqua and Rogue watersheds. The Nature Conservancy and Wild Salmon Center. 2012. Atlas of Conservation Values on Bureau of Land Management Holdings in Western Oregon. <http://oe.oregonexplorer.info/ExternalContent/TNC>.

<sup>5</sup> 1993 SAT Report, pp 158-159. [emphasis added]

<sup>6</sup> 871 F. Supp. 1291 (W.D. Wash. 1994) (appeal history omitted).

<sup>7</sup> *Id.* at 1314.

<sup>8</sup> *Id.* at 1311 (emphasis in original).

the ecological objectives of the NWFP.” (Recitation 2.18). However, as noted above, simply increasing protection on the National Forests cannot fully mitigate for increased logging on BLM lands.

The State of Oregon has also long recognized that the Northwest Forest Plan—including the public O&C forest lands integral role in that plan, places a disproportionate level of conservation on federal forests—so that non-federal forests might enjoy relatively greater regulatory stability. In April 2003, Roy Woo of the Oregon Department of Forestry said in a letter to the Forest Service regarding new forest planning rules:

[T]he Northwest Forest Plan ... serves as the conservation anchor for the Oregon Plan for Salmon and Watersheds. The Northwest Forest Plan in turn took pressure off of private lands to provide for recovery of spotted owls, murrelets, and salmonids listed under the ESA. Our fear is that a leaner forest plan would no longer provide adjacent non-federal forest lands protection from added land use restrictions to comply with federal environmental laws.

This disproportionate allocation of the conservation requirements toward federal land has also permeated the various recovery plans and critical habitat designations for ESA-listed species. For example, the final rule designating critical habitat for the marbled murrelet stated that:

The majority of lands included in this proposal are federally-managed and fall within the various special management categories for Federal forests established under President Clinton’s recently-approved Northwest Forest Plan. ... The proposal also limits its effect on state and private landowners by focusing principally on Federal forest lands.<sup>9</sup>

The unequal allocation of the conservation requirements is not just an abstract proposition. Federal forestlands are in fact placing a significant emphasis on conservation, while non-federal timberland owners (including the State of Oregon) are reaping the benefits by logging more than they would otherwise legally be able to do. Northwest Forest Plan monitoring reports show that habitat for northern spotted owls, marbled murrelets, and salmon are improving on federal lands, while logging-related destruction of habitat continues on non-federal lands. To change course now would require not only increased future conservation on non-federal timberlands, but also some form of ecological mitigation for the hundreds of thousands of acres of habitat irreversibly removed from private lands in reliance on the expectation of long-term conservation of BLM lands.

The problem is not limited to Oregon. The Northwest Forest Plan is a regional plan, and the species that are protected by the plan range across state boundaries. Western Oregon was expected to be a stronghold for threatened spotted owls, marbled murrelets, salmon, and other imperiled wildlife. If conservation requirements on BLM and O&C lands are significantly weakened, populations of those species become less secure in Oregon, so

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<sup>9</sup> <http://www.fws.gov/pacific/news/1996/r19549.html>

compensatory policy changes will be needed in other states in order to provide equivalent chances for recovery of listed species.

### **The Northwest Forest Plan Provides Certainty To Non-Federal Landowners.**

The strong conservation measures included in the Northwest Forest Plan in 1994 were designed, in part, to minimize the need for additional restrictions on logging of state and private timberlands to aid in the recovery of imperiled species. The direction President Clinton gave to the members of the scientific panel that developed the plan included developing a plan for federal lands that would minimize the *"impact of protection and recovery of threatened and endangered species on non-federal lands ...."*<sup>10</sup>

Prior to the adoption of the Northwest Forest Plan, nonfederal timberland owners were faced with significant uncertainty regarding what steps they could be legally required to take to support the recovery of threatened and endangered species and the maintenance of clean water. Typical logging practices on private lands, such as clear-cutting and herbicide spraying, can cause extremely significant direct and indirect harm to species such as northern spotted owls, marbled murrelets, and coho salmon, and result in polluted run-off into rivers and streams. The structure created by the Northwest Forest Plan—particularly the network of Late Successional and Riparian Reserves that connect conservation areas across the entire region—has focused endangered species recovery efforts on federal public lands. This has allowed private landowners to continue logging on their lands without significant new restrictions.

### **The Northwest Forest Plan Is Working.**

Reduced federal logging and continued forest growth is producing desired results on federal forest lands – that is, increasing amounts of late successional forests and improved water quality. Meanwhile, on non-federal forestlands more than 500,000 acres of suitable spotted owl habitat has been destroyed by logging between 1994-2003. This is more than four times more than all the acres of spotted owl habitat lost to wildfire during the same period.<sup>11</sup> Similarly, more than 170,000 acres of suitable habitat for the threatened marbled murrelet has been removed by logging on private lands between 1992 and 2003.<sup>12</sup>

The clock cannot be turned back, nor can the old trees be put back on the stump. Private landowners are unlikely to voluntarily increase conservation measures on their lands to replace the measures that BLM and other federal lands were expected to carry out under the Northwest Forest Plan. Efforts to reduce conservation on BLM and Forest Service

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<sup>10</sup> Forest Conference Executive Committee, Statement of Mission (May 7, 1993).

<sup>11</sup> See Raphael, M.G. (2006). Conservation of listed species: the northern spotted owl and marbled murrelet. Chapter 7 in R.W. Haynes, B.T. Bormann, D.C. Lee, and J.R. Martin (technical editors), Northwest Forest Plan—the first 10 Years (1994–2003): synthesis of monitoring and research results. Gen. Tech. Rep. PNW-GTR. USDA Forest Service, Pacific Northwest Research Station, Portland, Oregon. <http://www.fs.fed.us/pnw/publications/gtr651/> p 121; and Moeur, M. et al. 2011. Northwest Forest Plan—the first 15 years (1994–2008): status and trends of late-successional and old-growth forests. Gen. Tech. Rep. PNW-GTR-853. USDA. [http://www.fs.fed.us/pnw/pubs/pnw\\_gtr853.pdf](http://www.fs.fed.us/pnw/pubs/pnw_gtr853.pdf)

<sup>12</sup> Pacific Seabird Group comments on marbled murrelet critical habitat.

O&C lands, especially those lands in the public/private checkerboard, must account for the fact that over the last 15 years, much habitat has been lost on private lands.

**Many “Solutions” Bring Unintended Consequences.**

While the Northwest Forest Plan has not always been popular with the logging industry, it has been largely effective in reducing the bitter acrimony and civil unrest generated by the reckless logging policies of the 1980’s and 1990’s. It has also created a stable regulatory environment for forest policy across the Northwest. Any plan to remove federal public lands in Western Oregon from the Northwest Forest Plan framework runs the risk of derailing this progress.

Governor Kitzhaber, as you consider proposals to use increased logging on Western Oregon BLM and O&C lands to generate funds for county government, we urge you to carefully consider these risks. No one wishes to see a return to the conflict and controversy generated by past clear-cut logging on federal lands, nor witness the loss of habitat, clean water, and salmon that would result. We also believe that state and private logging interests, from large operations like Weyerhaeuser to small individual landowners (not to mention logging operations on the Elliot, Tillamook, Clatsop and Santiam State Forests), do not desire a return to regulatory uncertainty.

We strongly support a solution to the funding crisis facing some Western Oregon counties. However, any increased logging on federal public lands in Western Oregon must be scientifically and legally sound. If federal conservation contributions are reduced, private and state landowners would be legally required to increase their efforts. We stand ready to work with your office on realistic solutions to the current funding crisis facing some county governments, and to ensure that conservation of clean water, wildlife, and forests on federal, state, and private lands in the region is not diminished.

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Cc: American Forest and Paper Association  
American Forest Resource Council  
Boise Cascade  
California Department of Forestry  
California Forestry Association  
Douglas Timber Operators  
National Association of Forest Owners  
Oregon Department of Forestry  
Oregon Division of State Lands

Oregon Forest Industries Council  
Oregon Forest Resources Institute  
Roseburg Forest Products  
Rough and Ready Lumber Company  
Sierra Pacific Industries  
South Coast Lumber Company  
Southern Oregon Timber Industries Association  
Washington Department of Natural Resources  
Washington Forest Protection Association

Holders of Habitat Conservation Plans (HCPs) and Safe Harbor Agreements (SHAs) for northern spotted owls, marbled murrelets, and coho salmon.