

Railroad Grant Paved Way for Huge Land Holdings

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KALISPELL - The road runs arrow-straight, fresh blacktop laid smooth through logged-over forest, a string pulled tight between Montana's past and its future. At one end of the road: a hole tunneled through mountain, evidence of the railroad that once followed this same track west. At the other: a soaring rock and timber entryway, rustic chic highlighted in wrought iron.

Welcome to Meadowbrooke, a brand new Old West subdivision slowly rising in the woods west of Kalispell. That it's being developed by the real-estate arm of Plum Creek Timber Co. is a sure sign of things to come. That its primary artery sits directly atop the old railroad bed is an indication of how things came to be. "The past is driving the future on these lands," said George Draffen. "If you want to understand what's happening, you have to understand what happened." Draffen is a researcher and writer, co-author of "Railroads and Clearcuts," and according to him what happened - and what's happening - was and is the hijacking of the public trust. "The two million acres Plum Creek started with were federal lands," Draffen said, "public land they got for free from the citizens of the United States." Not surprisingly, Plum Creek president and CEO Rick Holley has a different take on history. "Those questions were resolved long ago," Holley said. "Our company has absolutely bought and paid for those timberlands." Still, it's hard to escape the sense that something wasn't quite right with the way the railroad barons came to own so many millions of acres. English statesman Lloyd George once observed that "to prove a legal title to land, one must trace it back to the man who stole it."

Assuming there's some truth to that, Plum Creek's land history must be traced back to larger-than-life men like financier J.P. Morgan and railroad magnate James J. Hill. Both were central figures in the story of the Northern Pacific, a transcontinental railroad venture that pushed west from Lake Superior, across Minnesota, North Dakota, Montana, and on to Washington and the Pacific Coast. In 1864, President Abraham Lincoln signed into law the largest railroad land grant in U.S. history, nearly 40 million acres, to help extend the Northern Pacific line. A broad swath 2,000 miles long, the land grant was a chunk of ground only slightly smaller than Washington state, equal to more than 10 Connecticut. The railroad builders, all agree, were supposed to raise much-needed capital by selling the land at reduced price to homesteaders. And they did sell quite a bit, right from the start. But they didn't necessarily sell to homesteaders; instead, much of the land went to Weyerhaeuser and Anaconda Copper Co., among other large companies. In addition - and again, on this all agree - the railroaders did not sell it all. After that, the disagreement begins. "The problem was," Draffen said, "they didn't need 40 million acres to build that railroad." He's read the original government charter and remains convinced that once finished, the railroaders were supposed to either give the excess and unsold land (some 32 million acres) back to the public, or sell it on the cheap to homesteaders. The law, he said, is clear on that point. But Holley's read his history, too, and insists the 40 million or so acres were meant as a sort of "compensation" for a job well done. "It's been litigated," Holley said, "time and again." In 1924, President Calvin Coolidge declared the Northern Pacific had, in fact, defaulted on its end of the deal.

Congress then pressed for legal action against the railroad. A settlement was reached in 1941, but several key issues raised by Coolidge and Congress remained unresolved.

Some of America's railroad grant lands - about one-third, or more than 40 million acres nationwide - have been given back to the public over the years, with courts deciding the gift was not absolute and that it did, in fact, come with obligations. But the Northern Pacific lands were not among those thus far "revested," and Plum Creek is now heir to that corporate good fortune. That's one reason land managers still struggle to manage adjacent public forests, and it's the only reason that patch of pavement at Meadowbrooke overlays so precisely the old railroad bed. "Geographically speaking, Plum Creek is a small stream in Minnesota." So says the official company history, which begins its tale long after the Lincoln-era land grants. It begins, instead, in 1945, when lumberman D.C. Dunham moved his company from Bemidji, Minn. - not far from the banks of Plum Creek - all the way to Columbia Falls. The tiny northwestern Montana town was on the verge of a Wild West boom back then, Holley said, thanks to the pending construction of Hungry Horse Dam. A whole lot of trees would fall before the reservoir filled; Dunham wanted to make boards of them all. And he pretty much did just that, right up until he died in 1966. Dunham's family then sold the mills (there was no land held by Plum Creek under Dunham's watch) to the Northern Pacific Railroad. A few years later, in 1970, the U.S. Supreme Court finally let stand a monopoly merger it had denied twice before - the marriage of Hill's great Northwestern railways with other regional lines, including Morgan's Northern Pacific. The result was the Burlington Northern Railroad. The railroad already had forest lands, thanks to that land grant of 1864. Now, it had Dunham's lumber mills, too, located right along the tracks. In 1988, Burlington Northern Railroad spun off the land-grant acres - and the natural resources on those acres - to a holding company called Burlington Resources. Plum Creek's mills went with the land. A year later, in 1989, Burlington Resources spun off the timber assets and mills to yet another company, which borrowed for itself Dunham's old name - Plum Creek. The new railroad-borne timber company went public at \$20 a share, raising \$256 million up front, Holley said. An additional \$300 million loan capped the deal, which Holley says allowed Plum Creek to purchase outright from its parent company 2 million acres of railroad grant lands. It also allowed Burlington Resources to avert a possible leveraged buyout while still retaining a corporate interest in the railroad lands. Whether the acres were "purchased" in the conventional sense remains hotly debated, though, with many - including Draffen - contending the modern timber company essentially inherited the ill-gotten gains of its parent. Either way, no one's contesting today's ownership of the lots along Meadowbrooke subdivision's new blacktop road. Those belong to the soon-to-be homeowners who purchased 57 residential lots across 500 acres. And no one's contesting the profits from Meadowbrooke's lots. Those belong to Plum Creek's shareholders. "This corporate heir to the railroad land grant empire is selling land to the public after all," Draffen wrote, "but more than a century late, and (at) thousands of dollars per acre instead of \$2.50 as the law required."

When Lincoln granted the public's land to America's railroad magnates, he didn't just give them a chunk of Midwestern prairie or Montana mountaintop. Instead, the land was granted in alternating 640-acre sections. That's why modern land-ownership maps look like checkerboards, with alternating square miles of private and public land. The idea, Draffen said, was that such a pattern would increase the value of the public's adjacent land, thanks to nearby railroad access. But the modern result is what he calls "a

completely schizophrenic land management situation in the West.” The checkerboards mean land managers are constantly bumping into public-private property lines when trying to work the woods. In the early 1990s, former regional forester John Mumma declared that the checkerboard pattern represented a substantial obstacle to the U.S. Forest Service. “Ecosystem management,” he said, “will never be achieved in the Pacific Northwest until the checkerboard railroad lands are returned to their rightful owners - the American public. Probably no other single event in this country has contributed more to the current Northwest forest crisis than the profit-driven harvest activities on the old railroad checkerboard lands.” More recently, Mumma recalled private timber companies clearcutting their squares during the 1980s and '90s, thereby hemming in options on adjacent public lands and reducing the public harvest. Draffen still hopes the public could again win the right to some of those railroad grant lands. Mumma thinks that's unlikely, but he does advocate for public purchase of the best of the railroad inheritance. He's seen that happen already in the Southwest, he said, and even up north of Montana's Crazy Mountains. “I truly believe there's a great opportunity for the public land interest to purchase those acres,” he said. “There's precedent for it to happen.” In fact, Plum Creek already is selling acreage to conservation groups and land trusts, and some of that land is making its way back into public ownership. But many of the modern sales are not to the public; instead, they're to residents in soon-to-be rural subdivisions such as Meadowbrooke. And that has public landowners - both state and federal - worried about their new neighbors. The checkerboard was troublesome enough, Mumma said, during the days when everyone - public and private land managers - were united in the business of cutting trees. Now, though, it promises to become even more complicated, “because people won't want a logging operation next door to their house. The purpose of that land is changing, and it's going to be a real mess now.”

A decade after Burlington Northern Railroad begat Burlington Resources begat Plum Creek, the timber company reorganized as a real estate investment trust, or REIT. The change - which took effect July 1, 1999 - did not necessarily signal a trend toward residential land development, Holley said, but rather was a tool to help Plum Creek attract investors and their capital. “It was really driven by the need to grow,” Holley said. And grow it did. Almost as soon as the REIT reorganization was complete, Plum Creek used that new investment capital to leverage a \$3.8 billion merger with The Timber Co. (Georgia-Pacific), becoming the second-largest private timberland owner in the nation, with some 7.8 million acres. Overnight, Plum Creek's acreage increased by 152 percent. Then came 307,000 acres purchased in Wisconsin; 139,000 acres in South Carolina, Arkansas and New Hampshire; 78,000 acres in Arkansas and Maine; 56,000 acres in Florida; 650,000 acres in northern Michigan. By the end of 2005, the company D.C Dunham left with nary an acre held 8.23 million acres nationwide, making Seattle-based Plum Creek the largest private landowner in the country.

The biggest holding is in Montana, where Plum Creek owns 1.282 million acres of forestland. Montana also is home to most of the company's 2,000 employees, and not a little of its \$1.5 billion in annual revenues. The REIT, Holley said, sells trees to its own corporate subsidiaries, which then cut logs for sale on the market. Another subsidiary mills logs into lumber. Likewise, a division called the Plum Creek Land Co. brokers land sales for the REIT, buying the property from its parent and then selling it to private owners. It's a neat deal. The REIT avoids corporate income taxes, leaving the taxable side of the business

to its subsidiaries. But if you own a share of the REIT, you also own a share of the subsidiaries, with everything consolidated under the Plum Creek corporate banner. It's "vertically integrated," as businessmen like to say, selling trees and land to itself and then passing the profits along to investors. This modern business model requires only one thing - lots of land. (Plum Creek has been buying land since becoming a REIT, but not mills and manufacturing facilities.) Holley insists his company purchased the initial railroad land that made all this commerce possible, free and clear.

Critics beg to differ. The railroad violated its original government charter several times over, Draffen said, which should have forced revestment. Railroaders kept the land, contrary to the legal intent. They and their corporate heirs paid no substantial property or income taxes for decades. Then they sold the timber at a profit, hobbling the public harvest on adjacent lands. And now, Draffen said, they're liquidating the logged-over land for still more shareholder profit. The modern manifestation of 150 years of history is now impacting local tax coffers, he said, and local schools. It impacts timber harvest, sawmill viability, economic stability. It impacts wildfire management, timber management, wildlife management. It impacts access to hunting and fishing, access to lakes and rivers and public lands. It impacts community planning, community identity, community tax assessments. "Yeah," Draffen said, "I've got a problem with that. Everyone should have a problem with that. It's illegal." The company acknowledges those impacts and more, but says it's working to address emergent problems and insists there are no modern or historic legal complications. And while Holley shares concerns about communities - he calls them stakeholders - he's adamant that his first priority must be to shareholders. In the words of Plum Creek itself, "we work to capture the most value from every acre that we own." The railroads were granted public lands across America for a public purpose. On that all agree. If, as Holley says, the debt of obligation to the public has been paid, then Plum Creek can with clear conscience pursue private profits. But if, as Draffen says, some debt remains, then Plum Creek's history demands attention in Montana's future. "What's lost is the idea of public resources and public duties," Draffen said. "That's just gone. This is a corporate culture now, and money - private money - is what it's all about. The idea of the public good, that's just a line you're not allowed to cross anymore." But there are other lines, lines etched hard into the land itself, lines like that strip of blacktop stretching out over the old railroad tracks and into Meadowbrooke. Draffen considers that line, and then considers Holley's conviction that the land-grant acres are paid for, free and clear. That road, Draffen says finally, "gets right at Plum Creek's contention that they're not the railroad. There it is, the railroad, right there on Plum Creek's land." Reporter Michael Jamison can be reached at 1-800-366-7186 or at mjamison@missoulian.com