

Testimony of Dale Riddle, Senior Vice President
Seneca Sawmill Company, Eugene, Oregon

S. 1784, the Oregon and California Land Grant Act of 2013

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United States Senate
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Good morning, Chairman Wyden, Ranking Member Murkowski, and members of the Committee. For the record my name is Dale Riddle, Senior Vice President for Seneca Sawmill Company, a family-owned company located in Lane County, Oregon. I appreciate the opportunity to appear before the Committee to discuss Senator Wyden's S. 1784 and the need for a permanent, comprehensive solution to restore active management to the Bureau of Land Management (BLM) Oregon and California Grant Lands (O&C lands) for the benefit of Western Oregon's rural communities and the health of our forests.

While I am here today to outline concerns we have identified with the proposed legislation, I want to thank Chairman Wyden for putting his proposal forward. This legislation represents a good start and provides us another framework to work from as we mutually seek to provide certainty that harvests sufficient to sustain Oregon's forest products industry, local governments, and rural communities can be achieved.

We have been encouraged by the Senator's public statements about the need to adopt legislation that provides real certainty for significantly increased harvest levels to restore the health of these forests and battered communities. While we currently lack critical information about the potential effects of S. 1784, Oregon Governor John Kitzhaber's O&C Task Force is modeling the proposal to better detail the sustained harvest levels, the geographic distribution of those harvests, the effect on key habitats, and the likely county timber revenues. We believe this information is critically important to understanding what S. 1784 would mean back home in Oregon as our delegation continues to search for an effective plan.

In the meantime, our initial review of the legislation and materials recently released by the BLM raise significant questions about whether the legislation, as drafted, will accomplish the goals outlined by Chairman Wyden. We do want to work with Chairman Wyden to fashion a solution that does meet these important goals.

Introduction

The roots of Seneca Sawmill Company date back to the post World War II period when Aaron Jones, himself a World War II veteran, entered the lumber business based on the promises of the federal government to open some of its holdings of Pacific Northwest timberlands to harvest to provide local jobs and wood products to a growing nation. Many other entrepreneurs of this era made substantial investments in industry infrastructure based on the same promise of a steady timber supply, building the economic backbone of much of the rural Northwest as they did so. Since the establishment of Seneca Sawmill Company in 1954 the company has grown from 25 employees to 400 employees. In the late 1980's we became concerned about growing threats to federal timber harvests and invested in our own timberlands. Seneca Jones Timber Company now owns and manages approximately 165,000 acres of Oregon timberlands on a sustained yield basis. With the majority of our timberlands interspersed with the BLM's checkerboard ownership in Western Oregon our company has a strong interest in the future management of the O&C lands.

The success of Seneca Sawmill is based on the dedication of our people and Aaron's insistence on excellence which has led to technological innovations that have resulted in over 20 patents, four new sawmills, three new planers, a log merchandiser, a renewable energy electrical plant and at least a dozen technical and mechanical creations, allowing us to stay at the forefront of efficiency in sawmill manufacturing. Today the company has successfully transitioned to Aaron's three daughters, Becky, Kathy and Jody Jones, and remains committed to the health of Western Oregon's communities and forests.

BLM O&C lands are statutorily unique

As you may know, the 2.6 million acres of O&C lands in Western Oregon have a unique history, statutory mandate, and connection to the industries, communities and county governments of Western Oregon. Douglas County Commissioner Doug Robertson will undoubtedly speak to the unique connection between the O&C lands and Western Oregon's O&C Counties in the form of shared timber receipts to meet the funding needs for essential county services. It is important for the Committee to understand that these unique lands do not have a multiple-use mandate like most other federal lands. Instead they have a dominant-use mandate to produce wood products for America, economic opportunity for the communities in which these forests are located, and revenues for local governments.

The Oregon and California Lands Act of 1937 (O&C Act) requires that the O&C lands be managed for "permanent forest production" with timber to be "sold, cut, and removed in conformity with the principal [sic] of sustained yield¹ 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" and mandates that "not less than the annual sustained yield capacity. . . shall be sold annually."

¹ "Sustained yield" forestry is a system that balances the amount of timber grown and the amount of timber harvested. *Dictionary of Forestry*, Helms, ed. Society of American Foresters, 2008. http://dictionaryofforestry.org/dict/term/sustained_yield

The primacy of the O&C Act was affirmed in Section 701(b) of the Federal Land Policy and Management Act enacted by Congress in 1976. This has been confirmed by the 9th Circuit. In *Headwaters v. BLM*, (9th Cir. 1990), the Court, held that timber production was the primary use of these lands and any other uses identified in the Act, including protecting watersheds and providing recreation, were advanced through sustained yield harvesting. Distinguishing between primary and secondary uses the Court stated:

“*** Nowhere does the legislative history suggest that wildlife habitat or conservation of old growth forest is a goal on a par with timber production, or indeed that it is a goal of the O&C Act at all.”

Similarly, in the case of *U.S. v. Weyerhaeuser* (9th Cir. 1976), the Court stated:

“***In order to protect watersheds and maintain economic stability in the area, long-term federal timber yields were guaranteed by limiting the maximum harvest to the volume of the new timber growth.”

From 1937 to 1994, the BLM and its predecessor agencies always interpreted and implemented the O&C Act to mandate timber production from suitable timberland as the primary use of the O&C timberlands. As described above, over a period of two decades and on five separate occasions, the Ninth Circuit has endorsed the BLM’s dominant-use interpretation of the O&C Act. Just last year Judge Richard Leon of the D.C. District Court affirmed a key aspect of the dominant-use timber harvest mandate of the O&C Act, ruling that it clearly requires the agency to actually sell, on an annual basis, its declared annual sale quantity. As a result of the Leon decision the BLM is currently under a court order to more than double its timber sale levels in southwest Oregon’s Medford and Roseburg Districts to meet the Clinton Northwest Forest Plan harvest levels. Meanwhile, there is another case pending before the D.C. District Court challenging the BLM’s authority under the O&C Act to reduce the sustained yield and resulting annual timber sale volumes through the application of extensive set-asides and reserves.

Recent history

The over 2 million acres of O&C lands managed by the BLM in Western Oregon grow over 1.2 billion board feet (bf) of timber annually. In the decades prior to the listing of the Northern Spotted Owl as “threatened” under the Endangered Species Act in the early 1990’s, the BLM managed these lands under the sustained yield timber production mandate of the O&C Act, which generated annual timber harvests of approximately 1.2 billion bf without any reduction in the standing volume of timber on these lands. Environmental lawsuits, conflicting federal regulations and laws, and broken federal policies have reduced these harvest levels by over 80 percent to less than 175 million bf annually.

This severe reduction in timber harvests has had a profound impact on rural communities, our industry, and the ability of local governments to provide essential services when the federal government owns 50-70 percent of the land and doesn’t pay taxes. The drastic

reduction in timber receipt revenues was made all too real last year when dozens of prisoners were released early from the Lane County, Oregon jail due to a lack of criminal justice funding. One of these released prisoners was awaiting trial on murder charges. One prisoner robbed a bank within hours of being released. Other counties in Western Oregon have been even harder hit. Law enforcement in some rural Oregon counties is nearly non-existent. In one instance last year a 911 operator informed a desperate caller that the sheriff's office no longer responded to evening calls. That caller, a woman being attacked by an ex-boyfriend, was ultimately attacked and raped when the assailant broke into the house with a crowbar. Communities throughout Western Oregon continue to suffer under stifling levels of unemployment and high poverty rates, as well as the resulting social ills like crime, domestic abuse, sexual abuse, and drug addiction.

Harvesting less than 15 percent of the annual growth on the O&C lands over the past two decades has led to marked increases in disease, insect infestation, and a general, overall decline in forest health. Overstocked stands of timber are more vulnerable to the frequent droughts that occur in the region, and the increased fuel loads have very predictably brought about dramatic increases in the frequency and severity of catastrophic wildfires. As a private landowner with lands interspersed within the BLM checkerboard we have significant exposure to catastrophic wildfires, insects, and disease caused by the gross mismanagement of neighboring BLM lands. This summer's record fire season in southwest Oregon provides a glimpse of the future if action is not taken. Our friends at Roseburg Forest Products, which lost 11,000 acres in the 48,679-acre Douglas Complex Fire, know all too well the consequences of the tinderbox BLM forests threatening their lands.

I know we can all agree that Oregon deserves better.

Key components of any solution (the "4-legged stool")

Governor Kitzhaber's O&C Task Force, on which I served, spent a great deal of time modeling potential solutions for the BLM lands, including the House-passed O&C Trust, Conservation and Jobs Act. The modeling and our extensive discussions continually returned to four key components that any solution must satisfactorily address in order to solve the O&C crisis. Each component is like the leg of a 4-legged stool, and if any one component is not addressed and resolved, will cause the entire stool to fall over.

Certainty. Any proposed solution is no solution at all if it doesn't deliver real legal certainty to ensure that planned, offered, sold and awarded timber sales will actually be harvested. Without certainty, it does not matter what the projected harvest levels are or what silvicultural approaches are mandated. The O&C Act already requires sustained yield timber harvests on these lands, but a complex web of conflicting (and often broken) laws and regulations have stymied this common sense vision of sustainable forest management.

The intent of S. 1784's ten-year large scale Environmental Impact Statement (EIS) is laudable, but it does not address the complex web of conflicting laws and regulations used to block timber harvests, including the National Environmental Policy Act (NEPA)

and the Endangered Species Act (ESA). Based on over two decades of experience we know that these complex EIS documents will be litigated and highly vulnerable without additional statutory protections. S. 1784 would also replace the very clear mandate of the O&C Act with a complex series of new silvicultural prescriptions, legal requirements, and undefined terms, thereby creating even more new hooks for litigation. The current litigation challenging the White Castle ecological forestry timber sale reminds us that some organizations are determined to block these projects regardless of positive ecological and economic benefits. These groups routinely take advantage of the complexity of conflicting statutory mandates to accomplish their agendas. There are additional legal risks embedded in S. 1784, including the fact that even if the EIS survives legal challenges the subsequent projects will be susceptible to “consistency based” challenges. I would be more than happy to work diligently with you and your staff to address these and other legal risks.

Congressmen DeFazio, Walden, and Schrader’s vision of a legislative fix for the O&C lands would deliver certainty to rural Oregon by establishing a public trust board, appointed by the Governor, to responsibly manage only the lands identified for timber harvests under their O&C Conservation, Trust, and Jobs Act. If the Senate doesn’t support the trust approach, then it will be critical to identify an alternate approach to provide real certainty. There is more than one way to skin the cat, but in the end, the cat, and by that I mean the endless litigation, has to be skinned.

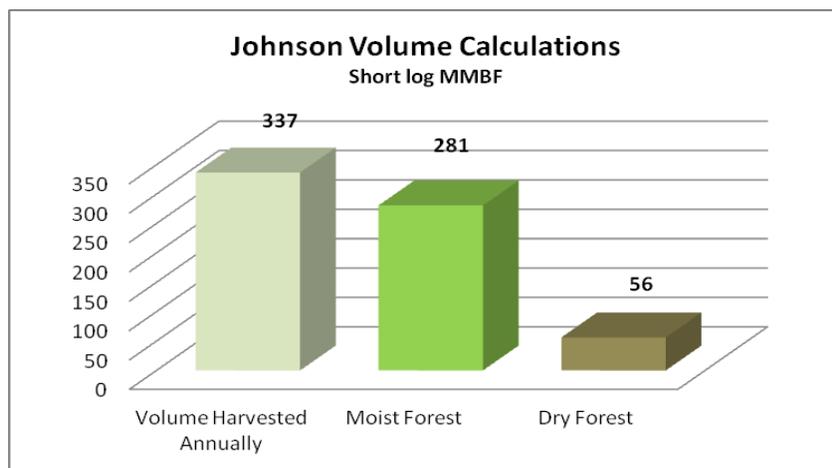
Certainty not only applies to sustainable timber harvests, but must include the other conservation gains in the legislation, including wilderness protection and riparian set-asides. However, we cannot have certainty for one side of the equation, but not the other. In other words, certainty for the additional conservation protections must be tied to certainty that the sustainable timber harvest objectives be met. Our rural communities and their people cannot afford to once again give up half the pie, only to discover that after giving up half of the pie, the other side wants their half of the pie also. Our people deserve better than that.

Unlike the game of horseshoes, almost doesn’t count when it comes to certainty for Oregon’s timber communities. All it takes is one successful lawsuit, a change in administrations, or nonsensical policies from the US Fish and Wildlife Service to bring O&C timber management to a standstill. After two decades of forest wars and summits, well meaning forest plans, and years of broken promises, the people of Oregon want a solution that provides real certainty to all sides in this debate.

Adequate, sustainable, and geographically distributed harvest levels. A significant increase in timber harvest volumes from the O&C lands is appropriate given the unique statutory mandate of the O&C Act, the need to maintain forest health and be good neighbors to neighboring private lands, and the clear role these lands must play in restoring the economic and fiscal well-being of the communities.

Geographic distribution. Adequate timber harvest levels must be distributed throughout Western Oregon, including the drier southwest Oregon forests, if we are to maintain the

health of the forests and keep the remaining industry infrastructure. We continue to lose mills in this part of the state, putting our ability to manage both public and private forests and the future of communities at risk. Unfortunately, the BLM's November 22, 2013 letter to Senator Wyden did not outline likely geographic distribution of harvests under S. 1784. Based on our initial review of information recently disclosed by the BLM and the highly experimental ecological forestry principles championed by Drs. Johnson and Franklin, it appears that S. 1784 will generate short-term harvest levels of approximately 56 million board feet (mmbf) in the drier forests of southwest Oregon. If true, this level of harvest is below the needs of local mills and communities in southwest Oregon and may well be below the levels established under Judge Leon's court order. The extensive modeling being performed by Governor Kitzhaber's O&C Task Force should provide us a confirmation of how southwest Oregon's communities would fare under the legislation.

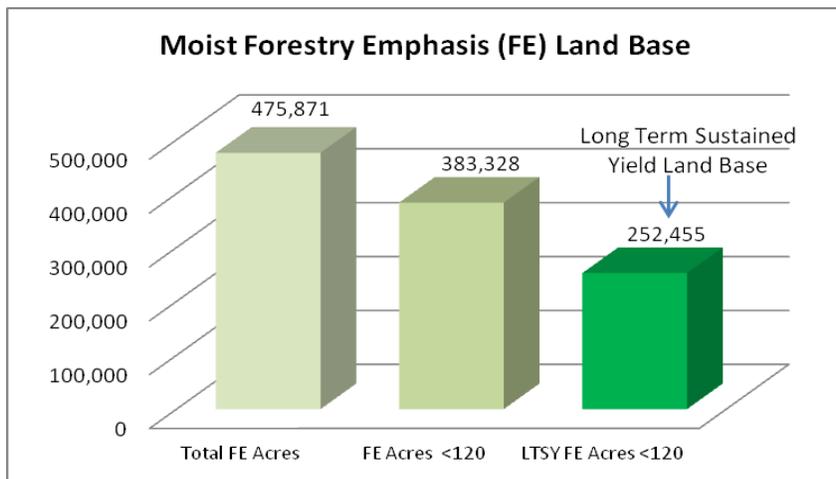


Long-term sustainable harvests for certainty. Most of our industry remains comprised of multi-generational, family-owned companies committed to the long-term future of our communities. Our companies need long-term certainty regarding future harvest levels to plan investments and make other critical business decisions.

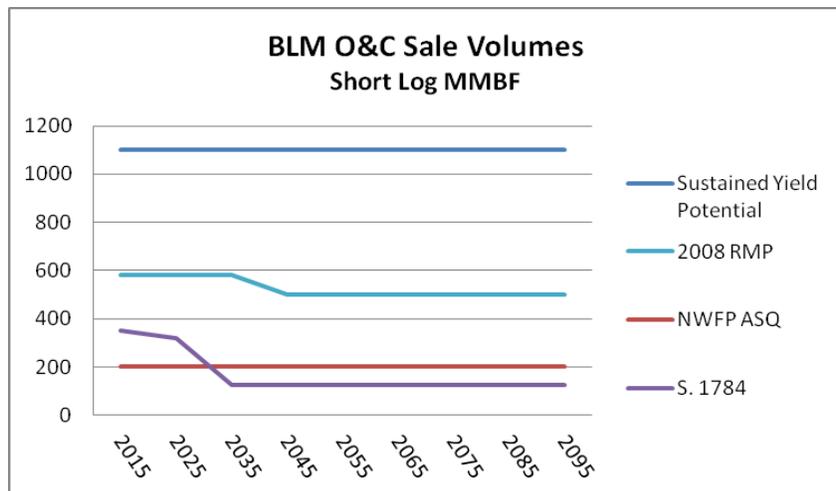
Family-owned companies do not plan for the next quarter stockholders' meetings -- we plan for our children's and grandchildren's future. Proposals that offer short-term promises of increased timber volumes but don't sustain those into the future do not meet the needs of our industry or the communities. That is precisely why Governor Kitzhaber's Task Force modeled both the short-term and long-term sustained yields.

On November 22, 2013, shortly before the release of S. 1784, the BLM sent Chairman Wyden a letter indicating that Dr. Norm Johnson, with the help of agency analysts, estimated that the legislation would generate 300-350 million bf annually over the next two decades. It is noteworthy that the BLM did not claim that this represented the long-term sustained yield under the proposal. While we will need to wait for the O&C Task Force modeling to determine the precise sustained yield of S. 1784, documents recently disclosed by the BLM allow us to draw a number of conclusions about Dr. Johnson's estimate:

- ❖ It provided a potential 20-year harvest plan under S. 1784, not the long-term sustained yield calculation the legislation calls for.
- ❖ It relied on front-loaded harvest volumes in the first and second decades that can't be sustained under the silvicultural prescriptions, land allocations and restrictions in S. 1784.
- ❖ It relied on the ability to implement variable retention regeneration harvests in spotted owl critical habitat, near spotted owl nest sites, in marbled murrelet critical habitat, and near marbled murrelet nest sites despite the fact that S. 1784 doesn't change the underlying laws and regulations that make that impossible today.
- ❖ When the ecological forestry prescriptions, land allocations, restrictions, and critical habitat acres are taken into account it results in a long-term sustained yield land base of approximately 252,000 acres, or just 12 percent of the total O&C land base.



Based on a preliminary review of the information received by the BLM it appears that the long-term sustained yield of S. 1784 would be approximately 126 mmbf. It is possible that some relatively modest level of additional thinning volume could be achieved under S. 1784. However, it is very difficult to assign any reasonable degree of certainty to achieving that volume under the legislation.



Adequate county revenues. Any O&C solution must provide an adequate, predictable source of timber receipt revenue for our counties. The fiscal challenges facing the O&C Counties due to reductions in timber revenues are very serious and no one understands them better than Douglas County Commissioner Doug Robertson, who will speak to them today. The continuation of Secure Rural School payments won't address the problem. Contrary to the claims of some, raising property tax rates in some of the poorest areas of the state isn't a viable option either, particularly when encouraging home ownership and housing affordability has been a national policy goal enjoying broad, bipartisan support for decades.

The counties must be self-sufficient. They cannot survive relying upon federal aid that is tenuous at best. Federal aid may, at times, provide monies to the counties, but it does not provide a paycheck to the residents of these communities.

Don't fall for the scare tactics about timber revenue not being dependable due to large swings in log prices and demand. Our neighbors in Washington have managed 2 million acres of state trust lands to generate consistent levels of annual revenue for their schools, counties, and other trust beneficiaries. In fact, over the past decade, which includes some of the most trying years of recession our industry has ever seen following the crash of the housing market, the Washington Department of Natural Resources (DNR) has averaged over \$125 million in annual timber revenue for trust beneficiaries.

Washington DNR Timber Sale Program (2.2 million acres)²

	Volume	Approx	Approx	Approx
	Sold (mmbf)	Total Receipts	Revenue to Beneficiaries	Price/Thousand bf
2001	515	\$218,850,000	\$164,137,500	\$425
2002	492	\$169,205,000	\$126,903,750	\$344
2003	495	\$149,000,000	\$111,750,000	\$301
2004	494	\$144,000,000	\$108,000,000	\$291
2005	616	\$176,000,000	\$132,000,000	\$286
2006	526	\$195,612,047	\$146,709,035	\$372
2007	565	\$191,664,731	\$143,748,548	\$339
2008	660	\$162,996,940	\$122,247,705	\$247
2009	556	\$95,239,308	\$71,429,481	\$171
2010	742	\$183,445,581	\$137,584,186	\$247
2011	591	\$200,396,016	\$150,297,012	\$330
2012	553	\$163,728,138	\$122,796,104	\$296
2013	495	\$165,411,134	\$124,058,351	\$334
Average	561.54	\$170,426,838	\$127,820,129	\$306

² FY 2008 & FY 2009 saw lower stumpage due to high proportions of blowdown salvage. Volume Sold and Total Receipts do not include FIT (Forest Health Treatment) Sales

In addition to providing timber receipt revenue, restoring balanced active management to the O&C lands would generate industry and non-industry private sector employment in these communities and the significant economic stimulus and tax revenue that results. This is the only truly sustainable solution for our rural, forested communities, not handouts from Washington, DC.

We do not lock up wheat fields in Kansas. We do not stop cattlemen in Nebraska from raising cattle. We don't tell farmers in Iowa to stop raising corn. It is no different in Oregon. So, why do we tell Oregonians to stop farming trees?

I have heard it said that the results of our O&C policy are akin to allowing our citizens to starve while standing in the middle of a supermarket. It is actually worse than that – not only are we starving unnecessarily; we are setting up a chain reaction of permanently closing down the supermarket, then the hardware store, then the gas station, and ultimately, the entire community.

No harm to private lands. Our industry is incredibly reliant on timber harvests from Oregon's private lands since the drastic reductions in BLM and Forest Service harvests. With many mills hanging on by a thread due to incredibly tight demand for logs, it is essential that legislation not negatively impact the ability to access and harvest private forestlands. As a private landowner, we appreciate the intent of S. 1784 to honor all existing reciprocal right-of-way agreements that are common amongst the checkerboard ownership pattern.

However, the legislation does contain provisions that will make new right-of-way agreements more difficult to obtain due to various prohibitions against the construction of new roads and restrictions on the harvest of any trees within certain protected areas established in the legislation. S. 1784 also directs the Secretary to reduce the number of existing "nonessential" roads, but provides no definition of this term. These provisions will likely limit the ability of private landowners with existing reciprocal right-of-way agreements to access their lands and it will make it extremely difficult, if not impossible, to obtain a right-of-way in areas where they currently do not exist or when the owner buys a new piece of land. It also appears that smaller landowners would not be protected since they lack formal right-of-way agreements and instead rely on case-by-case permits.

Finally, and of extreme importance to private landowners such as Seneca, is the increased risk of catastrophic fire that is likely to result from S. 1784 as it is currently written. Seneca's forestlands share 561 miles of common boundary with the O&C lands. To the extent fire risk is increased on O&C lands, it increases on Seneca's lands.

Fire has spread from federal land to Seneca's land in the past and is likely to increase in the future if significant changes are not made. Every day, the O&C forests are burdened with additional fuel loadings from tree mortality. The annual growth rate is 1.2 billion bf and the mortality rate on O&C lands is approximately 140 million bf per year. Simply put, every year the O&C timberlands continue to build fuel loadings at an astonishing

rate and this would not be appreciably reduced under S. 1784. The lands are turning into world class kindling and the owners of the timberland, the Federal Government, are turning into the slum lords of the Northwest – placing everyone’s lands at risk of horrific fires.

Exacerbating this fuel problem, the legislation calls for road closures, obliteration and decommissioning. The key to effective fire suppression is aggressive initial attack. Initial attack is dependent upon an effective road system. Any legislation that harms that road system will increase the likelihood of catastrophic fires originating on federal lands overrunning and burning out private lands.

Conclusion

Chairman Wyden, I want to thank you for your commitment to resolving this challenging problem and your work on other important issues, including the recent forest roads fix. Congratulations on your pending move to chair the Finance Committee. Since I understand that this could be your last hearing chairing this important committee, I want to encourage you continue your work to resolve a problem that continues to harm our great state. The residents of our rural, forested communities just want a chance to responsibly manage this renewable resource and for their children to be able to make an honest, decent living in the rural communities they love.