

# Committee on Resources

## Subcommittee on National Parks and Public Lands

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### Witness Statement

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My name is Richard Harris. I am a native of Eastern Oregon.

Why am I here? I am committed to trying to save some of the last few big trees in Eastern Oregon.

The proposed land exchanges will irreversibly alter the environment, and they cannot meet NEPA requirements. They are also a rip-off to the Taxpayers. **Why is there such a hurry to bypass the environmental process as this bill H.R.2950 will do?**

I was born in 1940 in Milton Oregon which is about 25 miles from where Senator Gordon Smith lives in Pendleton Oregon. After leaving High School, I enlisted in the United States Marines for 4 years, and after serving my country in the military, I served as a policeman in the Western Oregon cities of Eugene, Lebanon, and Albany before becoming a businessman and a licensed Realtor. My primary business eventually became the Motel business, in which I am still active.

In 1977, I moved my residence back to Eastern Oregon to Baker City where I still reside.

In the late 1970's my wife and I bought a 20 acre parcel of an old mining claim near the southern boundary of the Eagle Cap Wilderness. The 20 acre parcel had already been logged, but US Forest Service lands on three sides of the property contained huge old growth Ponderosa Pine, and we **naively** thought the big trees would be there for forever.

Then in the early 1980's, they started logging. They logged and they logged. That did not seem unreasonable for several years; but after the fifth or sixth Timber Sale in the area near my 20 acres, I became concerned and contacted the Forest Service. I ask them why they were logging so heavily. "Forest Health" was what they told me, so I still didn't say anything. Who would object to that? But now I look around and there are no big old growth trees surrounding my property. It isn't exactly clear cut, but it has certainly been "high graded" and it certainly doesn't look healthier.

In 1993, the Oregonian Newspaper ran an article in Metro with the headline "Old forests east of the Cascades in jeopardy", and this caught my attention. The story was based on a report to the United States Congress and the President written by the **Eastside Forests Scientific Society Panel**.

Their recommendations were:

1. **Do not log late-successional/old growth forests in eastern Oregon and Washington."**
2. **Cut no trees of any species older than 150 years or with a diameter at breast height (DBH) of 20 inches or greater".**
- 3 Do not log or build new roads in aquatic diversity management areas.

- 1 Do not construct new roads or log within current (1) roadless regions larger than 1000 acres.
- 2 Establish protected corridors along streams, rivers, lakes, and wetlands. Restrict timber harvest, road construction, grazing, and cutting of fuelwood within these corridors.
- 3 Prohibit logging of dominant or codominant ponderosa pine from Eastside forests.**
- 4 Prohibit timber harvest in areas prone to landslides or erosion unless it can be conclusively demonstrated by peer-review scientific study that no associated soil degradation or sediment input to streams results from that harvest.**
- 5 Prevent livestock grazing in riparian areas except under strictly defined conditions that protect those riparian areas from degradation.
- 6 Do not log on fragile soils until it is conclusively demonstrated by peer-reviewed scientific study that soil integrity is protected and that forest regeneration is assured.
- 7 Establish a panel with the appropriate disciplinary breadth to develop long-term management guidelines that will protect Eastside forests from drought, fire, insects, and pathogens.
- 8 Establish a second panel to produce a coordinated strategy for restoring the regional landscape and its component ecosystems. Emphasize protecting the health and integrity of regional biotic elements as well as the process on which they depend.

Also, as a result of conservationist lawsuits the Forest Service adopted the Eastside Screens which protects large trees over 21" DBH.

The small parcels of land that the BLM and USFS are offering for trade in

the NOALE and the Triangle Land Exchanges in Eastern Oregon contain some of the last Old Growth Trees. They are small parcels scattered across Eastern Oregon, and both Exchanges cover the same general area, with some of the NOALE parcels actually **adjacent** to Triangle parcels. The cumulative effect of the proposed exchanges will be enormous.

I have not been to all of the parcels proposed to be traded away in the Northeastern Oregon Assembled Land Exchange and the Triangle Land Exchange, but I have been to quite a few of them. These parcels are usually quite isolated but with forest roads leading very near them, but they are not well marked. After struggling with map and compass to get you close, it is then very easy to see the boundaries of the parcels. There are old growth trees within the boundaries of the parcel, and there are no old growth trees outside of the parcel. Everything around the parcels has already been cut. Some of these parcels are little islands of timber entirely surrounded with sagebrush and desert conditions.

The USFS has **finally** agreed to do an EIS on Triangle Land Exchange. During the EIS process, we concerned citizens have an opportunity to voice our concerns about the cumulative effect of the past harvesting and the damage it has already done to the environment, to show that these exchanges will further damage the environment and be assured they are following NEPA.

**H.R.2950 is a bill designed to circumvent that process.**

What will happen to the old growth trees if the exchanges occur? The old growth **will** be logged. These are supposed to be land trades so that local land owners can consolidate their holdings while at the same time allowing the BLM or the Forest Service to consolidate their boundaries. As I understand it, local landowners wanting to get some of that public land **must agree** to allow the old growth trees to be harvested as a requirement to be considered as a potential recipient of the public lands. **If they do not agree, they will not be invited to trade.**

Huge amounts of money must be generated. For instance, the JV Ranch, which Clearwater Land Exchange (CLE) intends to trade to the government in NOALE must be purchased from private parties, and they require \$6,000,000 (6 million) in cash. And CLE allegedly will receive between 6% and 12% of the total value of the exchanges for their fee. Although we are unable to learn the actual value of the exchanges because of the secrecy (NOALE is estimated to be \$50 million to \$100 million), CLE fees will be several million dollars, and these fees are to be paid by the Timber Industry out of the harvest of old growth trees.

Why is the public not allowed to know the **appraised** value of the timber and the lands proposed to be exchanged? Why the secrecy? The appraisals are being done by agencies hired and paid by Clearwater Land Exchange. **NOBODY IS LOOKING OUT FOR THE TAXPAYER.**

In May of 1999, I traveled to Orofino Idaho and dropped in on Clearwater Land Exchange and met with President Darrel Olson. We discussed NOALE for two hours. At the end of our discussion, I ask Mr. Olson to just drop the public lands that contained the old growth trees, as that is what would have happened had Alternative 3 been chosen. He said "We just can't do that. Without the big trees there is just no deal". **The money to pay for this whole thing will paid for by selling that big timber.**

My point here is that the environment and the taxpayer will be the loser in these exchanges. The old growth trees **WILL** be cut and there is already not enough. The eco-system will be changed and diminished.

What does the public get in return for this priceless old growth? Private lands already stripped of old growth.....or "hammered" as described to me by a fellow in the Umatilla County tax office in Pendleton, Oregon, referring to the lands on the North Fork of the John Day River, and other local people say the JV Ranch has already been heavily logged.

Clearwater Land Exchange is **not** looking out for the public lands or the public. CLE represents the timber companies looking for timber to cut. They propose to trade stumps to the public for old growth trees, so they can kill the old growth. Although the public would acquire some fish habitat, it does not make sense to decimate one segment of the ecosystem to get the chance/burden to rehabilitate another segment of the ecosystem.

Neither NOALE nor Triangle Land Exchange can meet the requirements of NEPA on several points.

**1. The government violated NEPA by failing to disclose scientific research from the Forest Service and others documenting the need to retain remaining LOS stands and ponderosa pine on the eastside.**

The Eastside Forests Scientific Society Panel (EFSSP) convened by Congress reported in 1993 that "only a fraction of the original old-growth forest in eastern Oregon and Washington remains," and that "[f]urther reduction in late-successional/old-growth forest is likely to jeopardize many components of the biological diversity of eastside forests and

increase numbers of threatened, endangered, and extinct species." See EFSSP Report. This panel, convened at the request of Congressional members from both parties, identified many eastside species as being highly sensitive to further reductions of eastside LOS forests, including bull trout, northern goshawk, flammulated owl, white-headed woodpecker, pileated woodpecker, and American marten. Id. This panel concluded that "all remaining LS/OG blocks and fragments are ecologically significant," and therefore recommended a total ban on logging in LOS stands and logging of trees older than 150 years or larger than 20 inches dbh. Id.

The Scientific Panel on Late-Successional Forest Ecosystems, (SPLFE), which reported to the U.S. House of Representatives on the status of Northwest LOS forests in 1991, found that "relatively little of the LOS forests extant in 1900 on federal land on the 'east side' now remains." See SPLFE Report. The Panel also noted that "[m]uch less forestry-related research has been done on east- than west-side forests . . . with concomitant lack of information on east-side ecosystems and processes." Id. The Panel concluded that "[b]ecause many LS/OG stands are scheduled for harvest over the next decade, delaying analysis will reduce the options for an LS/OG network." Id.

In particular, scientists are concerned that old-growth ponderosa pine is now an "endangered ecosystem." EFSSP Report; SPLFE Report. The EFSSP recommended that the federal government halt all logging of ponderosa pine, whether or not the stand meets the criteria for LOS. The SPLFE found that "LS/OG ponderosa pine stands are especially rare." Because BLM lands tend to occur at low- to mid-elevations on the eastside, it is likely that BLM's eastside forests are or were historically dominated by ponderosa pine.

"High-grading" (selective logging of large, old trees) has also been particularly damaging to eastside LOS forests. The government's Health Assessment found that "[s]tand and landscape characteristics have been significantly altered by selective harvesting, high-grade logging, and overstory removal operations in this century." The SPLFE Panel noted:

Many sites have been selectively logged several times, especially at lower elevations . . . . Much of that logging involved the selective removal of the highest valued trees, such as ponderosa pine. Selective harvest of this large, high value, fire-tolerant species has accelerated the change in forest structure . . . . Recent harvest has continued to focus on the higher valued overstory, often removing it in its entirety.

See also Reed F. Noss, "Saving Nature's Legacy" ("selective cutting of the largest and healthiest individual trees . . . resulted in a loss of trees that were most important ecologically and genetically.")

Of particular concern is the loss of "refugia" (small but critically important habitat areas which remain relatively intact) that have managed to escape degradation so far. Most of

the remaining LOS forest on the Eastside is highly fragmented, reducing its ability to support the basic needs of LOS-associated species. EFSSP Report; Thomas, "Conservation Strategy for the Northern Spotted Owl." Continued loss and fragmentation of remaining LOS forests by logging and road building on Eastside BLM lands, no matter how minor they may seem in isolation, are likely to adversely impact populations of LOS-associated species. Cumulatively, these actions may threaten the future viability of some wildlife species on the Eastside and foreclose options for implementation of a scientifically-based region-wide management plan.

The loss of Eastside public lands on the Eastside that provide habitat "refugia" is especially of concern on BLM lands because of its checkerboard nature, a side effect of a 19th- century land distribution plan. A

group of scientists, including one from the Forest Service's Pacific Northwest Research Station, looked in-depth into this issue in a recent report. Drs. James Boyle, Steve Garman, Bill McComb, Dave Perry, Tom Spies, and John Tappenier, "BLM Checkerboard Ownership Advantages and Limitations for Ecosystem Based Management." One of their "major findings" was that "[t]he remaining old-growth on BLM's alternate sections, even small patches, have value for habitat and perhaps for conservation of species and natural processes." They were particularly concerned about loss of these refugia through land exchanges, and noted:

The inter-relationships between the dynamics of the habitats and the generation lengths of the species of concern must also be considered. For instance, consider a land trade that resulted in a short-term reduction in habitat availability for a later seral associate . . . . If the species is short-lived or if mortality rates are increased as a result of the trade, then even a short-term reduction in habitat availability may cause the species to become locally extinct and it must then recolonize the area after habitat recovery. Short-lived species and/or relatively immobile species often are also faced with dispersal between patches that involve short-distance movement among generations of the species. Even a short-term interruption in connectivity could delay or prohibit the colonization of some patches.

Because of the decline and fragmentation of Eastside LOS forests, the EFSSP concluded that "all remaining LS/OG blocks and fragments are ecologically significant," and therefore recommended a total ban on logging in LOS stands and logging of trees older than 150 years or larger than 20 inches dbh. The Panel also advised against further road-building in aquatic diversity areas and in roadless areas that are biologically significant or larger than 1000 acres.

The land exchange would trade away public forests containing Ponderosa pine habitat types, which the EFSSP and others have found to be an "endangered ecosystem" especially in need of protection. EFSSP Report; SPLFE Report. Because of this, the EFSSP recommended there be no logging of Ponderosa pine (LOS or otherwise) until an ecosystem plan is developed for the Eastside. The SPLFE found that "LS/OG ponderosa pine stands are especially rare." The Forest Service's Eastside Screens provide special protection for Ponderosa.

Although BLM admits in the EIS that these lands are expected to be logged once they are exchanged, it failed to disclose that the logging of trees over 21" dbh is considered a significant impact to the environment by both the Forest Service and the EFSSP. EFSSP Report; Forest Service Eastside "Screens."

Because BLM has refused to acknowledge the scientific research underlying the Forest Service screens and the EFSSP, it failed to gather adequate information or to disclose significant environmental impacts from this land exchange. Where a NEPA document "rests on stale scientific evidence," declaratory relief is appropriate until the agency reexamines its proposed action using new information. Seattle Audubon Society v. Espy, 998 F.2d 699, 704-05 (9th Cir. 1993).

## **2. The government violated NEPA by conducting this land exchange before the Eastside EIS is completed and implemented.**

BLM also violated NEPA by conducting this land exchange before the Eastside EIS is completed and implemented. "The purpose of an EIS is to apprise decisionmakers of the disruptive environmental effects that may flow from their decisions at a time when they 'retain' a maximum range of options." Conner v. Burford, 848 F.2d 1441, 1446 (9th Cir. 1986). Taking actions in the interim which could limit those options undermines the purpose and effectiveness of the NEPA process. Thus, NEPA requires that while an EIS is

being prepared, the agency is to take no action which would irretrievably commit resources, have an adverse environmental impact, or limit the choice of reasonable alternatives. 40 C.F.R.' 1502.2(f), 1506.1(a)(1),(2); Conner, 848 F.2d at 1446; see also Pacific Rivers Council v. Thomas, 30 F.3d 1050, 1056-57 (9th Cir. 1994), cert. denied, 115 S. Ct. 1793 (1995); 40 C.F.R.' 1502.2(f).

Given the dire condition of Eastside LOS forests, and the ongoing Eastside EIS process designed to halt the continued decline of those forests, BLM is violating this provision of NEPA. BLM has on the one hand recognized the critical status of Eastside LOS forests and joined with the Forest Service to prepare the Eastside EIS, but on the other hand is blindly allowing its land managers to trade away some of the last fragments of the disappearing forests the Eastside EIS is designed to protect.

This exchange represents an irretrievable commitment of resource, would have an adverse environmental impact, and would limit the choice of reasonable alternatives available when the final Eastside EISs are issued. The final Eastside EISs will amend National Forest and BLM District land-use plans. The proposed amendments include reducing commercial timber harvest on many Eastside lands, including most of the public lands in this exchange, in some areas to zero to five percent within the next decade. Eastside/Upper Columbia Draft EIS Summary.

The purpose of the Eastside EIS is to develop a scientifically sound, ecosystem-based management strategy for [federal] lands . . . in the Columbia River Basin. . . . to respond to several critical broad scale issues including, but not limited to, forest and rangeland health, listing of Snake River salmon and other plant and animal species pursuant to the Endangered Species Act, potential listing of steelhead trout and bull trout as threatened or endangered, species associated with old forest structure, economies of rural communities, and treaty and trust responsibilities to American Indian Tribes.

### **3. The government violated NEPA by failing to disclose information on wildlife species and habitat present and the significant impacts to wildlife.**

BLM has a duty under NEPA to disclose "any responsible opposing view." 40 C.F.R.'1502.9(b); Seattle Audubon Soc. v. Espy, 998 F.2d 699, 704 (9th Cir. 1993).

Where agencies have failed to take a "hard look" at impacts on wildlife, the courts have found the NEPA analysis to be inadequate. See, e.g., Foundation for North American Wild Sheep v. U.S. Dept. of Agriculture, 681 F.2d 1172, 1178 (9th Cir. 1982) (agency violated NEPA by failing to address substantial questions raised about impacts to bighorn sheep from proposed reconstruction of road passing directly through their habitat); Marble Mountain Audubon Soc. v. Rice, 914 F.2d 179, 182 (9th Cir.1990) (holding that "the Forest Service did not take a 'hard look' at the impact of the selected salvage and harvest alternative on the Grider drainage biological corridor").

### **4. The BLM violated FLPMA's requirement that land exchanges serve the public interest.**

The exchange proposal is contrary to the requirements of the FLPMA, which allow BLM to conduct land exchanges only "where the Secretary . . . determines that the public interest will be well served by making that exchange." 43 U.S.C.' 1716(a). In making that determination, the Secretary must "give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife," and must find "that the values and the objectives" served by the public lands to be disposed of are outweighed by those of the private lands to be obtained. Id. The government made an inadequate factual

analysis of the public interest values at issue, **because it failed to disclose and include in the EIS the wildlife and ecosystem values of the public parcels.**

This legislation would also make the NEPA public involvement process irrelevant and would eliminate citizen rights to appeal under NEPA. Even if the agencies were ordered to complete the EIS processes for these exchanges (currently not addressed in the bill's language), the rest of the NEPA process would be irrelevant if the trades are sanctioned by an Act of Congress.

What use would there be in commenting on or filing appeals on the EISs and Records of Decision? None. The agencies would not be able to respond in any meaningful way to comments or appeals filed on exchanges that have been mandated by Congress. No court of law would review the legality of an action that has been ordered by law to occur.

The legislation of these trades therefore eliminates citizen rights and pushes these deals through in a manner that shuts the public out.

### Summary

95% or more of our Old Growth forests have already been decimated by harvest. If we do not want to see the old growth dependent species further decline, we must stop the further degradation of our old growth.

There are many wildlife creatures that cannot survive without "old growth forests". When wildlife associated with Old Growth begin to die out, it is an indicator of how our environment is doing. As we all know, those indicator species are in a decline.

Please let us have our chance to save our big trees. Please do not bypass the environmental laws.

I am an Oregon businessman in the motel industry. Tourism brings in much more business to our local economies than timber does anymore. The timber is gone and the work is automated anyway.

We need our wildlife and our beautiful trees and mountains and scenery to bring the tourist again and again.

Please defeat H.R. 2950.

Richard Harris, Businessman  
2890 Second Street  
Baker City, OR 97814

Attachments:

Photo of Oregon Old Growth  
Original Oregonian article

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