



Mar 19 2013

FULL COMMITTEE HEARING: Keeping the Commitment to Rural Communities

Options for reauthorizing and reforming the Secure Rural Schools and Community Self-Determination Act and Payments in Lieu of Taxes

SD-366 Senate Dirksen Building 10:00 AM

The purpose of the hearing is to examine the options and challenges related to possible reauthorization and reform of two payment programs for local governments - the recently expired Secure Rural Schools and Community Self-Determination Act and the Payment in Lieu of Taxes.

The hearing will be webcast live on the Committee's website, and an archived video will be available shortly after the hearing is complete. Witnesses' testimony will be available on the website at the start of the hearing.

Archived Webcast



KEEPING THE COMMITMENT TO RURAL COMMUNITIES

Prepared Statement,
Oral Statement,
and
Questions for the Record

by

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for the

Hearing Before the
Committee on Energy and Natural Resources
United States Senate
One Hundred Thirteenth Congress
First Session

To Examine

Options for Reauthorizing and Reforming the
Secure Rural Schools and Community Self-Determination Act
and
Payments in Lieu of Taxes

March 19, 2013

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INTRODUCTION

Chairman Wyden, Ranking Member Murkowski, members of the committee and staff, it is a great honor to be here today. My name is Jay O’Laughlin. I live in Moscow, Idaho, where I am professor of forestry & policy sciences at the University of Idaho and for 23 years, full-time director of a policy analysis research unit created by the Idaho Legislature in 1989 and continuously funded since then. Our mandate is to provide objective analysis of resource and land-use issues Idahoans care about. We care about the federal lands that make up almost 64 percent of the state’s land base, a percentage exceeded only by Nevada and Utah. Almost 39 percent of Idaho is in the National Forest System; Oregon at 25 percent ranks a distant second.

Congress enacted the Secure Rural Schools and Community Self-Determination Act of 2000 (SRS) as a temporary, optional program of payments based on historic revenues.¹ These payments compensate counties for the tax-exempt status of federal lands, following a policy dating to 1906 that counties receive a percentage of agency revenues, primarily from timber sales. Since 1989, however, timber sales have declined substantially, by more than 90% in some areas.² On an annual payment basis, Oregon benefits the most from SRS, followed by California, then Washington and Idaho, with Montana not far behind.³ Based on the percent of the county revenue for schools and roads that comes from federal payments, many counties in Idaho, Montana, New Mexico, and Oregon depend heavily on these payments.⁴

According to the U.S. Forest Service, the condition of at least 65 million acres of National Forest System lands could be improved with restoration treatments.⁵ The removed woody biomass can be manufactured into useful consumer products and the residuals used to produce energy. It takes people to do this work so in turn forest restoration helps revitalize our rural communities.

My main point is that active forest restoration results in a triple-win: first, improved conditions, including wildfire resiliency; second, consumer products and energy feedstocks, both helping make our nation more self-reliant; and third, jobs in rural communities. The triple win is related to the county payments programs because a meaningful federal timber sale program with a continued revenue-sharing policy would greatly reduce the need for federal land payments.

¹ P.L. 106-393, 114 Stat. 1607 (October 30, 2000)

² Gorte, R.W. (2010). *Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000*. Congressional Research Service Report CR41303, Washington, D.C. 14 pp. http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5260244.pdf

³ *Id.*

⁴ Headwaters Economics (2010). *County Payments, Jobs, and Forest Health: Ideas for Reforming the Secure Rural Schools and Community Self-Determination Act (SRS) and Payments in Lieu of Taxes (PILT)*. Headwaters Economics, Bozeman, MT. 96 pp. http://headwaterseconomics.org/wphw/wp-content/uploads/Reform_County_Payments_WhitePaper_LowRes.pdf

⁵ U.S. Forest Service (2012). *Increasing the Pace of Restoration and Job Creation on Our National Forests*. Unnumbered publication, Washington, DC. 8 pp. <http://www.fs.fed.us/publications/restoration/restoration.pdf>

In 2011, I was asked by the University's Research Office to respond to a query from one of our two members of the U.S. House of Representatives (Raúl Labrador) for information about the Secure Rural Schools Act and the trust land management model used to manage school trust lands granted to Idaho, and many other states, to support public education. These were not new issues for me,⁶ so I assembled an Issue Brief report for the congressman's staff and walked them through it.⁷ Updated and more detailed portions of it follow.

I begin with a **Problem Statement**, then identify and describe **Three Options** for providing funds to counties: 1) rejuvenate the program for federal **Timber Sales and Revenue-Sharing**, 2) create a **Property Tax Equivalency** system for federal lands, and 3) test the **Trust Land Management** model with pilot projects in some selected areas. My **Conclusion** is that some kind of action, including temporary extension of SRS until something else is developed, is better than no action.

PROBLEM STATEMENT

Unless reauthorized by Congress, payments to the counties under the SRS and Payments in Lieu of Taxes (PILT) programs are history and would have consequences. Some counties will be hard pressed to maintain local roads and schools without some form of payment to compensate for tax-exempt federal lands.

The economic impact of losing the SRS county payments program was presented in a 2010 consultant's report prepared for the Partnership for Rural America:

The loss of [SRS] money has annual losses for the counties and schools currently funded. The losses are not simply to local construction, education and conservation services and their allied industries. The industries affected by these changes are far and wide based on how construction workers, educators and conservation services employees spend their money and how these rural economies work. The reduction of [SRS] funding not only reduces jobs in these directly-affected industries, but also affects industries such as medical and dental offices, banking, auto repair, grocery and other retail stores, restaurants and bars, and many others. The loss of \$467 million of this funding leads to various businesses throughout the United States losing almost \$1.459 billion in revenues,

⁶ O'Laughlin, J., W.R. Hundrup & P.S. Cook. (1998). *History and Analysis of Federally Administered Lands in Idaho*. PAG Report 16, University of Idaho, Moscow, 125 pp.

<http://www.uidaho.edu/~media/Files/orgs/CNR/PAG/Reports/PAGReport16>

⁷ O'Laughlin, J. (2011). *Secure Rural Schools Program Reauthorization, U.S. Forest Service Timber Sale Program, and Trust Land Management*. Issue Brief No. 14, Policy Analysis Group, College of Natural Resources, University of Idaho. 16 pp.

http://www.uidaho.edu/~media/Files/orgs/CNR/PAG/Reports/PAG_IB-14_8-14-11

government at all levels losing over \$225 million in tax receipts, and over 11,460 people losing their job.⁸

Also facing its demise is the SRS feature embodied in the collaborative efforts of Resource Advisory Councils (RACs) to use SRS Title II funding for a wide variety of projects that might not otherwise be funded. Although timber projects can be approved under Title II, very few have been.⁹ Social scientists who have studied RACs in northern California report that most of the Title II funds were used to improve roads, wildlife habitat, and reduce invasive weeds.¹⁰

The RACs do good work in Idaho, and could do much more. The collaboration between seemingly disparate interests working towards a common interest has proven to be a valuable model that could lead to more good things. We wanted to use the RAC concept on a larger scale in Idaho and in 2004 a subcommittee of this committee held a hearing on our proposal.¹¹ It developed from a state task force charged by the legislature to develop cooperative arrangements with federal managers. After considerable time and effort, bills were introduced in the U.S. House and Senate. Had the Clearwater Basin Project Act passed, 2.7 million acres of National Forest System lands in north central Idaho now would be a pilot project in which a committee patterned after the RACs would work with federal managers on all forest activities, not just special projects under SRS Title II.¹²

THREE OPTIONS

If there is no congressional action this year, some counties have warned that they will face whatever one might call the local government equivalent of bankruptcy. The 25% revenue-sharing provisions in law since 1908 would remain in place, however.

Some western state politicians are calling for changing ownership of portions of federal land holdings. In 2012 several states took action. Utah passed a law promising that if the federal government does not “extinguish title” to a large portion of the federal lands and give them to the state, the matter will be pursued via litigation. Similar legislation in Arizona was vetoed by the

⁸ Eyler, R. (2010). *Rural Policy: Secure Rural Schools Act Economic Impact Analysis*. Economic Forensics and Analytics, Petaluma, CA. 6 pp. (Dr. Eyler is Chair, Economics Dept., Sonoma State University, CA.) http://www.partnershipforruralamerica.org/pdf/Economic_Impact_Analysis.pdf

⁹ GAO (2010). Update on the status of the merchantable timber contracting pilot program [under SRS Title II]. Letter of Anu K. Mittal to congressional committees, Government Accountability Office, Washington, DC. March 4, 10 pp. <http://www.gao.gov/new.items/d10379r.pdf>

¹⁰ Kusel, J., et al. (2006). *Assessment of the Secure Rural Schools and Community Self-Determination Act*. Sierra Institute for Community and Environment, Taylorsville, California. 235 pp. http://www.sierrainstitute.us/archives/COMPLETE_REPORT.pdf

¹¹ Hearing before the Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, on S. 433, “A Bill to provide for Enhanced Collaborative Forest Stewardship Management of the Clearwater and Nez Perce National Forests in Idaho,” Washington, D.C. (March 24, 2004). <http://www.gpo.gov/fdsys/pkg/CHRG-108shrg94830/pdf/CHRG-108shrg94830.pdf>

¹² Idaho State Board of Land Commissioners (2013). “About the Federal Lands Task Force” webpage. Idaho Department of Lands, Boise, ID. <http://www.idl.idaho.gov/LandBoard/fltf.htm>

governor. The Wyoming legislature debated the issues and created a study commission; at this writing Idaho is poised to do the same.

I want to talk about changing the rules, not changing ownership. Unless the rules are changed, ownership change would not make much difference. Federal managers must follow many rules, and some could be improved, especially the National Environmental Policy Act and National Forest Management Act.¹³ I address three ideas for generating more revenue that the current system does: 1) rejuvenating the federal timber sale program; 2) replacing SRS and PILT with a property tax equivalency payment system; and 3) testing the trust land management model with pilot projects.

1. TIMBER SALES AND REVENUE-SHARING

After World War II, returning veterans wanted and deserved the American dream—a home of their own. National Forest System lands provided a substantial portion of the timber necessary to do that. Building roads and mills to access and process timber strengthened rural communities. After Congress passed laws in the 1970s requiring Forest Service managers to involve the public and analyze environmental impacts, the decision process was opened to judicial scrutiny. In response to advocacy demands and court decisions, in 1990 the federal timber sale program was ratcheted down (**Figure 1**). In the 40 years prior to that, between 1950 and 1989, an average of

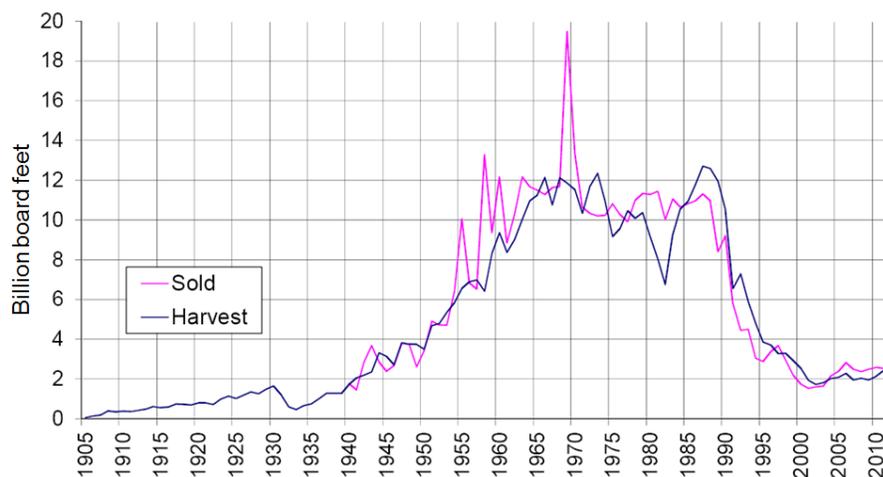


Figure 1. National forest timber sold and harvested, 1905-2012 (sold data not available before 1940).¹⁴

¹³ According to one estimate, “it is taking about 70% of the Forest Service’s land management budget to comply with planning and environmental review for projects, leaving only 30% for implementation and work on the ground.” Partin, Tom, “Subcommittee to review NEPA cost.” American Forest Resource Council newsletter, Portland, Oregon, January 23, 2013.

http://www.amforest.org/newsletters/browse/afrc_news_-_january_23

¹⁴ Source: U.S. Forest Service (note: timber sold data before 1940 are not available).

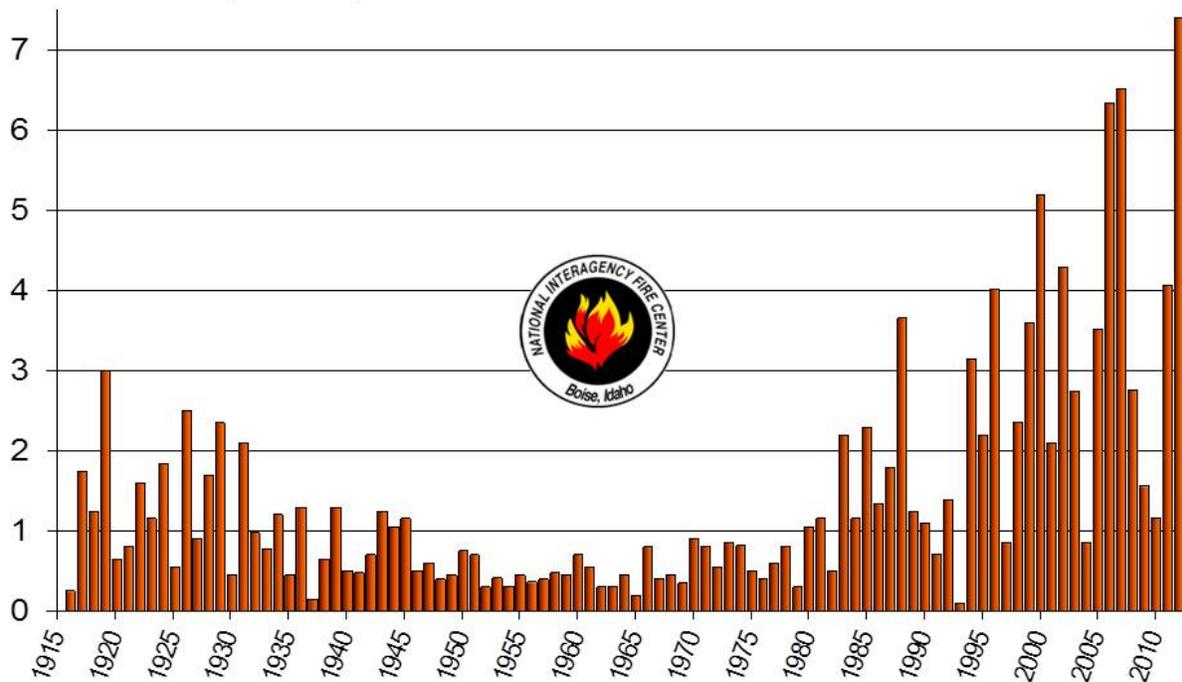
http://www.fs.fed.us/forestmanagement/documents/sold-harvest/documents/1905-2012_Natl_Summary_Graph.pdf

9.5 billion board feet (BBF) per year were harvested from national forests. Between 1990 and 2012, the average dropped by almost two-thirds, to 3.5 BBF per year. The current administration wants to increase from the current level of 2.5 BBF to 3 BBF per year.¹⁵

Coincidentally, after 1990 the number of acres burned by wildfires in the western states increased (**Figure 2**). In the 40 years between 1950 and 1989, an average of 800,000 acres per year burned. Between 1990 and 2012, the average increased by a factor of 3.7 to 3 million acres burned per year. This includes a modern record of 7.4 million acres burned in 2012. The increase results from the combined effects of accumulated fuels and longer, dryer fire seasons.

Wildfires in 11 Western States,* 1916-2012

Acres burned (millions)



*Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming
 Prepared by Jay O’Laughlin, University of Idaho, from NIFC data.

Figure 2. Acres burned by wildfires in 11 western States, 1916-2012.¹⁶

We cannot do much about the weather, but we can reduce fuels in areas that pose high risks to the things people value. Western national forests have an over-accumulation of vegetation that fuels destructive wildfires.¹⁷ As Forest Service Chief Emeritus Dale Bosworth put it, “We have

¹⁵ U.S. Forest Service, *Increasing the Pace of Restoration and Job Creation* (2012, *supra* note 5).

¹⁶ Source data from National Interagency Fire Center, Boise, Idaho.

¹⁷ GAO (1999). *Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats*. Report no. GAO-RCED-99-65. Washington, DC: U.S. Government Accountability Office, Washington, D.C. 60 pp. www.gao.gov/archive/1999/rc99065.pdf

some 73 million acres of national forest land at risk from wildland fires that could compromise human safety and ecosystem integrity. . . . The situation is simply not sustainable—not socially, not economically, not ecologically.”¹⁸

Restoration treatments that improve forest conditions by reducing wildfire hazards provide a triple win. As U.S. Forest Service scientists put it, “Implementation of any significant fuel reduction effort will generate large volumes of biomass and require the development of additional workforce and operations capacity in western forests.”¹⁹

As noted before, there are at least 65 million acres of National Forests System lands that could be improved by restoration treatments. The Forest Service relies primarily on fire as its tool, treating 3.5 to 4 million acres per year. However, 12.5 million acres need to be thinned with logging equipment before fire can be safely restored. In 2011, approximately 200,000 acres were mechanically treated; timber removals amounted to 2.4 BBF of timber. In 2012 that increased to 2.5 BBF, and the agency wants to increase the pace of restoration removals to 3 BBF feet per year.²⁰

At the current harvest level, the Forest Service is removing about 6 percent of the annual growth. Mortality takes 6 times that, or 36 percent of annual growth.²¹ So each year a large amount of additional wood fiber, some green, and a lot of it dead, is added to the forest fire fuel complex. Compare this to the late 1980s, when national forest timber harvests peaked at 12 BBF per year. Those harvests were equivalent to half of the annual growth, and mortality was one-fourth. The forest accumulated a substantial amount of additional timber volume, but not as much in more recent years because of reduced harvests.

How much timber harvest would be needed to provide revenues equivalent to SRS payments?²² The reply depends mostly on timber prices, and the answer is, not too surprisingly, about 12 BBF. In the late 1980s, national forest timber in the west sold for an average of \$107 per thousand board feet (or MBF). Adjusted for inflation, that is about \$206 per MBF in today’s

¹⁸ Bosworth, D. (2003). “Fires and forest health: our future is at stake.” *Fire Management Today* 63(2): 4-11. http://www.fs.fed.us/fire/fmt/fmt_pdfs/fmt63-2.pdf#firesandforesthealthourfutureisatstake

¹⁹ U.S. Forest Service (2005). *A Strategic Assessment of Forest Biomass and Fuel Reduction Treatments in Western States*. General Technical Report RMRS-GTR-149, U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fort Collins, CO. 17 pp. http://www.fs.fed.us/rm/pubs/rmrs_gtr149.pdf

²⁰ U.S. Forest Service, *Increasing the Pace of Restoration and Job Creation* (2012, *supra* note 5).

²¹ Source data: Smith, B., et al. (2009). *Forest Resources of the United States, 2007*. General Technical Report WO-78, U.S. Department of Agriculture, Forest Service, Washington Office, Washington, D.C. 336 pp. http://www.fs.fed.us/nrs/pubs/gtr/gtr_wo78.pdf

²² See O’Laughlin, J. (2007). “Q4. What quantity of timber harvest would match the Craig-Wyden payments?” Pp. 3-4, in, *Timber Harvests and Receipts from National Forest System Lands in Idaho*. PAG Issue Brief No. 10, Univ. of Idaho, Moscow. 13 pp. http://www.uidaho.edu/~media/Files/orgs/CNR/PAG/Issue%20Briefs/PAG_IB10_natl-forest-timber-sales.ashx

dollars. The most recent price data for national forest timber sales in the west averages about \$50 per MBF. By comparison, in 2012 the average stumpage price for sawlogs from Idaho state lands was \$196 per MBF, an indicator that perhaps the Forest Service could attain revenues capable of providing SRS payments with 12 BBF per year by rejuvenating a timber sale program.

Many interest groups support federal timber sales, including the Society of American Foresters.²³ This is the path to the triple win. Some analysts believe that 12 BBF per year from the national forests is sustainable.²⁴ The growth to removals ratio of 2:1 in the late 1980s was consistent with sustainability standards. There is more annual growth today, which can be an asset or liability, depending on how forests are managed. Although a revamped timber sale program at 12 BBF per year could eliminate the need for SRS payments, other issues remain. The social acceptability aspects of sustainable forest management are perhaps a more difficult barrier to overcome than physical sustained yield and economic viability.

Because of record-setting wildfires in many parts of the West during the past decade, some groups are advocating forest restoration via large-scale vegetation treatments, including the Western Governors' Association.²⁵ Professional foresters in Idaho, Nevada, Utah, eastern Washington, and western Wyoming support this approach.²⁶ As noted earlier, fuel treatments on the scale necessary to reduce hazardous fuels will generate large volumes of woody biomass and substantial additions to the workforce.²⁷ This is the path towards the triple win.

2. PROPERTY TAX EQUIVALENCY

The idea of replacing SRS and PILT payments with a tax equivalency system would make federal payments to counties equivalent to what they would be paid in property taxes if the land were privately owned. This is not a novel idea. According to a Congressional Research Service analyst, this approach “may be very difficult if not impossible.”²⁸

Consider, however, that the states tax timberlands and it is not particularly difficult. In Idaho,

²³ SAF (2012). *Timber Harvesting on Federal, State, and Other Public Lands*. Position Statement, Society of American Foresters, Bethesda, Maryland. 4 pp.

http://www.eforester.org/fp/documents/timber_harvesting.pdf

²⁴ E.g., Fedkiw, J. (1998). *Managing Multiple Uses on National Forests, 1905-1995: A 90-year learning experience and it isn't finished yet*. U.S. Dept. of Agriculture, Forest Service, Washington, DC. 284 pp.

²⁵ WGA (2011). *Large Scale Forest Restoration*. Policy Resolution 11-01, Western Governors' Association, Denver, CO. 4 pp. http://www.westgov.org/policies/doc_download/1390-11-0

²⁶ Society of American Foresters (2011). *Restoring and Maintaining Resilient Landscapes via Active Vegetation Management at Large Scales Helps Create Fire-Adapted Communities and Improve Responses to Wildfires*. Inland Empire SAF and Intermountain SAF Joint Position Statement, commenting on the Western Region component of the National Cohesive Wildland Fire Management Strategy being prepared in response to a requirement of the FLAME Act of 2009. 9 pp. <http://www.usu.edu/saf/position-11-0803.pdf>

²⁷ U.S. Forest Service, *Biomass from Fuel Treatments in Western States* (2005, *supra* note 19).

²⁸ Gorte, *Reauthorizing SRS* (2010, *supra* note 2, p. 4).

there are 3.1 million acres of private timberlands, taxed somewhere between two dollars and seven dollars per acre, averaging out at five dollars per acre.²⁹ At that rate, the twelve million acres of National Forest timberlands in Idaho, minus about 6 million acres of roadless area timberlands that will never be harvested, would provide roughly \$35 million to the counties, and BLM's half-million acres of timberlands another \$2.5 million. Idaho receives \$27.4 million under SRS. Spread across 20.4 million acres of NFS lands, this is \$1.34 per acre, but spread across the productive 6 million acres of timberlands, it is about \$4.50 per acre.

Idaho ranks fourth in revenue-sharing payments, behind Oregon, California, and Washington. In 1989, the 25% revenue-sharing payments for the entire National Forest System peaked at \$361 million, and about \$339 million of that came from timber production activities. Spread across the 98 million acres of National Forest System timberlands, minus 50 million acres of roadless areas for a net 48 million acres of operable timberlands, that is a payment averaging about \$7 per acre. But of course, roadless areas, rangelands, and other areas not producing timber would need to pay their way at some rate under this system.

The states have competent property tax assessors and administrators. If they were not taxing forest properties fairly, political outcry and subsequent adjustment would surely follow. Given the task, these professionals could devise a fair and workable system for the federal lands. Some differences between states would need to be ironed out by an oversight commission.

3. TRUST LAND MANAGEMENT

School trust lands came as grants from the public domain at statehood; part of a bargain that states would not tax federal lands within their boundaries. States were to generate revenues for supporting public schools, either by selling the lands, or retaining ownership and selling commodities from the land, such as timber, forage, and minerals.

Trusts work, and "Trust land management is our nation's most ancient and durable resource policy."³⁰ In the contiguous 48 states, 45 million acres of land grants to the states are managed under this model. These lands provide billions of dollars for education and other public purposes.³¹ Several solid principles serve as general guides for managing land under the trust concept: clarity, accountability, enforceability, perpetuity, and prudence.³² Two leading examples of states that retained and now manage timberlands for revenue production are in the

²⁹ Cook, P.S. & J. O'Laughlin. 2001. *Taxing Forest Property: Analysis of Alternative Methods and Impacts in Idaho*. PAG Report No. 20, University of Idaho, Moscow, 35 pp. <http://www.uidaho.edu/~media/Files/orgs/CNR/PAG/Reports/PAGReport20>

³⁰ Souder, J.A. & S.K. Fairfax (1996). *State Trust Lands: History, Management and Sustainable Use*. University of Kansas Press, Lawrence, KS. 360 pp.

³¹ To be exact, \$4.5 billion annually in the early 1990s, according to Souder & Fairfax, *State Trust Lands* (1996, *supra* note 30).

³² Fairfax, S.K. (1999). *Lessons for the Forest Service from State Trust Land Management Experience*. Discussion Paper 99-16, Resources for the Future, Washington, D.C.; see also Souder & Fairfax, *State Trust Lands* (1996, *supra* note 30).

State of Washington and also Idaho.³³ Recently some interest has been expressed in applying the trust land management model to selected federal lands. I support that.

The trust land management model is flexible and could be adapted to promote biological diversity as a trust mission.³⁴ It is not difficult, as portions of revenue from commodity sales could be directed into special funds. Ten years ago I was asked by the Society of American Foresters to testify before Congress about the Idaho Federal Lands Task Force, and specifically about adapting the trust land management model for National Forest System lands.³⁵ Information from these earlier writings is as relevant today as a decade ago.

Dr. Marion Clawson is an inspiration to forest policy specialists. He had a long and distinguished career before his passing in 1998. In the 1950s he was BLM director. He was a prolific and insightful scholar in residence at Resources for the Future, a pre-eminent think tank in the nation's capital, and he served as RFF's president. He wrote *Forests for Whom and for What?*—still my favorite.³⁶ During the Sagebrush Rebellion era of the mid-1980s, Clawson wrote,

I reject any idea that we today are less imaginative and resourceful than men and women who pressed for the establishment of the national forests, national parks, and grazing districts. ***We too can innovate; let us try.***³⁷

What should we try? Trusts work. More than a decade ago two parcels of federal land were set up as trusts—Valles Caldera Trust on National Forest System lands in New Mexico and Presidio Trust in California. Please let us put more trusts to work for our rural communities and schools.

³³ O'Laughlin, J., S.F. Hamilton & P.S. Cook (2011). *Idaho's Endowment Lands: A Matter of Sacred Trust*, second edition. PAG Report No. 1, 2d ed., University of Idaho, Moscow, 35 pp. <http://www.uidaho.edu/~media/Files/orgs/CNR/PAG/Reports/Endowment%20Lands%20Report%208-7-11>

³⁴ O'Laughlin, J. (2000). *Trust Concepts Applied to the Federal Public Lands: A New Approach for Sustaining Human Communities and Biological Diversity*. Paper presented to the Idaho State Board of Land Commissioners' Federal Lands Task Force Working Group, Boise, Idaho. 11 pp. http://www.uidaho.edu/~media/Files/orgs/CNR/PAG/other%20pubs/New/2000_trust-land-mgmt-concepts

³⁵ O'Laughlin, J. (2002). *Community-Based Land Management and Charter Forests*. Testimony for the Society of American Foresters to Oversight Hearing before the Subcommittee on Forests and Forest Health, Committee on Resources, U.S. House of Representatives, Washington, D.C. (April 25, 2002). Published as Committee on Resources Serial No. 107-108, U.S. Government Printing Office. 11 pp. http://www.uidaho.edu/~media/Files/orgs/CNR/PAG/other%20pubs/New/2002_testimony-for-SAF_fed-land-mgmt-models

³⁶ Clawson, M. (1975). *Forests for Whom and for What?* Resources for the Future, Washington, D.C. 175 pp.

³⁷ Clawson, M. (1984). "Major Alternatives for the Future Management of Federal Lands." Pp. 195-234, in, *Rethinking the Public Lands*, S. Brubaker, ed. Resources for the Future, Washington, D.C. (Emphasis added.)

CONCLUSION

As our task force learned and documented in Idaho 15 years ago, the federal land management system is broken and needs to be fixed.³⁸ Extension of SRS and PILT is appropriate for fulfilling past promises until a more permanent system can be developed, tested and implemented. Rejuvenating a timber sale program provides many societal benefits. Given appropriate policy direction, our resource managers can and will work with their fellow citizens to figure out what sustainable forest management looks like on the land, a better place to do that than in court. For lands that do not produce timber, some form of payment from a property tax equivalency system seems a reasonable approach to help alleviate some current fairness problems. Last, but not least, trust land management is our oldest and most durable model, and worth testing in several places.



ORAL STATEMENT

Thank you, Chair Cantwell,³⁹ Ranking Member Murkowski, and members of the committee.

My name is Jay O’Laughlin. I am a professor of forestry and policy sciences at the University of Idaho and for 23 years full-time director of a policy analysis research unit created by the Idaho legislature. Senator Risch, thank you for your leadership back then.

For 80 years, counties received 25% of revenues from federal lands, primarily from timber sales. But since 1990, timber sales have declined substantially, by more than 90% in some areas.

There are good reasons to rejuvenate a federal timber sale program. Revenue-sharing with counties is just one of them.

My **MAIN POINT** is the **TRIPLE-WIN FROM FOREST MANAGEMENT**:

First, improved forest conditions, especially sorely-needed wildfire resiliency.

Second, consumer products made from wood and its byproducts, including renewable energy feedstocks for the full range of applications:

- biomass thermal (we heat our campus with sawmill residues),
- biopower, and
- biofuels.

Wood products and its energy by-products help make our nation more self-reliant.

Third, jobs in rural communities.

³⁸ Idaho State Board of Land Commissioners, “About the Federal Lands Task Force” (*supra* note 12).

³⁹ Sen. Ron Wyden (D-OR) chairs the Senate Energy and Natural Resources Committee, and chaired most of this session. He had to step out for a few minutes to speak to a related issue in the Senate Finance Committee, and Sen. Maria Cantwell (D-WA) chaired the hearing during Sen. Wyden’s brief absence.

Some westerners are so dissatisfied with the current situation that they are calling for changing ownership of some federal lands.

I want to talk about changing the rules, not changing ownership.

THREE IDEAS for generating more revenue than the current system does are:

1. Rejuvenating the federal **TIMBER SALE PROGRAM**,
2. Creating a **PROPERTY TAX EQUIVALENCY SYSTEM**, and
3. Testing the **TRUST LAND MANAGEMENT** model with pilot projects.

1. TIMBER SALE PROGRAM

The Forest Service believes that at least 65 million acres of its lands could be improved with restoration treatments, including 12.5 million acres that need to be thinned with logging equipment before fire can safely be restored.

The Forest Service is mechanically treating about 200,000 acres per year, and from that providing about 2.5 billion board feet (BBF) of timber per year.

Rejuvenating the federal timber sale program is the path to the triple win. Some analysts believe that the 1980's level of 12 BBF per year is sustainable. Instead, I suggest harvesting half of that, which is the current Allowable Sale Quantity total of 6 BBF per year.

Price is as important as quantity. Lots of administrative rules affect markets and prices. If sold at prices the states of Washington and Idaho get for trust land timber sales, the 25% share for counties would match Secure Rural Schools Act payments.

2. PROPERTY TAX EQUIVALENCY SYSTEM

This would make federal payments to counties equivalent to property taxes, as if the land were privately owned. This approach may be difficult to design and implement, but each of the states has been doing this for a long time and fairness issues can be worked out.

3. TRUST LAND MANAGEMENT

School trust lands were granted from the public domain at statehood, as part of a bargain that states would not tax federal lands within their boundaries. States were to generate revenues for supporting public schools, either by selling the lands, or retaining ownership and selling commodities from the land, such as timber, forage, and minerals.

Trusts Work! In the contiguous 48 states, 45 million acres of land grants are managed as trusts, and they provide billions of dollars for education and other public purposes.

The trust land management model is flexible; it could be adapted to

- limit land sales,
- include a RAC-like⁴⁰ local advisory committee, and
- make biological diversity one of the trust missions.

The trust model could be organized to provide monies for that purpose.

IN CONCLUSION

Trust land management is our oldest and most durable resource management model.

It is worth testing in several different national forests in order to properly gauge the magnitude of the triple win from actively managing public forests under a different organizational structure.

Thank you for this opportunity. I look forward to your questions.

NOTE:

The hearing ran overtime, and as I was the last to speak, there was no time left for questions. However, two senators did send questions and I was asked to reply to them. The questions and replies will be part of the hearing record.

⁴⁰ Resource Advisory Committee (RAC) is a collaborative group that works with National Forest System managers to design and implement projects using Title II funds under the Secure Rural Schools and Community Self-Determination Act.

QUESTIONS FOR JAY O’LAUGHLIN, UNIVERSITY OF IDAHO

FROM SENATOR MURKOWSKI

QUESTION 1. Some have suggested that the expiration of the Secure Rural Schools program is actually an opportunity to experiment with alternative governance arrangements for national forest system lands. I understand that you have studied the state trust land model and believe it can be adapted successfully for national forest system lands.

Can you elaborate on how the state trust land model can be adapted for national forest system lands?

Reply – It is my privilege to do so. Our nation’s oldest, most durable resource management model is the trust concept applied to managing lands granted at statehood to support public schools and other public institutions. The trust model is used by 22 states to manage 135 million acres of land and creates cash flows of billions of dollars for trust beneficiaries, primarily public schools. The trust model is based on principles of *clarity, accountability, enforceability, perpetuity, and prudence*. Thus trust land management is capable of attaining sustainable resource management on public lands, and likely more capable than the hodgepodge of overlapping statutory mandates, administrative regulations, and case law precedents that characterize the current situation.

Of the five trust principles, only *enforceability* is evident on National Forest System (NFS) timberlands. As a result of extensive litigation, mostly regarding procedural failure rather than substantive environmental quality issues, federal courts have become de facto land and resource managers. As contrasted with the trust principles, NFS objectives are *unclear*, managers are generally *unaccountable* for their actions, at least 65 million acres of NFS timberlands are in a condition that *cannot be perpetuated* (i.e., an unsustainable condition due to excessive fuel loads), and the decision process is *imprudent* because the National Forest Management Act (NFMA) relieves the U.S. Forest Service (USFS) from having to employ efficiency guidelines that ordinary businesses follow.

Trust settlor and trust components. The creator of a trust is called the settlor. For a land management trust on NFS timberlands Congress would be the settlor. Trust components are briefly described as follows. The trust corpus is a body of assets placed under trust management, in this case, timberlands. The settlor creates a mission statement defining land and resource management objectives, identifies the trust beneficiaries, and appoints a board of trustees to set policies and oversee trust land managers, who presumably would be federal agency personnel. In essence, the lands in the trust are managed for the beneficiaries rather than “the public” and the trustees have a fiduciary obligation to act with undivided loyalty to the beneficiaries.

Funding the trust. To make the trust work, funding mechanisms are needed that promote prudent businesslike management of the trust’s revenue-producing assets. Eventually a timberland management trust could become self-sustaining if it had a sufficient

amount of timberlands. Given the current county payment situation, some bridge funding would be needed until revenues begin to flow into the trust fund accounts. To be sustainable the trust must be economically viable and able to provide outputs of goods and services consistent with the trust mission as well as perpetuate and sustain the trust assets.

Biodiversity considerations. Several provisions of federal laws that do not apply to state trust lands must be addressed to adapt the trust model to NFS lands. Foremost among them is the NFMA mandate to provide a diversity of plant and animal species. As USFS Chief Emeritus Jack Ward Thomas once pointed out in the context of northern spotted owl conservation, the NFMA diversity mandate is more difficult for the USFS than meeting the requirements of individual species protected by the Endangered Species Act. The trust model can be adapted to include species diversity as a trust mission, and assets and cash flows from them can be dedicated for that purpose in a biodiversity trust fund account.

Valles Caldera Trust. Application of the trust model to NFS lands is not novel. Some NFS lands in New Mexico have been managed since 2000 as the Valles Caldera Trust, a national preserve. Its mission, however, is as vague as that of the NFS: protect and preserve the scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the lands and to provide for multiple use and the sustained yield of renewable resources. Although it was designed as a revenue-producing trust with a self-sufficiency goal, it is proving impossible to meet because the resource base is not substantial enough.

Mission statement. State trust lands have more precisely defined missions than the Valles Caldera Trust. For example, as per the Idaho Constitution, the lands granted from the public domain at statehood must provide “maximum long-term financial return” for trust beneficiaries, mostly the public schools. However, eight other public institution beneficiaries also receive monies placed into their trust fund accounts, including the University of Idaho. The trust settlor (i.e., Congress) could dedicate some of the public lands trust assets to generate monies for a biodiversity trust fund, and wildlife advocates could be represented on the board of trustees to ensure that the trust assets are used prudently and the revenue-generating capacity is perpetuated. Other social concerns such as recreation opportunities could be similarly included in the trust’s organizational structure with its own trust fund account. So, too, could local government officials who have come to rely on federal payments as compensation for not taxing federal lands.

Collaborative decision-making. The current NFS governance system works best when citizen interest groups collaborate among themselves and recommend actions to the land managers. In theory this reduces litigation over project proposals, but it is slow and not without its critics. The current model stops short of power-sharing between interest groups and managers, which I view as a flaw that probably cannot be remedied under current laws and regulations. Under the trust model, a local collaborative management group could be created to not only work with and advise the trust land manager, but given power to make decisions with the manager or otherwise hold managers accountable for not implementing the group’s recommendations. What about national interests? It is debatable whether there is such a thing as a national interest that is not present in an inclusive group of local interests.

But if there is, then the national interest could be represented on the board of trustees, rather than the local collaborative group.

QUESTION 2. You stated in your testimony that in your view we could sustainably harvest enough timber from national forest lands to provide revenues equivalent to SRS payments. This conflicts with the testimony of Chief Tidwell of the Forest Service, who stated that the Forest Service would need to cut 16.2 billion board feet to meet the SRS payments and that this would be virtually impossible to accomplish.

QUESTION 2.1. Do you agree with the Forest Service that they would need to cut 16.2 billion board feet provide to revenues equivalent to SRS payments?

Reply – No, I do not agree with that statement. Revenues are a function of price as well as quantity. Timber price is determined by many things, including market demand, timber quality, and contract stipulations timber purchasers must follow that add costs to their operations and reduce the price they are willing to pay for timber. Market demand is beyond the control of the USFS, but the agency can change the quality of timber sale offerings and the administrative rules for timber sales.

How much timber is needed, and at what price, to provide revenues equivalent to SRS payments? In 2009, SRS payments peaked at \$438 million. With the 25% revenue-sharing policy that has been in place since 1908, revenues of more than \$1.7 billion would be needed to generate SRS payments. If it would take 16.2 billion board feet (BBF) to generate \$1.75 billion in gross revenues, then the average timber price is calculated as \$108 per thousand board feet (MBF). The question now can be reframed: Is \$108/MBF an accurate reflection of the value of national forest timber? Not necessarily. It could be higher, or it could be lower. In 2011 and 2012 the average price for NFS timber harvested was \$53/MBF and \$55/MBF, respectively. By comparison, the price for timber sold from Idaho's state trust lands averaged \$200/MBF in 2012; in Washington state, \$330/MBF in 2011, and an average of \$300/MBF over a ten-year period from 2001-2011.

QUESTION 2.2. Please describe what a sustainable timber program on national forest system lands would look like that would provide revenues equivalent to SRS payments. What quantity of timber does this represent?

Reply – During several years in the late 1980s, national forest timber sales were as high as 12 billion board feet (BBF). Some analysts would argue that 12 BBF/year is sustainable; if sold at an average of \$142/MBF then the 25% revenue-sharing policy would provide monies equivalent to SRS payments at their peak level. Now consider that if the Forest Service would harvest its self-determined Allowable Sale Quantity (ASQ) of approximately 6 BBF/year at an average price of \$292/MBF, that would provide for peak SRS payments.

Is 6 BBF/year sustainable? By definition, the ASQ can be considered sustainable, at least in the biophysical sense. When the USFS was harvesting 12 BBF/year in the late 1980s,

that was equivalent to only about half of the annual growth increment. If the entire annual growth increment were harvested during a year, the volume of timber in the forest would be the same at the end of the year as it was at the beginning. So even at 12 BBF/year, the timber harvest level was biophysically sustainable, and forest growing stock was increased by a large increment each year. With timber sales currently at 2.5 BBF/year, a very large increment is added each year. As a result forests are overstocked and trees struggle to compete for the limiting factor on each forest site – usually water in the Interior West and nutrients or sunlight elsewhere – and annual tree mortality has been increasing in every inventory period since the timber sale program began to wind down rapidly starting in 1990.

Sustainable forest management must be economically viable and socially acceptable as well as biophysically feasible. According to deceased Congressional Research Service analyst and forester Robert Wolf, in the late 1980s the USFS timber sale program had not paid its own way in any single year since the agency was created, despite USFS claims that the program was profitable. Wolf fixed the blame on a USFS failure to fully account for program costs.⁴¹ Since then timber sale volumes have declined, while procedural requirements have not, so costs are likely even higher per unit of timber sold. However, the main reason the federal timber sale program now struggles to produce 2.5 BBF/year instead of 12 BBF/year is social acceptability. Segments of society have made it clear that they wanted timber sales reduced, if not eliminated, and when they go to court to enjoin a proposed USFS timber sale project, they often are successful.

FROM SENATOR BARRASSO

QUESTION 1. Dr. O’Laughlin, the U.S. Forest Service believes that increasing timber production from our forests to provide revenues equivalent to SRS payments is basically impossible. Do you agree with the Forest Service that this is next to impossible?

Reply – I would stop short of agreeing that it is impossible and say instead it is highly unlikely, mainly because of the current set of rules the agency must follow. These complicated rules test managers’ patience as well as their ability to make scarce budget resources do everything that laws and regulations require. The USFS spends half or more of its land management budget on planning and environmental analysis documents that are often successfully litigated for procedural failing. It may be time to change the rules, as several western states, specifically Utah and Idaho, are formally calling for a change of ownership. While those calls are being tested in legal venues, some rule changes could be tested on the land. The state trust land management model can be implemented on lands that remain in federal ownership. This is not a novel idea, as some NFS lands in New Mexico have been managed as the Valles Caldera Trust since 2000.

⁴¹ Wolf, R.E. 1989. National Forest timber sales and the legacy of Gifford Pinchot: Managing a forest and making it pay. *University of Colorado Law Review* 60: 1037-1078.

If the ASQ were harvested, what would the price need to be? Putting aside planning, analysis, and administrative costs for the moment, let us assume that the agency has sufficient resources to cut as much timber as it wanted to. The Allowable Sale Quantity (ASQ) concept sets a ceiling on what managers feel is a sustainable level of timber harvest.⁴² The current ASQ across all NFS lands is about 6 BBF/year. If that quantity of timber was sold at an average price of \$292/MBF, then the USFS would have gross revenues equivalent to SRS payments at their highest level. The current price is an average of \$54/MBF. Perhaps Congress should consider what additional resources the agency needs to harvest the ASQ, which is about 2.4 times its current harvest level of 2.5 BBF/year, and require adjustments in agency practices so that higher quality timber could be sold under less onerous rules that would attract higher prices for sales. Some administrative rules would likely have to be changed to do that, but I do not understand procedural and contractual details well enough to make a recommendation. However, I do believe that Congress could improve the current situation and make land and resource management plans more meaningful by setting the ASQ as a target, not a ceiling, and specifying how the ASQ should be determined so that it is sustainable. If a land and resource management plan fails to do that, it is in my opinion not a very useful plan.

QUESTION 2. Would linking timber management to revenue generation lead to unsustainable logging?

Reply – No. The trust model used by the states to manage lands granted at statehood for supporting public education generally has a revenue- generating mission objective. If the mission is for long-term revenue generation, as in Idaho, then the trust land manager must protect and perpetuate the sustained-yield capacity of the land or be in violation of the long-term revenue-production mandate. My observations are that state trust lands in Idaho, Montana, and Washington are managed sustainably under a revenue-production mission objective. I suggest some pilot projects on federal lands to test this question as a working hypothesis. Then arguments could be based on evidence rather than speculation.

What is meant by sustainable logging? Logging is a forest management tool, and sustainable forest management must be biophysically feasible, economically viable, and socially acceptable. There are some who will argue that state trust land timber harvests are not sustainable, and that the current harvest of 2.5 BBF/year on national forests is unsustainable. Others can be expected to argue that state trust lands are managed sustainably. And some might even argue that the 12 BBF/year harvests of the late 1980s on national forests were sustainable. The NFMA does not require the USFS to practice sustainable forest management, but perhaps it should. A starting point would be revisiting the conditions under which timber harvest is permissible, and the NFMA partially addresses that question by

⁴² Brown, G., J. O’Laughlin, and C.C. Harris. 1993. Allowable sale quantity (ASQ) of timber as a focal point in national forest management. *Natural Resources Journal* 33(3): 569-594.

restricting harvests to “mature trees” as defined by the non-economic criterion of culmination of mean annual increment, which falls at a much older age than the cutting age of forests managed for revenue production. Third-party certification of sustainable forest management has been tested on NFS lands. Whether certification should be a requirement under the current system has been debated and the answer was no. Although certification is costly, it has public relations value and could be a useful approach to test as a feature of trust land management pilot projects.

Biophysical feasibility. The annual forest growth on all NFS timberlands is about 6.5 billion cubic feet, or roughly 32 BBF, with annual mortality representing about 11 BBF. That means if the centuries-old sustained-yield rule of thumb – don’t cut more in a year than the forest grows – were the guideline, then the national forests could provide a sustainable timber harvest of 32 BBF based on gross growth or 22 BBF/year based on net growth. That means if 22 BBF were harvested in a year, there would be the same amount of live green forest growing stock at the end of the year as at the beginning. A legitimate set of questions that I do not believe have ever been asked would be, what is the appropriate growing stock volume for NFS timberlands, and what should the annual net growth increment be? (After gross growth has been reduced to account for mortality and removals by timber harvest or other forest restoration activities.) Determining a sustainable ASQ implicitly relies on replies to these questions.

Economic viability. Given the high administrative planning and environmental analysis costs incurred by the USFS to comply with NFMA and the National Environmental Policy Act (NEPA) – some analysts estimate it to be more than half the agency’s land management budget – then the timber sale program probably is not economically viable. As noted in the reply to an earlier question, the USFS has never been able to demonstrate that the timber sale program was profitable.

Social acceptability. Although society has not deliberated the question of what a sustainable NFS timber harvest level would be, segments of society have used planning and environmental laws to sue the Forest Service seeking to stop timber sales. Courts have often interpreted the laws in the plaintiff’s favor.

QUESTION 3. In your testimony you talked about changing the rules as a way to increase timber production while also addressing our wildfire/forest health problem. Will you further explain what rules and how they must be changed?

Reply – Yes, gladly. The question addresses two parts of what I described as the triple-win from active forest management: improved conditions and useful products. The third part is creation of family-wage employment. Before responding directly to the question of rule changes that could advance the triple-win concept, a brief digression provides a description of and a prescription for the wildfire/ forest health problem that may provide useful context.

Wildfire/forest health problem. Western forests evolved in the presence of fire, thus are what ecologists call fire-adapted. By excluding fire from forests for a century through very effective fire suppression activities, the fuel complex has been altered. Fuel loads are at unprecedented high levels and wildfires have become larger and less controllable than at any time in a century. Ways to improve the situation are well known: Either return fire to the landscape at something approximating the historic fire regime, or where that is too dangerous or not socially acceptable, use a fire surrogate to reduce hazardous levels of fuel – i.e., remove woody vegetation using logging equipment. Even if it is desirable to restore fire everywhere, the USFS points out that at least 12 million acres need mechanical treatments, i.e., logging, to remove vegetation before restoring fire would be considered reasonably safe. The agency is doing about 250,000 acres of mechanical treatments per year and producing 2.5 BBF/year. At that rate it will take 48 years to do the mechanical treatment part of restoration, and because vegetation grows back the mechanical treatments will need to be repeated to keep fuel loads below hazardous levels if fire does not return as expected soon after fuel treatments. If the ASQ of 6 BBF/year were harvested only from these 12 million acres of lands needing mechanical treatment, then the program of restoration work would take 20 years instead of 48.

The trust model. It seems foolish to wait any longer to begin a program of accelerated restoration; however, the federal budget situation is tricky, to put it mildly, and sustainable forest management must be economically viable. The idea that revenues from timber sales should be dedicated to fund forest restoration work may be a heretical non-starter for some people, but those with open minds should consider that the principles underpinning the trust land management model do not necessarily mean that linking timber revenues to specific programs, whether it be county payments or forest restoration work, creates an unsustainable situation. Based on her important and insightful book on *State Trust Lands*, Sally Fairfax, professor emeritus of the University of California-Berkeley, concluded that the trust land management model was more likely to attain sustainability than the current system.

Rule changes. If trust land managers had to deal with all the same rules that NFS managers must comply with today, society should not expect outcomes that are much different than what the NFS lands are currently providing for society. I would describe that as overstocked forests waiting to burn in unprecedented large and uncontrollable wildfires, like those in 2000, 2006, 2007, and 2012, each successive year topping the previous record of acreage burned in the west while the average number of wildfires per year has remained relatively constant for the past three decades. Tens of millions of timberlands are in an unsustainable condition and managed passively rather than actively.

Redo the NFMA statute. The USFS has tinkered with NFMA regulations numerous times and still failed to provide a sustained yield of multiple goods and services while forest conditions have worsened. The NFMA diverts scarce resources to creating planning documents that are chiefly useful for the maps that designate dominant-use areas where timber can be harvested and motorized recreational vehicles can go. Pay careful attention to the NFMA diversity mandate. Redefining the ASQ mandate and a new set of criteria describing where and when timber can be harvested would help.

Put land managers in charge of land management, not courts. These changes would help: Reduce the need for land managers to shuffle papers in the office and get them out on the land where they can improve landscape resiliency by removing hazardous fuels. Healthy Forest Restoration Act mechanisms should be used more widely.

NEPA requirements are burdensome and expensive. Administrative approaches to NEPA reform have not made much difference. Some instructions from Congress could help. Create categorical exclusions for fuel treatment projects designed to improve wildfire resiliency across large landscapes. If there are to be such things as NFMA land and resource management plans, exempt them from NEPA analysis. These planning documents describe dominant use areas as guides to actions across multi-million acre planning units, not decision documents for taking action. Such actions are proposed in smaller-scale projects, but wisdom currently emerging on NFS lands in South Dakota and Arizona is that NEPA analysis needs to be done at the scale of hundreds of thousands of acres, which is at least an order of magnitude greater than more customary project size of several thousand acres. The wildfire/forest health problems are large-scale and so must be the creative approaches to improve problem situations.

Conclusion. I appreciate the senators' questions and the opportunity to respond to them thoughtfully. I hope some of these ideas will improve the way NFS lands are managed. That is a common interest shared by citizens across the U.S., but especially in the western states where the NFS dominates the landscape, and in no other state as much as Idaho. Trust land management works, and today's managers are just as innovative as those who initiated the federal land management systems. If managers were freed from expensive administrative burden they would be able to demonstrate the good things they are capable of doing. Try some pilot projects with the trust model, and do it at a large scale. A ranger district here and there will not be enough, as the Valles Caldera Trust demonstrates. A four million acre area, such as the Clearwater-Nez Perce NF planning unit in north-central Idaho, or the Boise-Payette-Sawtooth NF unit in southern Idaho, is the right scale. So are the Fremont-Winema, Okanogan-Wenatchee, Tongass, Medicine Bow-Routt, and Uinta-Wasatch-Cache. And there are many others.