



Establishing an Oregon State Trustlands Transfer Program

A Proposal to Resolve Conflicts Between Environmental Conservation and Oregon's Common School Fund Trustlands, Including Elliott State Forest

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Issue: Since the mid-1800's, Oregon has managed public lands known as "trust lands" to generate revenue for education funding. Envisioned at a time when old-growth forests, salmon, and other natural resources seemed limitless, today this program is increasingly in conflict with modern Oregon values, as well as laws that protect endangered wildlife, clean water, and salmon.

This conflict has come to a head in the Elliott State Forest, where the twin priorities of revenue for the Oregon Common School Fund and the public's desire to protect Oregon's remaining old-growth forests have collided. The Elliott is home to the only significant old-growth forest surviving anywhere on state-owned lands in Oregon. A proposal to privatize the Elliott and its 93,000 acres of public lands to provide revenue for the Common School Fund has generated intense controversy and public opposition.

However, other, better models exist. Since 1989, the State of Washington has used a Trustlands Transfer program to identify lands that are unsuitable for timber production because of outstanding wildlife, recreation, or other natural resource values, retain them in public ownership, and improve economic return to trust beneficiaries. According to the State of Washington, this program has protected over 116,000 acres of environmentally sensitive public lands, while providing \$738,080,000 of funding for education and other programs¹.

What's at Stake: The debate over Oregon's state trust lands is being driven by the public's desire to maintain ownership of the 93,000-acre Elliott State Forest, and to protect the century old forest, salmon, and wildlife it supports. The Elliott is located in the Oregon Coast Range east of Coos Bay, and includes approximately 41,000 acres of old-growth forest over 100 years old. The Elliott sustains some of the strongest runs of wild coho and chinook salmon and steelhead left in the Oregon Coast Range, with Oregon Department of Fish and Wildlife biologists estimating that 22% of all wild Oregon Coast coho salmon originate in the Elliott. This public forest also provides critical habitat for wildlife protected under state and federal law, and an enormous carbon bank where vast amounts of climate change-causing pollution is captured and stored.

¹ 2013-2015 Trustlands Transfer Program report,
http://www.dnr.wa.gov/Publications/amp_tlt_proposal_13_15.pdf

The Problem: In 2011, the Oregon Departments of Forestry and State Lands announced plans to nearly double the rate of clearcut logging on the Elliott, including clearcutting of trees over 100 years old. This sparked a public backlash and a legal challenge under the federal Endangered Species Act. This legal challenge was resolved through a settlement in early 2014 that has significantly reduced logging on the Elliott and has resulted in a significant decrease in revenue to the Common School Fund.

This reduction has sparked a need to explore other options on the forest in order to meet fiduciary mandates. The Oregon Department of State Lands is interpreting its obligations to the school fund to mean it must privatize (sell) the Elliott if state logging plans are restrained and no alternative funding model is identified. While privatization may generate some revenue for the fund (any encumbrances against logging due to the federal Endangered Species Act will transfer to the new owner), it would mean 93,000 acres of Oregon public land—and 41,000 acres of old-growth forest—being sold off to the highest bidder. This would be in direct conflict with the desires of the vast majority of Oregonians and of the public comments the Department has received on the issue.

Clearcutting is the primary form of logging on private lands in Oregon, and the weak rules of the Oregon Forest Practices Act (OFPA) would govern the Elliott if it were privatized. The OFPA has come under heavy fire in recent years not only for its allowance of aggressive clearcutting, but also the heavy use of toxic pesticides and herbicides, and lack of effective buffers to protect rivers and streams. There is no legal protection for older forest under the OFPA.

Recent scientific reports on climate change in the Pacific Northwest highlight both how serious the problem could be for Oregon, and how important forest conservation is as a tool to combat it. The temperate rainforests of the Pacific Northwest are highly effective at capturing and storing carbon dioxide—particularly the old-growth forests found on the Elliott. Dr. Beverly Law and other Oregon State University researchers have found that managing forests to restore and protect old-growth characteristics, and avoiding practices such as clearcutting, can be effective strategies for increasing carbon storage and combating climate change.

However, the Elliott's tie to the Oregon Common School Fund creates an inherent conflict between the proper conservation management of this public forest and the mandate to generate revenue. Department of State Lands managers are put in an impossible position, where they must choose between a) violating their constitutional obligations to generate revenue or b) violating state and federal environmental laws that protect endangered species, old-growth, and clean water. Not only is the Department faced with an intractable conflict, they also do not have the resources or policy expertise to address the myriad of environmental issues facing the Elliott.

The Solution: Rather than a politically controversial and environmentally harmful privatization scheme, the State of Oregon should instead adopt a trustlands transfer program, modeled on the highly successful legislation adopted by the State of Washington.

Using the Washington model, the Department of State Lands and State Land Board would identify lands unsuitable for logging due to their high conservation value (such as old-growth stands over 100 years old, riparian areas, and habitat for endangered species). These lands could then be recommended for transfer to another state or federal agency, contingent on funding being provided to acquire the fair market value of the lands.

Under the Washington model, the legislature would then make funding available to carry out this purchase and transfer, satisfying both the Common School Fund obligations and the public's desire to protect important natural resource values. Other potential funding sources exist, including the federal Land and Water Conservation Fund, should transfer to the Forest Service become the preferred option.

In Washington, the trustlands transfer program is funded by modest annual contributions as part of the state budget process. This allows the transfer of lands unsuitable for logging to be spread out over time, reducing both the fiscal challenges in funding such a program and giving the public more opportunity to consider proposals.

Such a program could serve as a solution not only for the conflict over the Elliott, but also provide an important tool for addressing conflicts that may arise over other lands in the future.

Key points for an Oregon Common School Fund Solution:

More Certainty for the Common School Fund: The Oregon Common School Fund exists to provide funding for K-12 education. There is no requirement that funding come from logging, or privatizing public lands, and the conflicts between aggressive logging and modern conservation standards are unavoidable. A trustlands transfer program would allow this obligation to be met while still maintaining public ownership and important conservation values. Funds provided to compensate the common school fund could be used to directly fund education, or to acquire replacement acres more suitable for logging or other activities.

Conservation Gains to Justify Public Funds: The Elliott is public land, and in order to justify asking Oregon taxpayers to fund a solution to the conflict over the Common School Fund, clear conservation benefits must be demonstrated. The underlying premise of a trustlands transfer program is that the public compensates the fund in exchange for strong, permanent protections for salmon, wildlife, clean water and outdoor recreation. Key principles for such a package should include:

- Transferring Elliott State Forest lands to the Oregon Parks and Recreation Department, or another suitable public entity: Oregon Parks enjoys broad public support and trust, and has vast experience in conserving public lands. Transferring the Elliott to Parks, to be managed for old-growth protection, wildlife, recreation, and sustainable science-based restoration forestry, would be a critical step in building public support for a plan. It also ensures a level of public accountability and transparency that would not exist under a quasi-private ownership model. If another entity were chosen to manage the Elliott, it is important that they enjoy a similar level of public trust, and be subject to strict guidelines regarding appropriate management of the forest.
- Old-growth and Clean Water Protection: Old-growth and mature forests (stands and trees over 80 years old) must be permanently protected from logging, as should stream buffers large enough to sufficiently protect clean water, protect and restore salmon runs, and meet federal standards.
- Working Forest Management Area for Younger Stands: Legislation authorizing the transfer of the Elliott should also create a Working Forest Management Area designation for younger stands (under 80 years old). This area should be managed with the goals of:

1) restoring forest and watershed health, 2) generating sustainable timber volume as the by-product of thinning and other restoration activities, and 3) evaluation of best practices in the restoration of forests and watersheds. This designation should include strong and permanent statutory protections for clean water, salmon, wildlife habitat and carbon sequestration, and prohibitions on clearcutting and use of toxic pesticides and herbicides.

- Revenue from Thinning and Other Activities: With more than half of the Elliott comprised of previously logged stands, restoration-based thinning could still generate sizable revenues, employ a local workforce, and provide logs to area mills. In addition, Parks, or other management entity, should be directed to investigate and pursue other methods of generating revenue from sustainable forest management, such as obtaining and marketing carbon credits, user fees, private and grant monies, and non-industrial forest products. Any funds generated should be used to: 1) cover the cost of administering the lands, 2) support environmental restoration activities and appropriate recreational facilities on the Elliott, and 3) assist in defraying the costs of purchasing the Oregon Common School Fund interest in the forest.
- Recreational Access: Transfer of the Elliott to the Oregon Parks and Recreation Department should ensure permanent public access to its 93,000 acres, and allow for appropriate recreation activities such as hiking, fishing, hunting, wildlife viewing, and camping. Appropriate recreational infrastructure on the Elliott, including trails, campgrounds, interpretive areas, and other facilities, would further increase economic benefits to local communities.

Oregonians have a long history of coming together to support the protection of public lands, as evidenced by the overwhelming vote in 2010 to maintain the use of lottery funds for this purpose. Proposals to transfer the Elliott out of public ownership not only run counter to our state's conservation values, they are also unnecessary. By adopting a trustlands transfer program, we can maintain the Elliott as public land, provide for the Common School Fund, enhance environmental protection, and provide increased economic opportunities for rural communities through sustainable management of younger stands and the development of new recreational resources and opportunities.