

**MISCELLANEOUS PUBLIC LANDS AND  
FORESTS BILLS**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION  
ON

**S. 2791**

**S. 2966**

**S. 2895**

**H.R. 3759**

**S. 2907**

**H.R. 4474**

MARCH 10, 2010



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## MISCELLANEOUS PUBLIC LANDS AND FORESTS BILLS

WEDNESDAY, MARCH 10, 2010

U.S. SENATE,  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:52 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Ron Wyden presiding.

### **OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON**

Senator WYDEN. The subcommittee will come to order.

The purpose of today's hearing is to receive testimony on several bills pending before the committee. These include S. 2895, the Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009; the Federal Land Avalanche Protection Act of 2009; S. 2966 and H.R. 4474, the Idaho Wilderness Water Facilities Act; and S. 2791 and H.R. 3759, the Forest Harvest Opportunity Act.

Before we get started, I would like to say just a few words about S. 2895. This is legislation that I have introduced to get saw logs to Oregon mills, get our forests healthy again, and protect our treasured old growth forests on the east side of Oregon.

I am very pleased that my colleague in the Oregon congressional delegation, Senator Merkley, has joined me as a co-sponsor of this legislation. I look forward to working closely with Senator Merkley to pass this bill, for it is urgent business, priority business for rural communities in my State that every single day are walking on an economic tightrope trying to survive.

This legislation was the result of years of work, months and months of negotiations with leaders from the timber industry and leaders from environmental groups and scientists. Bringing both sides together to craft this legislation, in my view, significantly increases its chances to succeed, and on my watch, what we seek to do is end the timber wars in my home State of Oregon.

The gridlock that has come about from the timber wars has taken its toll on both the well-being of our rural communities and the health of our forests. Nowhere has that impact been greater than in Oregon's eastside forests. With each passing month, the failure to address the needs of Oregon's increasingly unhealthy forests means that they have grown more and more at risk from preventable fire, insect infestation, and disease.

Now each side in this fight I call the timber wars has thoroughly armed itself politically. Each has enough to survive, but never enough to succeed when Oregonians that I meet at community meetings and certainly on the east side consistently tell me, "Ron, we need the tools in order to have good-paying jobs in our communities, and we want to protect our treasures."

The end result of all this gridlock across Oregon's Federal forest landscape is more than 9 million acres of choked, at-risk forest in desperate need of management. Millions of acres of old growth are in danger of dying from disease, insects, or fire. Certainly, the infrastructure of the forest products sector, our mills and our loggers and the jobs that are so essential for them, are now facing a very uncertain future.

Unless there are fundamental changes, the economic and environmental dangers that result from the lack of attention that our forest products and environmental coalition have been working on, these dangers are going to grow and not shrink in coming years.

I am certainly encouraged, however, by the opportunity that we have got in front of us today. I am encouraged because we have had some real courage shown by folks in the forest products sector, folks in the environmental community, who came together with me to introduce legislation that, in my view, can bring jobs, a healthier forest, and new well-being to communities across rural Oregon and particularly 8.3 million acres of Federal forest in eastern and central Oregon.

Timber executives are now standing shoulder to shoulder with leaders in the Oregon environmental community to take shared responsibility for saving endangered forests and the economies of rural areas. Today, in eastern Oregon, only a small handful of mills have been able to survive. Without giving them greater certainty of a supply of saw logs and an immediate increase in merchantable timber, more mills are going to close. If that happens, our eastside forests will pay the price, and on my watch, I am not going to let that happen.

Without mills to process saw logs and other merchantable material from forest restoration projects, there isn't going to be any restoration of our eastside forests. My legislation will provide an immediate supply of logs in the short term to jump-start restoration efforts and keep the mills alive.

Job one must be saving our remaining mills and our loggers, what I call the infrastructure of forestry in central and eastern Oregon, while preserving old growth and watersheds. Three years from its passage, this legislation will provide long-term certainty required to restore each of the 6 eastside national forests, restore good-paying jobs to rural communities, and protect our most sensitive environmental treasures.

Now we are very much aware that the road ahead will see significant challenges, and I expect that our coalition is going to be tested. But I have a lot of faith, great faith in the folks who developed this agreement. I know that they are as committed as I am to preserve the agreement that we have codified in our legislative proposal.

We have already demonstrated something that I think colleagues here in the Senate are going to be thinking more about in the days

ahead. That is the importance of working together on difficult issues and, as a result, achieving far greater results by working together than working apart. I am not going to consider a success, though, until Oregon's Federal forests are adequately funded to properly manage and restore their health as the valuable Federal assets that they are.

I expect to lead the fight for funding that is needed to manage all our national forests, and that, too, is priority business for this subcommittee. As part of that effort, I am going to pull out all the stops to secure funding for the administration's priority watershed and job stabilization initiative because I think the administration is on the right track by working to promote collaborative solutions to meet the economic and environmental needs of our forests and rural communities.

Let me close by thanking the individuals and organizations who have been in the trenches during what has clearly been hundreds and—I am looking out at some of them—I suspect it is thousands of hours of difficult work and negotiations to reach an agreement on this bill.

One final comment, if I might? Today, we are going to have a witness here from Grant County, Oregon. I just want to take a moment, as chairman of this subcommittee, to applaud the residents of Grant County for the extraordinary rejection of hatred that they demonstrated last month.

When the Aryan Nations, a neo-Nazi group known for violence, announced plans to relocate to Grant County, the people of Grant County rose as one to rally around their community and prove that racism is not welcome in Grant County. More than 1,000 people, a sixth of the county, attended public meetings to discuss how they would protect their community. So I am proud to be an Oregonian, and I am very proud to represent Grant County in the U.S. Senate.

We have got a lot of Oregonians in the audience. I thank all of them for making the trek across the country. My friend and colleague, Senator Barrasso, is not here at this time. So let us go right to our witnesses—Harris Sherman, Under Secretary of Agriculture for Natural Resources and Environment, Department of Agriculture; Mr. Edwin Roberson, Assistant Director, Renewable Resources and Planning, Bureau of Land Management.

Mr. Sherman and Mr. Roberson, if you will come forward, that will be very helpful. While you are coming forward, let me also give a special thanks to Mr. Sherman. I suspect he thinks that much of his waking time is being consumed talking to Oregonians, talking to our constituents about this legislation and other matters. I see his staff smiling in the back. So there is general recognition of that.

Mr. Sherman, let me express my appreciation to you. I know you have got a lot on your plate. You have just come to this position, and suddenly, you have Oregonians camping out every which way, every time you turn around. We thank you for your thoughtfulness and responsiveness to them. We will make your prepared remarks a part of the record in their entirety.

Mr. Roberson, BLM is a frequent guest before this subcommittee as well, and we appreciate the cooperation you have always shown us as well.

So, gentlemen, let us begin and start with you, Mr. Sherman.

**STATEMENT OF HARRIS SHERMAN, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE**

Mr. SHERMAN. Thank you very much, Senator Wyden.

Let me first begin by apologizing. I have somewhat of a cold. So, if I hack my way through this testimony, I apologize in advance for that.

It is a great pleasure to be here, and I am here to present the administration's position on 3 separate bills—S. 2966, S. 2907, and S. 2895. I want to focus most of my comments on your bill, S. 2895, but let me offer just a few quick comments on these other 2 pieces of legislation.

I would ask, Senator, if my written testimony can be incorporated into the record?

Senator WYDEN. Without objection, it is done.

Mr. SHERMAN. Thank you very much.

Very quickly, on S. 2966, this is the Idaho Wilderness Water Facilities Act. I just want to go on the record as saying the administration does support this bill. We have reviewed the bill very carefully, and I think that it provides for very specific criteria upon which the Secretary can issue special use permits for in-holdings within 2 wilderness areas in Idaho.

Unless there are questions, I would then move on to the next bill.

Senator WYDEN. You have full rights to move quickly.

Mr. SHERMAN. OK. Second, S. 2908 is the Federal Land Avalanche Protection Act. My written statement clarifies the administration's general support for the concepts contained in this bill. We do have some concerns about section 3 of the bill, principally relating to added potential responsibilities for the Forest Service concerning active management of avalanches and some comments on a requirement for a centralized depository and advisory committees concerning avalanche issues and our role in avalanche issues.

We would like to work with this committee and the staff of the committee on the language of this legislation, and I am happy to answer any questions with respect to that piece of legislation.

Senator WYDEN. Very good.

Mr. SHERMAN. OK. Then turning to your bill, S. 2895, at the outset, Senator, I want to express my appreciation to you for your extraordinary leadership and energy and just effort in bringing this highly diverse group of Oregonians together and coming up with a consensus as to how to focus and deal with the challenges on the six eastside Oregon national forests.

This administration strongly supports the goals and the principles of S. 2895, and I would like to be specific in clarifying why we support this. First, the bill's focal point is on restoration of these 6 national forests. This is restoration not on a random basis, but this is restoration on a comprehensive land-scale basis.

That is the only way we are going to get to the root causes that we are facing today is a broad, systematic effort. So, that is exactly what needs to be done, and we applaud your focus on a landscape-scale effort.



Second, the bill recognizes that collaboration is essential in getting the work done. It is very clear to me in my first 4 months on this job that without collaboration, whether it is in Oregon or anywhere else in the United States, we are going to have a very, very hard time accomplishing our goals of restoring the Nation's forests. So collaboration is essential, and I think this bill places appropriate energy on bringing people together in a collaborative mode.

Third, the bill gives careful direction to the protection of the environment, to the right siting of our road systems on national forests, and the building of science into decisionmaking. The bill also recognizes the importance of the woods product industry, without which restoration cannot happen.

Having a strong, viable, sustainable timber industry is key to providing jobs, to sustaining our rural communities, and to getting this restoration work done. I wholeheartedly endorse your opening comments, Senator. I think they are right on.

The bill also highlights the importance of biofuels and its potential role as part of the restoration process. The bill also addresses the appeals process and better approaches to resolving conflicts before they turn into litigation.

As my written testimony outlines, these principles are very consistent with the themes that Secretary Vilsack has outlined beginning back in his speech last August in Seattle and the consistent message that USDA has brought to these issues in the past 6 or 7 months.

There are certain clarifications and other concerns that we would like to work on, Senator, with you and your staff and the committee staff in the weeks ahead. I have identified what those concerns are in my written testimony.

So I think I will stop with that, and I would welcome any questions that you might have.

[The prepared statement of Mr. Sherman follows:]

PREPARED STATEMENT OF HARRIS SHERMAN, UNDER SECRETARY, NATURAL  
RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

S. 2895

Mr. Chairman, Members of the Committee, thank you for the opportunity to share the Administration's views on S. 2895, the Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009.

S. 2895 directs the Secretary of Agriculture to establish a science advisory panel, conduct an assessment of forests located in eastern Oregon and subsequently undertake ecological restoration projects. While the assessment is prepared, the legislation directs the Secretary to mechanically treat 80,000 acres of forest in the first fiscal year following enactment, 100,000 acres in the second fiscal year, and 120,000 acres in the subsequent year. During this "interim" period, the projects on the forests within eastern Oregon would not be subject to an administrative review process (appeals). The legislation also requires the Secretary to promote use of biomass and encourages the use of long-term stewardship contracts.

I would like to express my appreciation to Senator Wyden for the leadership, energy and effort that went into developing this legislation and his work to bring diverse interests together. There are numerous concepts in the bill that the administration fully supports including collaboration, achieving restoration results on the ground, conducting assessments at a broad landscape scale to focus our efforts, reducing our road system to what is needed, establishing a pre-decisional administrative review process, maintaining our much needed wood products industry and infrastructure, and promoting sustainable use of biomass as an energy source.

## CURRENT EFFORTS

On our national forests, we are currently engaged in numerous administrative efforts to encourage and expand many of the concepts included in this legislation.

When Secretary Vilsack articulated his vision for America's forests, he underscored the overriding importance of forest restoration by calling for complete commitment to restoration. He also highlighted the need for pursuing an "all-lands" approach to forest restoration and close coordination with other landowners to encourage collaborative solutions.

To that end, the Forest Service portion of the President's 2011 budget proposes to invest \$50 million to improve watershed conditions through a new initiative, Priority Watersheds and Job Stabilization, as a part of the Integrated Resources Restoration budget line item in the National Forest System appropriation. Under this initiative, priority watersheds will be identified through a rapid watershed assessment or State forest assessment. Large-scale (greater than 10,000 acres) watershed restoration projects within these priority watersheds will be selected through a national prioritization process which favors projects that demonstrate coordination with other federal and state land management agencies; improve watershed function and health; create jobs or will contribute to job stability; create or maintain biomass or renewable energy development; and use youth programs. Restoration projects will clearly show restoration needs and goals, and will be developed in a collaborative manner with local communities.

Throughout the nation, the Forest Service is engaging with a variety of citizens' groups to develop collaborative solutions to help us provide the best possible stewardship of the national forests. Two notable efforts in eastern Oregon include the Glaze Forest Restoration Project and the Lakeview Stewardship Group.

The Glaze Forest Restoration Project on the Sisters Ranger District of the Deschutes National Forest was initiated in 2005 when Oregon Wild and the Warm Springs Biomass LLC approached the Forest Service with a proposal to restore 1200 acres of eastside Cascades old growth ponderosa pine forest so that it can function more naturally in a fire-prone environment. A collaborative partnership of diverse interests agreed to cooperate and apply ecosystem, community and economic values on the land. After five years of active engagement and bringing these diverse groups together to plan and analyze this stewardship project, implementation began this January. No appeals were filed on the project, making it one of the few Deschutes National Forest projects involving commercial forest products interests to avoid appeal since 1996. The project work is ongoing, and aims to jumpstart the old growth characteristics in the Glaze area while protecting the aspen stands, scenery and wildlife habitat.

As important as the results achieved on the ground are the outcomes of the collaborative process that have resulted in strong relationships built on trust that will provide the basis for future collaborative work and projects that restore our national forests on a larger scale and over the long-term.

The Forest Service also employs a variety of assessment methods to gather information at the landscape or watershed level to guide our restoration efforts and develop projects. For example, the Pacific Northwest Region has an Aquatic Restoration Strategy in place which identified priority basins and watersheds for restoration. The Region is conducting a region-wide assessment of terrestrial habitat restoration needs and is working with the Western Wildland Environmental Threat Assessment Center to conduct a regional assessment of wildfire risk. These assessments will help identify the highest priority landscapes for integrated forest and watershed restoration treatments. In addition, the Region is working closely with the states of Oregon and Washington as they complete their State-wide Forest Resource Assessments and Strategies as required by the 2008 Farm Bill. The State-wide assessment is an analysis of forest resource conditions and trends, threats, and opportunities for the purpose of identifying and treating priority forest landscapes. The Region is using this all lands approach to mutually identify priority landscapes and plan how to best leverage resources.

Another tool that has been helpful in building relationships and improving agency decision making is use of the objections process prior to a decision, rather than using an appeals process after a decision is made. Our experience with the objections process indicates that the process tends to increase direct dialogue between the agency and stakeholders and often results in resolution of concerns before a decision is made, and thus a better, more informed decision results. One example is the Sportsman's Paradise Fuels Reduction Project on the Mt. Hood National Forest. This project was initiated by local homeowners, who along with the Oregon Department of Forestry and an environmental group worked collaboratively to develop recommendations for the District Ranger. The most positive aspect of this effort is that

the Sportsman's Paradise homeowner's group, which previously had not engaged with the Forest Service became an active participant in the planning process resulting in new relationships. The Mt. Hood National Forest received an objection from a participating environmental group. After discussions with the group, the District Ranger made some minor revisions to the document which resulted in the group withdrawing their objection. Upon implementation, the authorized work will decrease potential catastrophic fire loss for approximately 900 acres surrounding the Sportsman's Paradise community of approximately 170 lots.

I am very interested in expanding these successes not only within the State of Oregon, but throughout the country. I am focusing on advancing several principles I believe are paramount to accomplishing restoration on the entire national forest system. These principles include collaboration with diverse stakeholders, efficient implementation of the National Environmental Policy Act, greater dialogue over areas of conflict prior to the decision, ensuring opportunities for local contractors, expansion of the use of stewardship contracting, and monitoring to track our results on the ground. S. 2895 includes many of these principles I believe lead to success.

#### AREAS OF CONCERN

While the Administration supports the key concepts in this bill, we do have some specific issues.

I look forward to further dialogue with Senator Wyden and the committee to address the following areas of concern and offer other minor technical input into sections of the legislation.

- Inclusion of existing management guidance and direction in statute: While we appreciate the intent to ensure adequate protection of riparian areas and the species dependent upon them, we are concerned about codifying any particular strategy that is intended to change over time. We want to work with the committee to ensure that as new information becomes available or there are changed circumstances in the forests that we can easily and quickly adapt our plans and strategies.
- Mandate to treat specific acreage levels. These specific levels of treatment may result in unrealistic expectations on the part of communities and forest product stakeholders that the agency would accomplish the quantity of treatment required. The levels called for in the first year would require the forests involved to more than double their current levels of treatment. We want to work with the committee to ensure these treatment levels do not affect other forests and programs in Oregon or the rest of the country.
- Establishment of a formal science advisory panel. I am concerned that the proposed advisory panel could be costly and process laden. It appears likely that the tasks assigned to the advisory panel would not be achievable within the timeframes provided. Reaching consensus among a broad array set of scientists on a wide variety of management recommendations for a landscape as diverse as eastern Oregon will be a challenging task. Often, there is conflicting peer-reviewed science regarding appropriate management actions and disagreement over the geographic applicability of scientific conclusions. The selection of restoration projects could be affected if the scientific panel cannot achieve consensus, or if it makes a recommendation that the Forest Service found inappropriate to a specific management situation. Finally, we believe that establishment of an advisory science panel is unnecessary, because personnel on the eastern Oregon forests currently work very closely with scientists from the Pacific Northwest Research Station and other scientists, including those from Oregon State University and the University of Washington, to ensure that management practices reflect current science and that decision makers are aware of relevant disagreements within that science.
- Exemption from the appeals process for certain projects during the interim period. An administrative review process serves as an important and useful process for resolving issues and averting litigation. With no established administrative method to review decisions and areas of disagreement, we could see more litigation during the interim period as a result of having no administrative review process. Further, the bill provides for an objection process for decisions on ecological restoration projects that is only subtly different than the objection process in our current regulations. Our preference would be to have the authority to use our current regulations at 36 CFR 218 to manage an objections process for all interim and ecological restoration projects.
- Collaboration: The provisions in the bill that provide for recognition of collaborative groups are much more formal than necessary to ensure collaboration on restoration projects. Collaboration can and has been achieved without formal

recognition; I am cautious about adding more process to our already rigorous public engagement process. Further, it is not clear whether these groups would be subject to the Federal Advisory Committee Act.

- The precedent setting nature of the legislation and the movement toward greater disaggregation of the national framework under which the national forests are managed continues to concern me. The Agency has a meaningful national approach to management of the forests that takes into account local conditions and circumstances through the development and implementation of Land and Resource Management Plans.

S. 2895 includes many of the concepts embodied in the president's proposed 2011 budget. We will use the full and comprehensive range of authorities available to the agency to restore and sustain forest landscapes in a collaborative open manner.

I want to again thank Senator Wyden for his leadership and strong commitment to Oregon's national forests, their surrounding communities and forest products infrastructure. I look forward to working with the Senator, his staff, and the committee, and all interested stakeholders on this bill and to help ensure sustainable communities and provide the best land stewardship for our national forests.

This concludes my prepared statement and I would be pleased to answer any questions you may have.

S. 2907

Mr. Chairman, Members of the Committee, I am Harris Sherman, Under Secretary of Agriculture for Natural Resources and the Environment. Thank you for the opportunity to share the Department's views on S. 2970, the Federal Land Avalanche Protection Act of 2009.

S. 2970 directs the Secretary of Agriculture to establish a coordinated avalanche protection program to identify the potential for avalanches on Federal lands and inform the public about the hazard; to carry out research related to avalanches to improve forecasting; and to reduce the risk and mitigate the effects of avalanches on Federal lands. S. 2970 also requires the Secretary to establish an advisory committee to assist in the development and implementation of the avalanche protection program. The bill would require the establishment of a central repository 2 for weapons for avalanche control purposes, and would authorize the Secretary to make grants to carry out projects and activities under the avalanche control program.

I would like to thank the sponsors of this legislation and the committee for recognizing the importance of the Forest Service avalanche program. The Forest Service supports the general concept of S. 2907, but asks the committee to consider revising Section 3 to clarify intent and to reflect changes to the Forest Service avalanche program that have occurred in the last several years. We would like to work with the committee and the sponsors in this regard.

#### BACKGROUND

The Forest Service was the first agency to initiate avalanche control and forecasting in the United States. When the first ski areas began operating on National Forest System lands in the 1930s, the Forest Service began using explosives for avalanche control work to protect visitors. In 1948, the agency worked with the U.S. Army and pioneered the use of artillery for avalanche control. In the years since, the Forest Service has gradually transferred day-to-day responsibilities for avalanche control work to ski areas, though it supervises and manages the artillery program at the resorts. This is the case because the Department of Defense prohibits acquisition of artillery by private entities and because the Bureau of Alcohol, Tobacco, and Firearms requires that artillery programs be under federal "dominion and control" at ski areas.

Departments of transportation in Alaska, California, Colorado, Utah, and Washington also use artillery to control the avalanche danger in a number of transportation corridors in those States. In these areas, artillery is fired into avalanche starting zones on National Forest System lands. This effort is usually authorized and monitored by the Forest Service under a special use permit issued to the respective transportation department.

As the Forest Service gradually moved into more of an oversight role for avalanche control work, the agency increasingly focused on providing forest visitors the education and information necessary to avoid or minimize avalanche hazards in the mountain backcountry. In the early 1970's, the Forest Service established the Colorado Avalanche Information Center. Through the 1980's the agency created a number of other backcountry avalanche centers around the country. Today, there are a total of 15 avalanche forecast centers operating in nine States, providing avalanche training and regular backcountry avalanche hazard forecasts throughout the winter.

Were it not for these avalanche centers and the information they provide, the number of avalanche-related fatalities would be much greater than the 28 that have occurred each year on average over the past 15 years. Nearly all of these avalanche-related fatalities were on National Forest System lands and involved backcountry recreationists, including snowmobilers, skiers, and others. As populations increase and technology supports easier access to avalanche-prone areas, public exposure to this hazard has been heightened.

We are convinced the avalanche forecast and education programs literally save lives. We are fortunate that others, including States and local community non-profit organizations, have joined with us to provide these services.

COMMENTS ON SECTIONS 3(A) AND 3(B)

We are concerned that parts of subsections 3(a) and 3(b) may be interpreted to require the Forest Service to move beyond its traditional role of informing and educating backcountry users, into active avalanche control work. This concern is heightened if the intent is to have the Forest Service assume responsibilities on both National Forest System lands and federal lands managed by agencies in the Department of the Interior or others such as the Department of Defense. We would like to work with the Committee to clarify and limit the scope of Forest Service responsibilities under this legislation.

COMMENTS ON SECTIONS 3(C) AND 3(D)

Presently, the Forest Service avalanche program has three main components. The first is avalanche backcountry forecasting, public education and information distribution, and research and technology transfer to avalanche forecast centers. The second is oversight of permitted ski areas and their avalanche control programs. The third component is oversight of the military weapons used for avalanche control.

Section 3(c) mandates that the Secretary establish a 15-member advisory committee to assist in the development and implementation of the avalanche protection program. As it concerns the 5 avalanche forecast centers and their information and education programs, we do not believe an advisory committee is necessary. As it concerns civilian use of military weapons for avalanche control, the Avalanche Artillery Users of North America Committee (AAUNAC) was formed in 1987 and encompasses all of the users of avalanche artillery in Canada and the U.S., as well as the U.S. Army. AAUNAC is an ad hoc consensus-based working group established to address the need for an informal coordination body for civilian use of military weapons for avalanche control. AAUNAC has proven to be an effective organization to establish standard operating procedures, conduct training, and provide a central point of contact for U.S. Army. We feel it would be helpful if AAUNAC could be formally recognized as the coordinating body for using military weapons for avalanche control purposes. We look forward to working with this Committee to determine the best approach for providing this designation.

Section 3(d) requires the establishment of a central Depository for weapons for avalanche control purposes. A central depository has already been established by AAUNAC, working with the Department of Defense. The facility is located at the Sierra Army Depot in Herlong, California and contains an estimated 20-year supply of artillery and parts. The Army has assured AAUNAC that the Army will reserve at least a twenty year supply of ordnance for AAUNAC users. Additionally, ski areas operating under a permit issued by the Forest Service can obtain ordnance for future use in their programs and store that ordnance at other Army Depots. Consequently, section 3(d) is not necessary.

COMMENTS ON SECTION 3(E)

We request removal of the grant program. This subsection also identifies two criteria for awarding grants. If a grant program is retained in S.2907, we ask the committee to consider 6 recognizing the avalanche centers, and their forecasting and education work, as the first priority, and public safety the primary criteria for any grants.

COMMENTS ON SUBSECTION 3(F)

This section amends Section 549(c) (3) of title 40, United States Code to provide that, when a state agency selects surplus artillery ordnance suitable for avalanche control for distribution through donation within the state, the Administrator of the General Services administration shall transfer the ordnance to the user of the ordnance. Currently, munitions are purchased by the various entities in the military

weapons program. We defer to the Department of Defense and the General Services Administration on this proposed change.

In closing, I want to thank the Committee for the opportunity to be with you today to provide testimony on this legislation and we look forward to working with you on refinements to S.2970.

S. 2966

Mr. Chairman, Members of the Committee, thank you for the opportunity to share the Administration's views on S. 2966 the Idaho Wilderness Water Facilities Act.

The U.S. Forest Service supports S. 2966. The bill authorizes the issuance of a special use permit for the continued use of water storage, transport, or diversion facility located on National Forest System lands in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in Idaho. The permits will only be issued to the water system owners of the water systems identified on the two maps accompanying S. 2966, and if certain conditions are met.

Currently, there are over 20 water developments within the Frank Church River of No Return and Selway-Bitterroot Wilderness Areas that predate establishment of the wilderness, in some cases by decades.

These developments include hydropower developments, irrigation, and domestic water uses. The legislation establishing both wilderness areas did not address these pre-existing water developments. S. 2966 would direct the Forest Service to issue special use authorizations, if the Secretary makes the following determinations: the facility was in existence when the wilderness area on which the facility is located was designated as part of the National Wilderness Preservation System; the facility has been in substantially continuous use to deliver water for the beneficial use on the owner's non-Federal land since the date of designation; the owner of the facility has a valid water right for use of the water on the owner's non-Federal land under Idaho State law, with a priority date that pre-dates the date of designation; and it is not practicable or feasible to relocate the facility outside the wilderness and achieve the continued beneficial use of water on non-Federal land. We understand that the bill does not create any rights beyond what is provided in the special use permit and that both maintenance responsibilities and liabilities continue with the permit holder, and not the Federal government.

This concludes my prepared statement on S. 2966 and I would be pleased to answer any questions you may have.

Senator WYDEN. Mr. Sherman, again, that is very helpful and reflective of the kind of cooperation you have shown us and my constituents. I will have some questions in a moment when your colleague has spoken from BLM.

But I think with your opening comments, this ought to send a message across Oregon that we now have a partner at this agency who is going to be hands-on, who is going to work with us. Of course, no piece of legislation is set in stone. I think all of the negotiators in our effort realize that.

But to have this kind of cooperation, the opportunities to secure funding through the innovative approach that the administration has taken in the budget is the kind of approach my constituents want to hear. So we will have some questions in a moment, and I thank you for your help and cooperation.

Mr. Roberson.

**STATEMENT OF EDWIN ROBERSON, ASSISTANT DIRECTOR, RENEWABLE RESOURCES AND PLANNING, BUREAU OF LAND MANAGEMENT**

Mr. ROBERSON. Mr. Chairman, thank you for inviting me to testify on S. 2791, the Forest Harvest Opportunity Act, and H.R. 3759, the BLM Contract Extension Act. I, as with Harris Sherman, respectfully request that my written testimony be made a part of the record.

Senator WYDEN. It is done.

Mr. ROBERSON. The Department of the Interior supports the goal of the bills to allow timber sale contract extensions for market-related reasons. This action would assist timber sale purchasers whose industry is facing serious economic challenges. We appreciate Senator Merkley's effort to address this very time-sensitive issue and would like to work with the subcommittee on technical changes that give the Secretary the discretion to grant the extensions.

Of the 253 million acres of public lands administered by the BLM, more than 60 million acres are forests and woodlands. About 11 million acres are commercial forest land, including 2.1 million acres of Oregon and California grant lands in western Oregon. Our goals of forest management include restoring and maintaining healthy forests; improving their resistance to wildfire, insect, and disease outbreaks; and promoting sustainable economic development for local communities.

Each year, the BLM offers about 270 million board feet of timber for sale. Both large and small businesses purchase the timber sales through competitive bidding, and contracts are awarded for 3 years.

Many purchasers bought BLM timber in good faith at prices that are no longer economically viable. Under current regulations, the BLM may grant a 1-year contract extension, but that extension may not be granted due to market changes. However, the BLM and timber contract purchasers may agree to cancel a contract, and mutual cancellation relieves the purchasers' duty to perform their contract obligations and allows the BLM to reoffer the sales at a price that reflects current market conditions.

To date, we have received 46 requests for contract cancellation and have authorized 39 of these requests. We are now contacting purchasers and beginning the cancellation negotiations.

We support the intent of S. 2791. The legislation would provide the Secretary with an additional tool for assisting timber sale purchasers in weathering current economic conditions. However, the legislation as written requires the Secretary to grant 3-year economy-related timber contract extensions. BLM is concerned about mandatory timber contract modifications and would like to work with the subcommittee to make the extensions fall within the discretion of our Secretary.

H.R. 3759 passed by the House on January 19th this year, and we support this bill, which authorizes but does not require the Secretary to grant 3-year market-related contract extension for qualified contracts.

We are currently negotiating with purchasers to authorize mutual cancellation of timber sales. Most of these same purchasers would also qualify for the timber sale contract extension under both bills, the H.R. and the Senate bill. Many purchasers have expressed a preference to extend their contracts rather than to proceed with contract cancellation, and having the option to extend these contracts would be beneficial to the BLM, to the industry, and to western communities.

We look forward to working with the committee on this important legislation. Thank you for the opportunity to testify, and I, too, will be happy to answer questions.

[The prepared statement of Mr. Roberson follows:]

PREPARED STATEMENT OF EDWIN ROBERSON, ASSISTANT DIRECTOR, RENEWABLE  
RESOURCES AND PLANNING, BUREAU OF LAND MANAGEMENT

S. 2791 AND H.R. 3759

Thank you for inviting the Department of the Interior to testify on S. 2791, the Forest Harvest Opportunities Act, and H.R. 3759, the BLM Contract Extension Act. The Administration supports the goal of the bills to allow timber sale contract extensions for market-related reasons. This approach would assist timber sale purchasers whose industry is facing serious economic challenges. We appreciate Senator Merkley's efforts to address this very time-sensitive issue, and we would like to work with the Subcommittee on technical changes that give the Secretary the discretion to grant the extensions.

BACKGROUND

The Bureau of Land Management (BLM) manages approximately 253 million acres of surface lands, of which more than 60 million acres are forests and woodlands. Approximately 11 million acres are commercial forestland within the 11 western States and Alaska, including 2.1 million acres of Oregon and California Grant lands in western Oregon. Our goals of forest management include restoring and maintaining healthy forests; improving their resiliency to wildfires, insect, and disease outbreaks; and the BLM promoting sustainable economic development opportunities for local communities.

Each year, the BLM offers approximately 270 million board feet of timber through sales contracts. Both large and small businesses purchase BLM timber sales. Timber sale contracts are sold primarily through competitive bidding and are awarded for a contract period of three years.

The forest products industry is facing an unprecedented struggle due to the downturn in the national economy and the housing market. According to the Western Wood Products Association, western lumber production in 2009 decreased by approximately 21 percent to 10.2 billion board feet, the lowest since the 1930s, about half the volume Western mills produced in 2005. The value of lumber has declined even more steeply. The estimated wholesale value of western lumber was \$3.66 billion in 2008, a decrease of 40 percent from its 2007 value of \$6.1 billion according to the Western Wood Products Association.

Many timber purchasers bought BLM contracts in good faith at prices that, under current market conditions, render the completion of their contract obligations no longer economically viable. BLM timber sale purchasers have been faced with difficult decisions of whether to default on their contracts or harvest the wood at a great economic loss, both of which could result in severe consequences to their companies and to the local communities that support them. Under current regulations, the BLM may grant a one-year contract extension, but that extension may not be granted on the basis of market fluctuations. However, the BLM and timber contract purchasers may mutually agree to cancel a contract. Mutual cancellation would relieve existing purchasers' duty to perform their contract obligations and allow the BLM to reoffer the sales at prices reflecting current market conditions. On October 14, 2009, the BLM provided direction to its State Offices to offer timber contract purchasers the option to request a one-time mutual cancellation of contracts.

On November 14, 2009, all eligible timber sale contractors received a letter from the BLM with information regarding the opportunity to make such a request within 60 days. The BLM received 46 requests for mutual cancellation of timber sales from purchasers in Oregon and Wyoming. The BLM State Directors evaluated the requests and authorized contract cancellation for 39 requests. The BLM Oregon State Director recommended that the agency not consider mutual cancellation on four sales where no contract obligations remain. The Oregon State Director's staff is still evaluating three additional requests. Contracting Officers are now contacting purchasers to initiate negotiating the process. The BLM has developed procedures to ensure that the process is fair to the BLM, the taxpayer, and the purchaser.

H.R. 3759

The House passed H.R. 3759, as amended, on January 19, 2010. The Administration supports H.R. 3759, as amended, which authorizes, but does not require the Secretary to grant three-year market-related contract extensions to qualified contracts upon a written request made by a purchaser within 90 days of enactment. Qualified contracts must meet certain criteria: 1) the contract has not been termi-



nated; 2) the contract was awarded during the period beginning on January 1, 2005, and ending December 31, 2008; 3) there is unharvested volume remaining on the contract; 4) the contract is not a salvage sale; and 5) there is no urgent need to complete harvest under the contract due to deteriorating timber conditions. The House bill also requires the BLM to promulgate new regulations authorizing the BLM to extend timber contracts due to changes in market conditions and to negotiate new contract terms.

## S. 2791

S. 2791 requires the Secretary of the Interior to grant three-year economy-related timber contract extensions within 30 days of a request from the timber purchaser. The bill would apply to contracts executed on or before December 31, 2008, for which there is unharvested timber volume remaining and the contract is still in effect. The purchaser would be required to make a written request for an economy-related extension within 90 days of enactment of the Act. The BLM is concerned about mandatory timber contract modifications, and would like to work with the subcommittee to make the extensions within the Secretary's discretion (as provided for in the House-passed H.R. 3759).

## CONCLUSION

Thank you for the opportunity to testify on S. 2791 and H.R. 3759. The BLM is currently involved in negotiations with timber sale purchasers to authorize mutual cancellation of timber sales. Most of these same purchasers would also qualify for timber sale contract extensions under either bill. In order for the purchasers to have either the option to request a three-year contract extension or to complete mutual cancellation negotiations, enactment of legislation is necessary. Many purchasers have expressed a preference to extend their contracts rather than to proceed with mutual cancellation. Having the option to extend these contracts would also be administratively beneficial to the BLM. We look forward to working with the Committee on this important legislation.

Senator WYDEN. Thank you very much.

I think I am advised by the staff, that last bill is in the jobs legislation, isn't it?

Yes, just yesterday. So thank you, and good points from both of you.

Let me start with you, if I might, Mr. Sherman? What I am struck by, and I am going to just tick off a number of the points that you made in terms of the features of the legislation that you have indicated move in the right direction and go to this question of maintaining the infrastructure, the industry infrastructure and its importance.

I know in Washington, DC, people talk about infrastructure all the time. Everybody kind of scratches their head and tries to figure out what in the world you are talking about. But in the real world of eastern Oregon and eastern Oregon communities, what people are talking about are mills and loggers.

What we are concerned about is if we don't move and move quickly, there is a real risk that we are going to lose those folks, and we are going to lose those folks at a critical time. Because, of course, they are a substantial part of the economic livelihood of rural communities, and we so need them right now as we seek to go forward and tap these exciting opportunities for biomass.

We know that there is a tremendous economic opportunity in eastern Oregon in the biomass sector. Take wood waste, turn it into clean energy, get it to the mills. It is going to be good for the forests. It is going to be good for the economy. It has the chance to be a huge multiplier in terms of benefits to the region.

We aren't going to be able to get it done if we lose those remaining mills and if we put more loggers on the unemployment line. So

this has been a key part of our whole coalition's efforts to come together, and I wanted to ask you a question with respect to the important forest restoration work that you all have been doing. You can kind of comment on how this is something you have analyzed even in the context of other parts of the country.

What are the prospects for the Forest Service to accomplish this critically needed forest restoration work if we lose infrastructure? It just strikes me as once again the dominoes are going to start falling, and they are not going to be collapsing in a positive way.

But tell us, even in light of your national experience, what happens when you are trying to do forest restoration work and you keep losing infrastructure?

Mr. SHERMAN. As I have indicated in my opening remarks, Senator, the key to getting this restoration work done is to have a viable, healthy, strong timber industry. We have to get this material out of the forests, and we have to look to our partners in industry to help us do the restoration work.

I think you have been privy to some of these discussions about stewardship contracts, where we are trying very, very hard to go forward with contracts where the companies will not only take the timber out, but they will do a lot of the hard restoration work that needs to be done. But if these companies are not there, it becomes very problematic to get the restoration work done.

My home State of Colorado, we are down to one mill in Colorado. It is very, very hard to do the restoration work that is necessary when you get to that kind of a situation.

So, without question, we have to work with the industry to make sure it is viable and healthy and it has adequate product and it has an environmental review system that is responsive to its needs. We have to have a system here of collaboration that really works.

I know collaboration can be a relatively slow process sometimes. But I think as we get better and better in our collaborative skills, hopefully, that will go more smoothly than it has in the past and it will go more quickly. But it is a combination of things that we need to work on to ensure that the industry will be viable and healthy and help us with this restoration work.

Senator WYDEN. I am going to have some additional questions. But our ranking member has arrived, Senator Murkowski. I want to recognize her for an opening statement before we go any further.

**STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR  
FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate that.

Welcome to the gentlemen before the committee today.

On the calendar this afternoon is legislation that I have introduced, which is S. 2907 to establish a coordinated avalanche protection program. I understand comments have been made on this, but I wanted to take just a couple minutes today to speak to this legislation. I am a member of the Congressional Hazard Caucus and introduced this legislation to tackle the impacts of our Nation's natural hazards, and that is avalanches.

In my home State, we are paying very close attention to the avalanches because, as we speak, we have had 2 in the past 18 hours

on the highway from our popular ski resort into town. I was on that road myself Monday morning and experienced the most intense whiteout of 35 miles that I have been privileged to go through in a while. The good news for me is I made it on this side of the avalanche safely and am here to tell the story.

The legislation that we have introduced is identical to the measure that we favorably reported out of this committee back in 2005. The goal is to better protect people in avalanche zones nationwide, reduce the growing potential for avalanches to damage property, and as more and more building is taking place on mountainsides and in valleys that are threatened by avalanches, I think we recognize we have a problem in this country.

Just last month, in the space of just 2 days, we had 3 Alaskans that were killed by avalanches in 2 separate instances. One, we lost the president of ConocoPhillips in an extremely tragic and sad incident as they were out snow machining.

Last year, we had 49 avalanches in 10 States and Canada, which caused 54 fatalities in North America. What we are seeing is not unusual. In the 2007–2008 season, we had 36 Americans lose their life as a result of avalanches. Another 16 Canadians died that season, 43 reported avalanches. In 2002–2003, we had 58 people in North America die.

When you look at what we are seeing in terms of averages, 38 people have died on average each year in North America from avalanches, and most of these occur in western States—Colorado, Montana, Idaho, Wyoming, Utah, Alaska, California, Oregon, and Washington. But we have also had some in our eastern States. But when you put that into perspective, that is 38 people on average. There were 29 deaths within the ranks of the wildland firefighters from 1990 to 1998. So that is 3.2 fatalities per year. Thirty-nine deaths from 1999 to 2006, 4.9 fatalities per year.

The agency expends millions of dollars working to keep these firefighters safe which is absolutely appropriate. But it expends comparatively little on work to protect the millions of folks who visit our Federal lands during the winter time. We have issues that need to be addressed.

The bill directs the Secretary of Agriculture to establish an avalanche protection program to identify the potential for avalanches on Federal lands and inform the public, carry out ongoing research to improve avalanche forecasting, and reduce the risks of avalanches and mitigate their effects.

Now, I have mentioned a couple different instances up in my State right now, and I think we appreciate that avalanches are a concern not just in the back country, whether it is Hatcher Pass or for heli-skiing enthusiasts outside of Valdez. But we see it in the urban areas. We see it in Juneau, our capital city, and as I mentioned, the motorists who drive daily from Seward Highway to Girdwood to Anchorage or through the Turnagain Pass.

We have to do more on Federal lands. We need to do more to assist the States to lessen the severity of avalanche dangers on State and private lands.

Now I understand that you are willing to talk to us about how we might implement such a measure, the concern that we don't have enough funding to carry out some of the requirements of that

legislation. But I guess I would respond that if the Forest Service wants to shift away from commodity resource management toward a recreation-based program, we have to be prepared to provide a safe recreational experience within budgets that it is now receiving.

It is not acceptable to be losing 20 to 40 Americans to avalanches and so many on Federal lands, without the agency doing what it can to predict, control, and mitigate. I know these are difficult, but I would like to think that many of these deaths are preventable.

I think the proposal that we have takes logically fiscally prudent steps to do just that, and I would look forward to working with you, Mr. Chairman, and with all those involved to see what we can do to make a difference.

With that, Mr. Chairman, I thank you for the opportunity to step in and make a statement. I look forward to working with you.

Senator WYDEN. I thank my colleague, and I think it is clear these are areas that we can work together on. I am interesting in working with you. It is something that I have always enjoyed in my time in the Senate. We will work very closely on this.

Senator MURKOWSKI. I appreciate it.

Senator WYDEN. Good. Senator Risch, who has also been working hard and very constructively on natural resources issues, why don't we recognize you for any statement you would like to make?

Senator RISCH. Thank you, Mr. Chairman.

I am honored you would say that, and thank you for holding this hearing.

I would like to talk about S. 2966 that Senator Crapo and I are co-sponsors on, if—

Senator WYDEN. Please, go ahead.

Senator RISCH [continuing]. The chairman would permit that?

I am going to be brief on this. Although it doesn't affect a lot of people, it is very important to the people that it does affect.

Very simply, what this bill does, it allows—it permits, but does not require, but does permit the Secretary of Agriculture to issue permits to allow people who have individual water systems within 2 wilderness areas in Idaho—the Frank Church-River of No Return Wilderness Area, which was established by Congress in 1980, and the Selway-Bitterroot Wilderness, which was established by Congress in 1964, one of the oldest wilderness areas in the United States.

But in any event, what has happened is the water diversion systems in these areas have been deteriorating over the years, and it is important that they be maintained and that they, where necessary, be rebuilt in order to be safe and, for that matter, to protect the watershed that they are in and the resource that they are in.

At the present time, there is, at the very least, a question as to whether the department can do this. This will answer that question, and it allows the permit only to be issued if, No. 1, the facility existed—that is, the water diversion facility existed prior to the designation as wilderness. Second, the facility has been used to deliver water to the owner's land since the designation, that the owner has a valid water right, and that it is not practical to move the facility outside the wilderness area.

So it has got some pretty tight sideboards on it. It is something that is really needed by what I think is just a handful of people

that it does affect. There has been an estimate that it is several dozen people who have these systems. I am not quite sure it is that high. I think that is generous.

But in any event, I am not aware of any opposition to this bill. I think that it is supported, as I understand it—and I certainly don't want to speak for the Department of Agriculture, but I understand it is supported by the Department of Agriculture. The environmental groups that generally keep a close eye on these things I understand are not in opposition to this.

So, with that, thank you, Mr. Chairman. Thank you for the ability to be able to present this bill, and we look forward to moving it forward.

Senator WYDEN. I thank my colleague. It certainly sounds to me like you have done good work on this, and let us get our staffs together. If there are anybody who has any questions, we will get on it.

But I look forward to working closely with you and moving this ahead.

Senator RISCH. Thank you, Mr. Chairman.

Senator WYDEN. A couple of other questions, if I might? For you, Mr. Sherman, I was very pleased to hear you, in your comments on the Oregon legislation, talk about landscape-scale planning because to my constituents, this really means that you can get more work done more quickly and produce greater benefits to the region.

But if you might, tell me a little bit about your interest in moving toward this kind of approach, because it certainly sounds to me like the agency wants to go in this direction, how you seek to go about doing it and what you think the gains are in going that route?

Mr. SHERMAN. Thank you, Senator.

I think we fully agree with you that on a landscape-scale basis, you can get a lot more work done. So that is clearly our desire and intent. I think there are many ways in which we move to get there, one of which is to do a very comprehensive assessment early on as to what are the conditions of these forests and what are the priorities so that we can make better decisions about how to allocate our resources. I commend you in your bill for calling for an assessment during the first 2 years so that we get a comprehensive picture of the priorities that we want to address.

I think, in addition to that, we need to, again, focus on how we can make the National Environmental Policy Act as responsive as possible to identify what those environmental concerns are, how to mitigate those environmental concerns, and then get on with the implementation of these programs. So having an efficient NEPA process is important.

I think, in addition to that, in order to get to a landscape-scale program, we have to come back to this issue of collaboration. How do we get groups working together to make sure that we are on the same track, we have a consensus about how to do this, as opposed to the timber wars that you have mentioned in the past? So that is very important.

We need to incorporate good science into landscape-scale restoration work, and we need to tailor our stewardship contracts to make sure that they are allowing us to remove the timber that is nec-

essary and, at the same time, allow us to do comprehensive restoration. I think those are the main components of how we need to move forward on a landscape-scale basis.

Senator WYDEN. Tell me a little bit more about collaboration, and I think that is an appropriate one to kind of wrap up this part of the hearing. We will have guests from around Oregon and continue to work with your folks.

We have come to feel that without that kind of collaboration, what folks in eastern Oregon showed as we tried to get this bill together, that you really get a lose-lose situation. In other words, everybody in Oregon wants a win-win. They want to have jobs and a real economic future in rural Oregon, and they want to protect treasures. But without collaboration, what you usually get is somebody running down to a courthouse somewhere and suing each other, and you don't get either.

So we are very interested in the administration's approach on collaboration, and we look forward to working with you to be as creative as we possibly can in this room. I think about Senator Craig—Senator Risch will remember this. We were stalled on the county payments legislation. We went round and—

Senator RISCH. Excuse me. Is that the Craig-Wyden bill?

Senator WYDEN. There was a lot of joking. Frank Gladics remembers the history about this. Whether it was called Craig-Wyden or whether it was called something else, the fact was that people did then what Secretary Sherman is talking about, is look for new ways to collaborate. That was the point of the resource advisory committees.

Nobody had ever really thought about anything like that. Senator Craig and I basically said, coming out of this huge and bloody battle about sufficiency language—talk about litigation, that was a lawyer's full employment program there for a while. Let us use these RACs, resource advisory committees, to try to get people working together.

So let us close this part of the discussion, Secretary Sherman, by hearing some of your thoughts about the opportunities for collaboration, areas where you may want to try some new approaches to bring people together because I am pleased the administration is going that route. We ought to push the envelope just as hard as we can to find ways to get people together. That was, of course, the point of the eastside effort.

So close this part of the discussion with your thoughts on collaboration.

Mr. SHERMAN. Senator, I am gratified by the examples I am seeing around this country on collaboration. I think it is fascinating how we go to the Northeast now, we are seeing major success in collaboration. We come out to Montana and Oregon and California, Colorado, Wyoming, Idaho. We are seeing people getting together because I think there is a common recognition that we have got a problem, and we have got to address the problem.

One of the frustrations with collaboration is it takes time. I am hopeful as we go through some of these initial collaborative processes, we are going to get more more skillful in dealing with collaboration, which will allow us to expedite some of these collabo-

rative efforts. I think people are gaining experience, which should be helpful later on.

In addition to that, these collaborative efforts within a given State build trust, and over time, people learn to trust each other in a way that they haven't before. So, initial collaborations may take more time, but subsequent collaborations may go faster because of that trust level that grows.

So I think we have got to try everything in this respect. I believe that the informal collaborative processes sometimes are more adaptable, and they work faster than sometimes these highly structured collaborative processes. But that is the sort of issue that we want to have a chance to talk to you about and your staff and the committee staff in terms of the specifics of this legislation.

Senator WYDEN. I appreciate that, and I think you know how strongly folks feel in my part of the world. The Federal Government owns most of our land. The folks that are going to be testifying in a little bit are from communities that are extraordinarily dependent on national forests.

So I think on our watch, we have got a chance to literally, as I would like to put it, I want to see us end the timber wars on my watch in the State of Oregon. They have gone on for more than 2decades. It has not served our State well. It has not been good for our economy. It has not been good for protecting our treasures. That is what I am going to do everything I can as chairman of the subcommittee to reverse.

So we thank you for your constructive approach. We will be following up with you often, and I promise not to send more than half of the adults in my State to visit with you and your staff. I know that we have been keeping you busy, and we are appreciative.

Mr. SHERMAN. Thank you, Senator. Once again, let me thank you for your leadership, and rest assured we always welcome Oregonians at USDA. Thank you.

Senator WYDEN. Very good. Thank you.

Mr. Roberson, you are getting spared, I guess, questions from me today. But as you know, we will be working very closely with you as we move to the timber payments legislation and reauthorizing that. Senator Risch has a great interest in that and some good ideas on that as well.

Senator Risch, do you have any questions for our witnesses?

Senator RISCH. No, thank you very much. I appreciate it.

Senator WYDEN. OK. Let us go to our next panel. We will excuse you both. Look forward to working closely with you.

Our next panel—Andy Kerr, senior counsel of Oregon Wild; John Shelk, managing director of Ochoco Lumber; K. Norman Johnson from—Norm is from Oregon State University, the College of Forestry. Stephen Fitzgerald, associate professor of Oregon State University, and Larry Blasing, member of the Grant County Public Forest Commission from Prairie City, Oregon.

My thanks to all for coming, and I can certainly identify with everybody making the long trek from the Pacific Northwest, and we appreciate the attendance of all.

Let us start with Mr. Kerr. We are going to make your prepared remarks a part of the record in their entirety. If you would like to summarize your comments, that would be helpful.

Mr. Kerr, welcome.

**STATEMENT OF ANDY KERR, SENIOR COUNSELOR,  
OREGON WILD**

Mr. KERR. Thank you, Senator. Thanks for having this hearing today.

You know, I come from the wilderness movement. As a public land conservationist, nothing is more satisfying than to achieve one's conservation goals than when Congress draws a line around an area and says this piece of public land is so special and sacred that it shall be managed primarily by leaving it alone for the benefit of this and future generations.

I still have one foot firmly planted in the wilderness movement. There have been plenty of worthy roadless areas in eastern Oregon that ought to be part of the national wilderness system. However, most of our eastside forests of Oregon are not pristine and are, in fact, sick and wounded.

My other foot is firmly planted in the best available science. The general consensus of this best available science for dry Ponderosa pine and dry mixed conifer forests on the east side of Oregon is that much of this forest in these types is in need of active restoration, ecological restoration that includes not only the careful re-introduction of fire into these fire-dependent forests, but often the judicious use of a chainsaw and the removal of ecologically problematic trees.

Enactment of this legislation can mark the end of the timber wars for the eastside forests of Oregon. It can result in new rules of engagement for national forest stakeholders. Confrontation can give way to collaboration. Walking and talking in the woods can become more prevalent than litigating and arguing in the courts.

The amount of old growth Ponderosa pine forest in eastern Oregon today is but 2 to 8 percent of what it was before European settlement. The result is unnatural concentrations of fire-susceptible younger and smaller trees that are out-competing the residual old growth Ponderosa pine for moisture and nutrients, leaving the old growth trees more likely to suffer premature death from insects and disease.

An additional, but sometimes overblown concern is that the encroaching trees can also serve as a ready fuel ladder and carries otherwise beneficial low-severity surface fires into the residual old growth canopy, resulting in the loss of this rare old growth Ponderosa pine.

It is the dry forest types of the east side that are generally unhealthy. For a century and a half, the natural and beneficial frequent low-severity surface fires have been interrupted due to domestic livestock grazing, which removes the grass that carried those fires. For well over a century, the forests have been high-graded for their wood by removing the largest and most naturally fire-resistant trees for timber. For well over half a century, the fire industrial complex has effectively deprived these forests of vital fire.

From the standpoint of both habitat and hydrology, row densities on these forests are extreme. Restoration of dry forest types across eastern Oregon needs to be done on a very large scale. It is not fea-



sible to solely rely on either prescribed or wildfire to achieve these ends.

First, the wildfires may not be adequate in scale. Second, the acceptable level of prescribed burning is limited to the appropriate weather windows and available staffing. Third, fire is imprecise tool to surgically excise ecologically problematic small trees while saving ecologically vital live trees.

A major challenge in implementing this legislation will be securing adequate funding. Society owes an ecological debt to these forests that Congress must honor. The best source of funds to pay down this ecological debt is to reprogram the current Forest Service annual appropriations that now go to a fire industrial complex that wastes billions of dollars attempting to extinguish fires that cannot or should not be extinguished.

Reprogramming this money to ecological restoration and to private land owner incentives to make their dwellings resistant to fire is a much better use of taxpayer funds.

Unlike other bills pending in Congress that address forest health issues on Federal lands, what distinguishes this legislation, I think, is that it does not presuppose a specific ends or a means to achieve them. Rather than declaring as a matter of legislative fact that all bugs are bad and all diseases disastrous and all fires are fatal, this legislation, rather, sets broad goals of how the forests should be managed that most people can agree to and leaves to the Forest Service to manage consistent with the best available science to achieve those goals.

You know, in sum, this legislation is not a bill I would have written on my own. It is a product of what you, Senator, could convince a critical mass of the conservation community and the timber industry to agree on.

While it is not a perfect bill, it is nonetheless a great bill. It will provide for new and better goals for national forest management that can result in the conservation and restoration of old growth forests and watershed for the eastside forests of Oregon, benefiting clean water, fish and wildlife, and helping mitigate the effects of climate change, and leaving these forests and watersheds in a healthier state for future generations.

Thank you.

[The prepared statement of Mr. Kerr follows:]

PREPARED STATEMENT OF ANDY KERR, SENIOR COUNSELOR, OREGON WILD

S. 2895

I come from the wilderness movement. As a public lands conservationist, nothing is more satisfying to achieve one's conservation goals than when Congress draws a line around an area and says this piece of the public's land is so special and sacred that it shall be managed primarily by leaving it alone for the benefit of this and future generations.

I still have one foot firmly planted in the wilderness movement; there are plenty of worthy roadless areas on the eastside forests of Oregon that ought to be in the National Wilderness Preservation System. However, more of the eastside forests of Oregon are not pristine and are, in fact, sick and wounded.

Humans have already caused them great harm from livestock, chainsaws, bulldozers and Smokey Bear mythology. Many of Oregon's eastside dry forests are in bad shape.

## BEST AVAILABLE SCIENCE

My other foot is planted firmly in the best available science. The general consensus of the best available science for dry ponderosa pine and dry mixed-conifer forests on the eastside of Oregon is that much of the forest of these types is in need of active restoration—ecological restoration that includes not only the careful re-introduction of fire to these fire-dependent forests, but often the judicious use of a chainsaw and the removal of ecologically problematic trees.<sup>1</sup>

Not only have bulldozers, chainsaws, bovines and flame-retardants screwed up these forests, human-caused climate disruption that is further stressing these already stressed forests. This additional stressor all the more requires the application of the best available science to restore these forests, including the removal of site-specific stressors.

## WHEN THE FACTS CHANGE CONSIDER CHANGING YOUR MIND

When the facts change—be they ecological, economic or political facts—it is appropriate to at least consider changing one's mind. This historic legislation that has brought together historic enemies is possible because the facts have changed. My goals for eastside forests haven't changed, but my strategies and tactics have changed in light of the facts. Consider these changes:

1. Less logging and less old-growth logging. During the height of the timber wars in the late 1980s and early 1990s, there were approximately 30 wood products mills in eastern Oregon cutting nothing much else but old-growth trees. Today, there are about five still running and cutting little—but still too much—old growth.<sup>2</sup>

2. Increased scientific consensus on the need for active management to achieve ecological restoration. The best available science is clear and convincing that unhealthy dry forests can benefit from prescribed fire and careful and constrained restoration thinning to restore them to ecological health.<sup>3</sup>

3. A matured conservation community. The conservation movement is diversifying from a historic focus centered on the preservation of pristine natural landscapes to also being equally concerned about the restoration of degraded natural landscapes.

4. The timber industry on the eastside of Oregon is no longer a monolith. The timber companies that remain are of two species:

- (A) *Sylvanus adaptus* adapted to changed conditions and recognize that they've lost their social license to log old growth and in roadless areas; and

- (B) *Sylvanus horribilis* survived so far by not changing one damn bit. Pure stubbornness and resistance to change have served *S. horribilis* well enough until now, but they are just dead men walking.

*S. adaptus* is the one that can help the Forest Service conserve and restore degraded dry forests, while at the same time profiting for themselves and prospering for their communities.

I will work as hard to keep this new timber industry alive to restore Oregon's eastside dry forests as I have worked and will work for the old timber industry to die before it cuts the last of the old trees.<sup>4</sup>

What the role of the eastern Oregon timber industry should be after needed ecological restoration period (approximately three-decades) is a question that need not be answered—or even debated—now.

<sup>1</sup>For more on my views on this subject, see: Kerr, Andy. 2006. Thinning Certain Oregon Forests to Restore Ecological Function. Ashland, OR: The Larch Company (<http://andykerr.net/Downloads>)

<sup>2</sup>Shelk, John. Managing Director, Ochoco Lumber Company. Personal Communication. 28 December 2009.

<sup>3</sup>See Noss, R. F., J. F. Franklin, W. L. Baker, T. Schoennagel, P. B. Moyle. 2006. Managing fire-prone forests in the western United States. *Frontiers in Ecology and the Environment* 4(9): 481-487. (Ecological Society of America. Washington, D.C.). With the permission of the lead author, this paper is available for download for limited educational purposes only at [www.andykerr.net/downloads](http://www.andykerr.net/downloads). And Brown, Richard T., James K. Agee and Jerry F. Franklin. 2004. Forest Restoration and Fire: Principles in Context of Place. *Conservation Biology* 18:903-912.

<sup>4</sup>For more of my views on how the timber industry has changed and society's views of forests are continuing to change, see: Kerr, Andy. 2008. "Starting the Fight and Finishing the Job," Page 129-138 in Spies, Thomas A and Sally L. Duncan (eds). *Old Growth in a New World: A Pacific Northwest Icon Reexamined*. Island Press. Washington, DC.

## THE END OF THE TIMBER WARS FOR THE EASTSIDE OF OREGON

Enactment of this legislation can mark the end of the timber wars for the eastside forests of Oregon. When fully implemented, the new statute can result in the comprehensive conservation and restoration of forests and watersheds on over eight million acres of National Forest System lands.

In addition to new management goals that emphasize natural structure, process and functions over the historic emphasis on timber production, this new law can also result in more timber going to the mills than in recent times.

These logs will be from trees that are ecologically problematic—smaller trees that have grown in during the past century and a half of livestock grazing, high-grade logging and fire exclusion in dry forest types and that are threatening the little remaining old-growth ponderosa pine and other species.

In the isn't-life-ironic department, the best available science tells conservationists that we need a right-sized timber industry to aid in the conservation and restoration of forests and watersheds. Conservationists also need a relevant and working Forest Service to be in service to forests.

Enactment of this legislation will result in new rules of engagement for national forest stakeholders. Confrontation can give way to collaboration. Walking and talking in the woods can become more prevalent than litigating and arguing in the courts.

I am still a happy warrior when it comes to logging natural young, mature and old-growth moist forests types, or to conserving the greater sage grouse and the Sagebrush Sea, to prohibiting energy development off the Oregon Coast, or other matters.

However, the times for and the politics of eastside dry forests of Oregon have changed and all these changes require the conservation community and the timber industry to reinvent themselves. Senator Ron Wyden's introduction of this path-breaking legislation is an important milestone in those efforts.

As we humans continue and increase our messing with Mother Earth, the response of the conservation community must be to diversify to complement our preservation paradigm with a restoration paradigm.

## CONVERTING ECOLOGICALLY PROBLEMATIC SMALL TREES INTO COMMERCIALY VALUABLE LOGS

The amount of old-growth ponderosa pine forests in eastern Oregon today is but 2-8% of what it was before the European invasion.<sup>5</sup> The result is unnatural concentrations of firesusceptible younger and smaller trees that are outcompeting the residual old-growth ponderosa pine trees for moisture and nutrients—leaving old-growth trees more likely to suffer premature death due to insects and disease.<sup>6</sup> An additional—but somewhat overblown—concern is that these encroaching trees can also serve as a ready fuel-ladder to carry otherwise beneficial lowseverity surface fires into the residual old-growth forest canopy, resulting in the loss of rare oldgrowth ponderosa pine. Unnaturally dense stands are less suitable habitat for white-headed woodpeckers and other wildlife,<sup>7</sup> as well as a variety of understory plants.<sup>8</sup>

## THE PROBLEMS THE LEGISLATION WILL ADDRESS

By “eastside forests” in Oregon, I mean approximately 8.3 million acres of National Forest System lands not within the range of the northern spotted owl and covered by the Northwest Forest Plan. These forests range from ponderosa pine at the lowest elevations at the edge of the Sagebrush Sea to alpine parklands above timberline. In between one can find western larch, western white pine, mountain Douglas-fir, whitebark pine, western juniper, white fir, grand fir, subalpine fir,

<sup>5</sup>Noss, Reed F., Edward T. Laree, J. Michael Scott. 1995. Endangered Ecosystems of the United States: A Preliminary Assessment of Loss and Degradation. Biological Report 28. USDI-National Biological Service. Washington, DC: (unpaginated) (citations omitted) (available at [biology.usgs.gov/pubs/ecosys.htm](http://biology.usgs.gov/pubs/ecosys.htm).) Comparable losses have occurred on the Ochoco, Malheur, Umatilla and Wallowa-Whitman National Forests.

<sup>6</sup>Brown, R. 2000. Thinning, Fire and Forest Restoration: A Science-Based Approach for National Forests in the Interior West. Defenders of Wildlife. Portland, OR. 40 pp. Available at [http://www.defenders.org/resources/publications/programs\\_and\\_policy/biodiversity\\_partners/thinning\\_fire\\_and\\_forest\\_restoration.pdf](http://www.defenders.org/resources/publications/programs_and_policy/biodiversity_partners/thinning_fire_and_forest_restoration.pdf)

<sup>7</sup>Johnson, D. H., and T. A. O'Neil, editors. 2001. Wildlife-habitat relationships in Oregon and Washington. Oregon State University Press, Corvallis, Oregon, USA.

<sup>8</sup>Dodson, Erich Kyle; Peterson, David W.; Harrod, Richy J. 2008. Understory vegetation response to thinning and burning restoration treatments in dry conifer forests of the eastern Cascades, USA. *Forest Ecology and Management*. 255: 3130-3140.

Engelmann spruce, incense cedar, quaking aspen, black cottonwood, limber pine, mountain hemlock, lodgepole pine and other tree species.

Ponderosa pine-dominated forests outside of designated Wilderness and Inventoried Roadless Areas are found on 4.6 million acres of the lands covered by this legislation.<sup>9</sup> It is only the dry forest types of Oregon's eastside that are generally unhealthy. For a century and a half, natural and beneficial frequent low-severity surface fires have been interrupted due to domestic livestock grazing, which removes the grass that carries these fires. For well over a century, these forests have been high-graded for their wood by removing the largest and most naturally fire-resistant trees for timber. For well over a half-century, the fire-industrial complex has effectively deprived these forests of vital fire. From the standpoint of both habitat and hydrology, road densities are extreme.

The evidence and effects of fire exclusion are obvious. The harm to these forests is chronic, ongoing and severe.

#### PASSIVE VERSUS ACTIVE RESTORATION

It is reasonable to ask if the best course is to simply withdraw human-caused site-specific ecological irritants and let nature heal itself. Passive restoration is what I always prefer philosophically and in many cases it is the right ecological course of action. However, a general scientific consensus exists that says that—either on a tree, stand and/or landscape basis—active management is necessary to ecologically conserve and restore ponderosa pine-dominated forests on the eastside of Oregon.

The absence of further interventions by humans to correct previous interventions will likely—according to most scientists—result in the loss of the remaining dry old-growth forests and the species that depend upon these endangered ecosystems.

The best available science tells us that careful and constrained ecological restoration thinning will heal, not further harm, dry forests.

#### TO THIN OR NOT TO THIN—BEFORE TO ALWAYS BURN

In dry ponderosa pine-dominated forests of eastern Oregon, the reintroduction of fire into these fire-dependent ecosystems is always necessary. Wildfire is either the continuation of the present forest or the birth of the next one. Merely thinning a dry forest—without also reintroducing fire—will not achieve ecological restoration.<sup>10</sup>

In many cases restoration goals in fire-dependent forest types can be met with only the careful reintroduction of prescribed fire. However, there are many other cases where the careful and constrained scientifically based restoration thinning is necessary or desirable.

In these other cases, the presence of “ladder” fuels (younger trees in the understory that can carry otherwise beneficial surface fires into the residual old-growth overstory) makes for an unacceptable risk to the relatively few remaining old-growth ponderosa pine trees.<sup>11</sup> Though the risk of loss to wildfire of old-growth ponderosa pine trees in a particular stand is relatively low, the introduction of prescribed fire before restoration thinning can—in many but not all cases—result in unacceptable risk of old-growth tree loss.

It is very important to conserve the remaining old-growth ponderosa pine trees in Oregon, as perhaps only one-twelfth to one-fiftieth remains. Today, the number and extent of such trees are so perilously low that extraordinary measures are necessary to conserve them. As more old growth is again found on the landscape it will be both desirable and possible to leave these forests to the vagaries of wildfire.

Because of this severe shortage of live old-growth ponderosa pine across the landscape, it's important to make extraordinary efforts to conserve these habitats until such time that fire can again be expressed naturally across the landscape. While the conversion to a standing dead tree from a standing live tree is not a “loss” to nature per se—but rather just a change—given there are not enough live old-growth trees means that special care needs to be taken. There are not enough dead old-growth trees either, but live trees will turn into dead trees in time.

There is also the matter of scale. Restoration of dry forest types across eastern Oregon needs to be done on a very large scale. It is not feasible to solely rely on either prescribed or wild fire to achieve these ends. First, the wild fires may not

<sup>9</sup> Fernandez, Erik. F. Oregon Wild. Personal Communication September 2009.

<sup>10</sup> Brown, R. 2000. Thinning, Fire and Forest Restoration: A Science-Based Approach for National Forests in the Interior West. Defenders of Wildlife. Portland, OR. 40 pp. Available at [http://www.defenders.org/resources/publications/programs\\_and\\_policy/biodiversity\\_partners/thinning\\_fire\\_and\\_forest\\_restoration.pdf](http://www.defenders.org/resources/publications/programs_and_policy/biodiversity_partners/thinning_fire_and_forest_restoration.pdf)

<sup>11</sup> Brown, Richard T., James K. Agee and Jerry F. Franklin. 2004. Forest Restoration and Fire: Principles in Context of Place. *Conservation Biology* 18:903-912.

be adequate in scale. Second, the acceptable level of prescribed burning is limited to appropriate weather windows and available staffing. Third, fire is an imprecise tool to surgically excise ecologically problematic small trees while saving ecologically vital live old trees.

#### INVOKING THE BEST AVAILABLE SCIENCE RATHER THAN THE WORST POSSIBLE POLITICS

Besides the statutory protection for large trees and streams, limitations on roads and changes in management goals for the eastside forests of Oregon, perhaps the most important concept of this legislation is that Congress would be establishing a process to conserve and restore the forests and watersheds of the eastside forests of Oregon. This process is based on strong protections and clear directions from Congress to the Forest Service and is to be guided by the best available science.

Unlike other bills pending in Congress to address forest health issues on federal lands in the American West, what distinguishes this legislation is that it does not presuppose specific ends or means to achieve them. Rather than declaring all bugs bad, all diseases disastrous and all fires fatal—as a matter of legislated fact—the legislation rather sets broad goals for the management of forests that most can agree with and leaves it to the Forest Service to manage consistent with the best available science to achieve those goals.

#### THIS IS COMPROMISE LEGISLATION, NOT COMPREHENSIVE LEGISLATION

The legislation fails to address many aspects of national forest management and use that I believe Congress should address. In many instances, I would have preferred more explicit direction and protection. However, a critical mass does not exist for my wishes to prevail.

An important missing element in the legislation is the provision of federal tax credits to leverage industry investment in state-of-the-art logging, yarding, hauling and milling equipment that reduces soil impacts and energy consumption, while at the same time making those ecologically problematic, generally smaller trees into more generally economically valuable logs.

A major challenge to implementing this legislation will be securing adequate funding. Society owes an ecological debt to these forests that Congress must honor. The best source of funds to pay down this ecological debt—by undertaking the necessary comprehensive forest and watershed restoration—is to reprogram current Forest Service annual appropriations that now go to a fire-industrial complex that wastes billions of dollars attempting to extinguish fires that cannot or should not be extinguished. Reprogramming this money to ecological restoration and to private landowner incentives to make their dwellings resistant to fire is a much better use of taxpayer funds.

#### CONSERVATION COMMUNITY NOT OF ONE MIND REGARDING RESTORATION THINNING

The conservation community is not of one mind when it comes to ecological restoration thinning of dry forest types. While a large critical mass of the conservation community is in support of careful and constrained ecological restoration thinning—as part of a comprehensive forest and watershed restoration strategy that also includes the removal of unnecessary roads and the improvement of necessary roads, limitations on livestock grazing, efforts to limit invasive species, and the careful re-introduction of fire into these fire-dependent forests—some environmentalists are not.

Their objections can be categorized as scientific, philosophical and esthetic.

#### *Scientific*

The science on how best to manage dry forest types is not unequivocal. Science never is totally settled. However, the vast majority of the relevant science concludes that careful and constrained ecological restoration thinning broadly applied across the landscape helps to restore these forest types to ecological health. Unfortunately, some of my colleagues who disagree with this scientific consensus are inclined to selectively interpret selected sources to support their viewpoint. I am troubled that some of my conservation colleagues embrace the best available science that says leave moist forest types alone, yet ignore the best available science for dry forest types that says careful and constrained thinning is necessary for their ecological restoration.

#### *Philosophical*

Like most of my colleagues, I believe that federal public lands should provide goods and services to society that the private sector is unwilling or unable to provide. I do not believe that logging (or mining or grazing for that matter) merely for

commercial purposes is a legitimate use of public lands. However, in the case of eastside dry forest types, the removal of ecologically problematic trees by converting them to commercially valuable logs is a coincidental convergence of ecological and economic interests that I can support. Timber production as a byproduct of ecological restoration is an economic opportunity, a social good and an ecological necessity. Of course, it's easier when the best available science coincides with one's philosophy, esthetic sense, re-election or self-interest.

#### *Esthetic*

Part of the objection that that part conservation community has to ecological restoration thinning is esthetic. Logging—even that done well—with all its stumps, usually looks like hell. When I visit a dry forest that recently has been subjected to ecological restoration thinning, I think of visiting my father after his triple bypass. He was in intensive care and he was so cut up and bruised that it looked like the old man had been beaten to within an inch of his life. Yet afterwards, he was the better for the surgery that had a purpose and the desired effect. Aldo Leopold said, “One of the penalties of an ecological education is that one lives alone in a world of wounds. Much of the damage inflicted on land is quite invisible to laymen.”<sup>12</sup>

#### BURDEN OF PROOF AND STANDARD OF EVIDENCE: UPON WHOM AND HOW MUCH?

Most conservationists and many governments give great weight to the precautionary principle. Wikipedia says: “The precautionary principle states that if an action or policy has suspected risk of causing harm to the public or to the environment, in the absence of a scientific consensus that harm would not ensue, the burden of proof falls on those who would advocate taking the action.”<sup>13</sup>

Always in ecological preservation and often in ecological restoration, the best course is to do nothing—just leave an area or an ecosystem alone (while stopping degrading activities). However, in the case of these dry eastside forests degraded from past management, doing nothing is doing something. Doing nothing—most of the evidence suggests—will cause these forests to remain unhealthy, if not irreversibly converting to a new ecological state that is not desirable for wildlife, watersheds or re-creation.

The differences among conservationists come down to both who should bear the burden of proof and what should be the standard of evidence. Yes, there is not 100% agreement among the best available scientists as to the best available science. In determining either civil liability or criminal guilt, American law has developed three distinct standards:

- Preponderance of the Evidence. “[T]he matter asserted seem more likely true than not.”
- Clear and Convincing Evidence. “[I]t is substantially more likely than not that the thing is in fact true.”
- Beyond a Reasonable Doubt. “[C]lose to certain of the truth of the matter asserted.”<sup>14</sup>

The fundamental question is whether restoration thinning will help degraded dry forest types to live or help them to die. To deprive one of life or liberty, the criminal standard is “beyond a reasonable doubt” (“beyond a shadow of a doubt” is not a legal standard). If the evidence in support of ecological restoration thinning in dry forest types turns out to be true, then to not thin will be to condemn these forests. If such evidence is incorrect, then to thin will similarly condemn such forests. In either case, the consequences of being wrong argue against requiring the highest standard of evidence to determine a course of action (or inaction).

Yet, having the “preponderance of the evidence” seems like too low of a standard of evidence to determine the ecological truth. Merely being barely more likely than not to choose the correct course is not something to bet the forest on.

Therefore, we are left with “clear and convincing evidence” as an appropriate standard of evidence, as it requires that the evidence be substantially more likely than not to turn out to be true.

An insurmountable problem is that standards of evidence are usually applied after the fact. If the alleged fact that occurred previously is true, one goes to jail or pays a judgment. In the case of dry forest types, society must consider evidence not on what has happened, but what will happen if a particular course of action

<sup>12</sup> Leopold, Aldo., Luna Bergere Leopold, and Charles W. Schwartz. 1991. Round River: From the Journals of Aldo Leopold. Page 165.

<sup>13</sup> [http://en.wikipedia.org/wiki/Precautionary\\_principle](http://en.wikipedia.org/wiki/Precautionary_principle); accessed on 30 December 2009

<sup>14</sup> [http://en.wikipedia.org/wiki/Burden\\_of\\_proof](http://en.wikipedia.org/wiki/Burden_of_proof)

is taken or not taken. At best, society must choose the best-reasoned prediction in the hope of avoiding the worst reasonably anticipated outcome.

In the case of degraded dry forest types, doing nothing does not ensure that nothing will happen. If only the precautionary principle had been applied long before now.

#### HEDGING AGAINST BOTH IGNORANCE AND ARROGANCE

Scientific consensus does not mean scientific unanimity. There are still scientists who argue there is no link between tobacco and cancer or carbon dioxide and climate disruption. However, if nine out ten doctors tell me I have cancer, it is prudent for me to believe them and to follow a course of action that most of them agree on.

While today's best available science that says that careful and constrained—but widespread—thinning of dry forest types on the eastside of Oregon is the best course of action, such may not be the case in the future. The existing scientific consensus may either grow stronger or turn out to be wrong. To mitigate this risk of wrong prediction it is prudent for society to hedge against the risks of both ignorance and arrogance.

Today, the best available science says careful and constrained restoration thinning of much of these degraded dry forests is necessary to return them to ecological health. However, we should no more thin every acre than not thin any acre of dry forest types in eastern Oregon. Perhaps one-half should be thinned, while perhaps one-half should not be thinned. In this way, if the best available science of today turns out to be correct, we will have done well for the forest on a landscape scale. If the best available science of today turns out to be wrong, at least we won't have made the entire landscape worse.

#### CONCLUSION

In sum, the proposed Oregon Eastside Forests Restoration, Old Growth Protection and Jobs Act is not the bill I would have written. It is the product of what Senator Wyden could convince a critical mass of the conservation community and timber industry to agree on. While not a perfect bill, it is nonetheless a great bill. It would provide for new and better goals for national forest management and can result in the conservation and restoration of old-growth forests and watersheds for the eastside forests of Oregon—benefiting clean water, fish and wildlife; helping to mitigate the effects of climate change; and leaving them in a healthier state for future generations to enjoy.

#### SUPPLEMENTAL STATEMENT FROM OREGON WILD

For the last two decades, Oregon Wild has struggled over the question of how best to defend oldgrowth forests and important watersheds in eastern Oregon from logging, road building, and other destructive activities, while at the same time promoting needed restoration on degraded lands. We believe there is a need for both.

Oregon Wild has long sought to protect the last remaining old-growth forests in eastern Oregon, and we have used the existing regulations that protect large trees and riparian and aquatic resources to do this. We also understand that Oregon's eastside forests have been altered drastically by more than a century of fire suppression, livestock grazing, road building and industrial logging. Past management has left eastside landscapes in desperate need of restoration, which begins with conserving intact watersheds, remaining mature and old-growth forests, and habitat for at-risk fish and wildlife.

Oregon Wild supports this legislation because it expands upon existing protections for large trees and aquatic resources. These protections are important to us. But the bill also directs the Forest Service to use the best available science to restore forest and watershed health as its primary goal. We believe this is equally important.

Beginning with the lush forests of the Siuslaw National Forest more than a decade ago, conservation, industry, and community interests have begun to come together to seek common ground on managing our public lands around the concept of restoration. This has led to broad agreement on the treatment of thousands of acres of previously harvested forests that benefit the restoration of old-growth habitat, and the restoration of many miles of salmon habitat.

In the drier forests of eastern Oregon, this shift has been happening as well. Tim Lillebo has been working for Oregon Wild to help design and implement forest management projects that advance ecological restoration in the Deschutes, Ochoco and Malheur National Forests for more than two decades. In particular, he is currently working with the Sisters Ranger District to get the Glaze Forest Restoration Project implemented, and to facilitate a broad collaborative effort to engage the community in designing what might have been a highly controversial project within an

oldgrowth pine forest. That project can hopefully serve as a model for collaboration and for prescriptions that benefit wildlife and forest health.

Senator Wyden's Oregon Eastside Forests Restoration, Old Growth Protection and Jobs Act represents a compromise. It is not perfect, but based on our experience working in eastern Oregon for three decades, we believe that it makes significant improvements in forest management that will yield real benefits for water quality, fish and wildlife, healthy forest structure and function, and help prepare for and mitigate the effects of climate change. It will also support the trust and common ground that has begun to be built between the US Forest Service and its stakeholders.

## APPENDIX

OREGON WILD,  
March 16, 2010.

Hon. RON WYDEN,  
*Chair, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR SENATOR WYDEN, I wish to append this letter and attached table to my written statement for the record for the hearing held by the subcommittee on March 10, 2010 in the matter of your proposed "Oregon Eastside Forest Restoration, Old Growth Protection and Jobs Act" (S.2895).

The table depicts the timelines for the current Administrative Appeals process and the proposed Administrative Objection process in S.2895. There would be an estimated time-savings of 45 days for an administrative review of a project supported by an Environmental Assessment and 75 days for one supported by an Environmental Impact Statement. Yet, the essential due-process elements for citizens remain.

Thank you.

Sincerely,

ANDY KERR,  
*Senior Counselor.*



Current Appeals Reform Act Process		S. 2895, Sec. 11 Environmental Analysis & Expedited Administrative Review	
Environmental Assessment with Appeal	Environmental Impact Statement with Appeal	Environmental Assessment with Objection	Environmental Impact Statement with Objection
Agency planning team develops proposed action, takes scoping comments, develops alternatives. (This phase can take anywhere from 3 months to 3 years.)	Agency conducts scoping and also works with collaborative groups to develop proposal and alternatives, come to agreement on restoration needs, priorities and prescriptions. (This phase can take anywhere from 3 months to 3 years.)	Agency conducts scoping and also works with collaborative groups to develop proposal and alternatives, come to agreement on restoration needs, priorities and prescriptions. (This phase can take anywhere from 3 months to 3 years.)	Agency conducts scoping and also works with collaborative groups to develop proposal and alternatives, come to agreement on restoration needs, priorities and prescriptions. (This phase can take anywhere from 3 months to 3 years.)
Public comment period on EA: 30 days	Public comment period on EA: 30 days	Public comment period on EA: 30 days	Public comment period on EA: 30 days
Evaluate public comments and agency planning team work. 30 days minimum assumed.*	Evaluate public comments and agency planning team work. 30 days minimum assumed.*	Evaluate public comments and agency planning team work. 30 days minimum assumed.*	Evaluate public comments and agency planning team work. 30 days minimum assumed.*
Decision. 45 days to appeal.	Decision. 45 days to appeal.	Decision. 30 days to file objection.	Decision. 30 days to file objection.
Agency response/decision on appeal. 45 days	Agency response/decision on appeal. 45 days	Agency response to objection. 30 days	Agency response to objection. 30 days
15 days before implementation.	15 days before implementation.	Decision. Immediate implementation.	Decision. Immediate implementation.
EA w/ Appeal: 165 Elapsed Days	EA w/ Appeal: 165 Elapsed Days	EA w/ Appeal: 120 Elapsed Days	EA w/ Appeal: 135 Elapsed Days
		EA Decision: Immediate implementation.	EA Decision: Immediate implementation.
		EIS Decision: Immediate implementation.	EIS Decision: Immediate implementation.
		EA: 5 days before implementation.	EA: 5 days before implementation.
		EIS: 5 days before implementation.	EIS: 5 days before implementation.
		EA: 110 Elapsed Days	EA: 90 Elapsed Days; EIS: 105 Elapsed Days
		EIS: 156 Elapsed Days	EIS: 156 Elapsed Days
		Agency response/decision on appeal. 45 days.	Agency response/decision on appeal. 45 days.
		15 days before implementation.	15 days before implementation.
		EIS w/ Appeal: 210 Elapsed Days	EIS w/ Appeal: 210 Elapsed Days
		Agency Practice Appeals Reform Act Regulations Proposed Eastside Legislation Proposed Eastside Legislation Proposed Eastside Legislation	Agency Practice Appeals Reform Act Regulations Proposed Eastside Legislation Proposed Eastside Legislation Proposed Eastside Legislation
		Agency Practice Appeals Reform Act Regulations Proposed Eastside Legislation Proposed Eastside Legislation Proposed Eastside Legislation	Agency Practice Appeals Reform Act Regulations Proposed Eastside Legislation Proposed Eastside Legislation Proposed Eastside Legislation

\* 30 days if the agency is efficient and focused. However, this period can be much longer if: (1) the agency gets delayed up in Endangered Species Act consultation (which they will if they knowingly propose activities that harm listed species); (2) the staff specialists or contractors are not available; (3) the agency is unable to work year round due to fire fighting or lack of agency funding.

Source: CEO National Environmental Policy Act Regulations, (40 CFR 1506); Appeals Reform Act Notice Comment and Appeal Regulations, (36 CFR 215); Oregon Eastside Forests Restoration, Old Growth Protection and Jobs Act (S.2895; 111th Congress).

Senator WYDEN. Mr. Kerr, thank you. Very helpful and very much appreciate your cooperation.

Your partner is here with us, Mr. Shelk, and we are so glad to have Prineville well represented here with Mr. Shelk. We will make your prepared remarks a part of the record as well and just want to note the tremendous contributions Mr. Shelk makes to our State. Not just in forestry, but in lots of other areas as well.

Mr. Shelk.

**STATEMENT OF JOHN SHELK, PRESIDENT, OCHOCO  
LUMBER COMPANY**

Mr. SHELK. Mr. Chairman, members of the committee, I am John Shelk, and I am the managing director of Ochoco Lumber Company in Prineville, Oregon.

Ochoco Lumber Company's roots in central Oregon and eastern Oregon go back to 1924 when we began buying timberlands there. So, in sum, we have over 80 years of experience in managing timberland and in operating mills in eastern Oregon.

Altogether, Ochoco's operations employ approximately 100 people now. That is down from 350 people at the peak of its operation in 1993. Successful implementation of S. 2895, the subject of my testimony today, would make it possible for us to reemploy about 40 people, so an increase of 40 percent beyond our current employment base.

Our company has been decimated the last 15 years due to a lack of Federal timber available to us. We are a small company that has been dependent upon Federal timber. When the Federal timber program began to decline in 1990, that marked the gradual decline of our company as an employer in eastern Oregon.

As you know, Mr. Chairman, the bill that we are talking about today came about as a result of months of discussions between representatives of the environmental community and eastern Oregon lumber manufacturers who are dependent upon Federal timber from public lands. The bill contains compromises on the part of all of those who participated in these negotiations.

I think it is fair to say that none of us individually would have written this bill the way that it is currently configured. We have worked out an agreeable compromise that will improve the health of Oregon's eastside forests and help preserve the livelihood and tax base of our rural communities.

Since 1990, 23 eastern Oregon mills that employed nearly 2,000 workers have shut down, and several of those mills have been ours. How much longer the eight or so remaining mills can survive will depend upon the availability of raw material, and that is saw logs. That is done by increasing the volume of timber coming off the Federal forests of eastern Oregon, and it is absolutely critical to keep the sawmill—in keeping the sawmill infrastructure in place.

This has become even more acute as private land owners in our region have held their timber off the market because of low stumpage prices due to the economic dislocation we have had the last several years. Paralleling the decline in eastern Oregon's milling infrastructure has been a decline in the health of our Federal forests. Prior to 1994, Ochoco National Forest harvested 130 million

board feet and is now down about 90 percent. This is roughly paralleled on the other forests east of the Cascades.

As the decline has taken place, it has been replaced by a continuing growth of forests east of the Cascades. Hence, an overgrowth of material on the forests that really brings about a condition that leads to insects and disease manifestation and increased risk of fire. As of July 2008, there were nearly 5.5 million acres in fire condition class 2 and 3 on acres in eastern Oregon's Federal forests. This can only be reversed by active intervention, mechanical treatment of these forests.

Over the last 2 decades, it has become increasingly difficult for our Federal land managers to utilize timber harvest activities as part of their forest management program. It is these projects that could provide raw materials to our mills and maintain living wage jobs. At the same time, we can improve forest health by reducing the overcrowded condition of the forest stands.

In order to survive, eastern Oregon's mills need a predictable supply of raw material from Oregon's Federal lands. To produce timber, we need saw logs, and that is logs that are large enough to be made into boards.

At the same time we are doing this, we can also provide biomass for the various other facilities that are coming onboard that will completely utilize the products coming off of Federal forest lands.

There are those who criticize this bill because they disagree with including diameter limits and other specific details, believing that such decisions reduce the flexibility of our Federal forest agencies to best manage our forests. For the most part, we are managing under the conditions that we are describing in our bill right now. We believe that this bill can transition very nicely into the current management regime that we are experiencing.

Senator Wyden, we appreciate the work that you and your staff have done with our group in bringing this bill to the Senate, and we look forward to working with you constructively in the future.

[The prepared statement of Mr. Shelk follows:]

PREPARED STATEMENT OF JOHN SHELK, PRESIDENT, OCHOCO LUMBER COMPANY

S. 2895

Mr. Chairman, members of the Committee: I am John Shelk, Managing Director of Ochoco Lumber Company, Prineville, Oregon. Ochoco Lumber Company's roots in Eastern Oregon go back to 1924 when it began buying timber lands. Milling operations began in Prineville Oregon in 1938. The company built and operated a large log mill and later built a small log mill. Ochoco closed its Prineville sawmill operations in 2000. Ochoco Lumber Company's wholly owned subsidiary Malheur Lumber Company, located in John Day, Oregon, started up in 1983 and has been in continuous operation since. Malheur Lumber Company produces approximately 42 million board feet (99,000m<sup>3</sup>) of quality Ponderosa Pine annually, as well as Douglas fir and white fir products. All together, Ochoco's operations employ approximately 100 people, down from 350 people at the peak of its operation. Successful implementation of S. 2895, the subject of my testimony today, would make it possible for us to re-employ about 40 people.

I am here today to testify in favor of S. 2895, "the Oregon Eastside Forests Restoration, Old Growth Protection and Jobs Act of 2009" introduced by Senator Wyden. As you know Mr. Chairman, this bill came about as the result of months of discussions between representatives of environmental organizations and Eastern Oregon lumber manufacturers dependent on timber from federal lands for a source of raw materials. The bill contains compromises on the part of all those who participated in these negotiations. I think it is fair to say that it is not the bill any of us would have written, but we believe it is a workable compromise that will improve

the health of Oregon's Eastside forests and help to preserve the livelihoods and tax base of our rural communities.

Oregon's eastside counties and communities are in dire straits. In Grant County, the unemployment rate for December, 2009 was 14.9%; unemployment was below 10% (9.7%) in only one month since October 2008. In Union County, things are only slightly better: December unemployment stood at 10.8%; the monthly average unemployment for 2009 was 10.6%. Since 1990, 23 Eastern Oregon mills that employed nearly 2,000 workers have shut down. How much longer the 8 or so remaining mills can survive will depend on the availability of raw material—saw logs. Increasing the volume of timber coming off our federal forests is critical to keeping this sawmilling infrastructure in place. This need has become even more acute as private landowners hold their timber off the market because of low stumpage prices.

Paralleling the decline of Eastern Oregon's milling infrastructure has been a decline in the health of our federal forests. Prior to 1994, the Ochoco National Forest harvested 130 million board feet (mmbf) annually on a sustainable basis; the Malheur National Forest harvested 210 mmbf annually, sustainably. In 2009, only 13.0 mmbf were sold on the Ochoco and 34.0 mmbf on the Malheur. These figures show that we are growing vastly more wood than we are removing from these forests. As the amount of wood growing on these forests has continued to greatly exceed the amount harvested and removed, our federal forests have become seriously overcrowded. This leads to insect and disease infestations and increased risk of fire. As of July, 2008, there were nearly five and a half million acres of fire condition class II and III acres on Eastern Oregon's federal forests. These forests can be restored to health only through active management: a program that plans for and uses mechanical treatment to reduce overcrowding, maintain forest health and at the same time produce raw materials for our mills each and every year.

Over the last two decades, it has become increasingly difficult for our federal forest managers to utilize timber harvest activities as part of their forest management program. It is these projects that could provide raw materials to our mills, maintaining living wage jobs (according to the Oregon Department of Forestry, each 1 million board feet harvested supports 11.2 direct and indirect jobs with an average annual wage of \$43,200) and a tax base for local government, at the same time improving forest health by reducing overcrowding in forest stands. Overcrowding leads to insect and disease infestations and increased fire hazard.

In order to survive, Oregon's mills need a predictable supply of raw material from Oregon's federal lands. To produce lumber, we need saw logs—logs large enough to make into boards. When trees of this size are harvested, the interspersed smaller trees and the tops and limbs can be turned into chips and biomass to produce other products, electricity and perhaps other types of energy. Without the larger, more valuable materials to support the removal of the less valuable biomass, removing the smaller materials is not economically feasible. The simple reality is that the federal coffers are not sufficient to pay for all the work our forests need. Selling sawlogs puts private capital to work in the restoration of our federal forests.

SB 2895 contains provisions designed to restore forest health while assuring a sustainable supply of sawlogs for our industry. It emphasizes planning at the landscape scale and ecological restoration projects based on those plans. It requires the Forest Service to prioritize its projects to both improve forest health and maintain the infrastructure necessary to maintain forest health.

Of course, these landscape scale plans will take time and will not result in timber outputs for the next few years. In order to maintain our logging and milling infrastructure, the bill calls for the Forest Service to do interim projects comprised predominantly of mechanical treatment totaling 80,000 acres per year distributed across all of the Eastside national forests and increasing to 120,000 acres in the third fiscal year after enactment of the bill. Existing and new funding for vegetation management, timber management and hazardous fuels reduction will be prioritized to complete these projects. The bill authorizes the appropriation of \$50,000,000 for the work needed to carry out these projects.

Like most Western national forests, work on Oregon's Eastside forests has been hindered by appeals and litigation. The bill would foster collaboration among agency personnel and affected members of the community. In this way, we hope to avoid the gridlock resulting from appeals and litigation and get our forests back to work. The bill calls for a streamlined objection process for ecological restoration projects and for expedited judicial review of any action which give rise to legal action. For interim projects, administrative appeals would be eliminated, but the right to challenge the project in court remains.

There are those who criticize this bill because they disagree with including diameter limits and other specific details, believing such decisions reduce the flexibility of our federal forest agencies to best manage our forests. For the most part, our fed-

eral land managers are already managing under these restrictions. In our view, the legislation is a necessary improvement on the status quo. We simply must find a way to restore the health of our Eastside forests. We believe this bill will provide the reassurance that both the industry and environmental organizations need to establish trust and eliminate the gridlock our forest managers now face.

Yet, passage of the bill alone will not result in success. Once the legislation is in place, the Forest Service must move promptly to implement both the interim projects and the large scale ecological restoration plans. Congress must appropriate the funds necessary to carry out this ambitious and far-reaching program. We request that you continue to monitor both implementation and outcomes to assure that the agency has the will and the means to succeed. The projects simply must result in the production of material suitable for the current infrastructure. If we go out of business, there will be no one to do the work necessary to restore forest health on the Eastside.

Senator Wyden, we appreciate the work of you and your staff to get this bill before this committee today. We know that you are committed to working with all of us to assure the survival of our mills and our loggers and to restore the health of our Eastside forests and communities. There is much that needs to be done for this legislation to result in the hoped-for outcome. We know that you are committed to continue that work with us to ensure its goals are realized.

Thank you for the opportunity to appear before you today.

Senator WYDEN. Thank you very much, Mr. Shelk.

I have been urged to carry around the picture of you and Mr. Kerr standing side by side at the launch of all of this, just to convince the disbelieving that it was on the level. I just reviewed with Mr. Gladics, almost the subcommittee's historian at this point, the prospect of the 2 of you coming together on something like this. If you had thought back years ago to the prospect of something like that happening, the odds would be infinitesimally small.

So it is just great that you 2 have led this effort, and I just want to note so it is in the record that I know both of you took a lot of flak from some of your best friends on this.

Mr. KERR. For the record, taking a lot of flak. But, OK.

Senator WYDEN. Took/taking. I am sure that that is the case. Therein lies the effort to try to get breakthroughs.

I continue to have the only bipartisan health reform bill here in the U.S. Senate, and I am still trying to bring people together on that. So I just want both of you to know how much I appreciate the very constructive way that you all have gone about this. It took a lot of courage to do it. I know both flak has been directed at you in the past, and Mr. Kerr corrects the record to make sure everybody knows you are still taking it. So we are very, very appreciative.

Let us go now to Dr. Johnson, who is really the intellectual force behind the kind of approach we have been talking about here. Professor Johnson has gotten many a late-night phone call from me to discuss a lot of these issues, and consistently, it has been Dr. Johnson's scholarship and good work, work that is respected by all sides—by folks in the scientific community, folks in the timber industry, folks in the environmental community.

Dr. Johnson, our thanks to you for all of your service, and any remarks you would like to make are welcome.

**STATEMENT OF K. NORMAN JOHNSON, UNIVERSITY Distinguished PROFESSOR, COLLEGE OF FORESTRY, OREGON STATE UNIVERSITY, CORVALLIS, OR**

Mr. JOHNSON. Thank you, Mr. Chairman. I testified before you 2 years ago when you had a hearing on the state of eastside for-

ests, and I am delighted to be part of the hearing today on this remarkable day.

I am Dr. K. Norman Johnson, and I am here to give testimony for myself and Dr. Jerry Franklin, who worked with me and with you for quite a long time.

I am a professor in the College of Forestry at the Oregon State University, and Jerry is a professor of ecosystem sciences in the School of Forest Resources at the University of Washington. The comments represent our views and not those of our respective institutions.

The proposed legislation that you have introduced has the goals of restoring forest landscapes, protecting and increasing old growth forests and trees, and creating an immediate predictable and increased timber flow to support locally based restoration economies. This testimony provides our advice on achieving these goals in the national forests of eastern Oregon. We believe that the legislation captures many of these elements.

The first—I am going to make five points. The first one is that restoration needs to recognize different strategies for moist and dry forests. As Andy Kerr mentioned, really, the dry forest ecosystems are the topic today. They have evolved primarily with low and mixed severity disturbances, including wildfire and localized insect outbreaks.

Active management often is required to reduce the potential for uncharacteristic and ecologically damaging wildfire and insect outbreaks in these dry forests, and many of them will require restoration where there are existing populations of old growth trees.

The second point, eastside Federal forests in Oregon face a bleak future without swift action. My comments here are very similar to the comments from Andy Kerr. We will lose many of these forests to catastrophic disturbance events unless we undertake aggressive active management programs.

The potential for loss of our eastside forests and the residual old growth trees that they contain to fire and insects is greatly magnified by expected future climate change. We know enough to take action.

Furthermore, it is critical for stakeholders to understand that active management is necessary in stands with existing old growth trees in order to reduce the risk that these trees will be lost. Finally, to avoid this loss, we need to significantly increase the rate of treatments to reduce stand densities at least by 2 or 3 times.

My third point, the proposed legislation is based on scientific principles for restoration of dry forests. They include focusing on comprehensive ecological restoration. Rather than focus on a single goal, such as fuel hazard reduction, timber production, or carbon sequestration, the bill addresses comprehensive restoration needs for both forests and watersheds.

Second, developing management guidance by plant association, recognizing the infinite variety in these forests. Third, conserving existing old growth trees and restoring the old growth populations where they have been depleted. We are preparing these forests for coming potential threats from climate change.

Next, starting with historical information as a guide to restoration goals and modifying that as needed to reflect climate change;

creating heterogeneity both to stand and landscape scale, as mentioned by Under Secretary Sherman and you, Mr. Chairman, and also Andy; restoring large areas such as whole watersheds, moving rapidly in restoring these forests; and finally, utilizing commercial wood products from the restoration to defray costs, maintain processing capability, and provide employment.

Both Dr. Franklin and I firmly believe that as the bill moves through Congress, it is important to retain these principles.

My fourth point is that citizen-driven collaboration efforts are a key here, as been said, and I have just got to add that I teach a collaboration course. This winter, I have had many of the collaboration groups talking in the course, including the Blue Mountain partners. It is an amazing transformation in eastern Oregon, and the creative energy of Federal forestry in eastern Oregon now runs through these local collaboration efforts.

The proposed legislation acknowledges the importance of them in the achievement of the long-term purposes of the act. They also can play a crucial role in successful implementation of the interim, that is the first 3 years of projects.

Finally, that management discretion should be combined with third-party review. Managers will need latitude to adapt general policies to specific problems and places. Successful restoration of these forests will require large-scale actions over time and space, as we discussed above, and managers will need the discretion to adapt general policies to the specific situations, and this is an important element to provide in the bill.

Also, the third-party review will be essential to gain and retain broad public acceptance. The proposed legislation acknowledges this need through its purpose of providing periodic independent review of agency programs to carry out the act. Review of the interim first 3 years' projects will be crucial in this regard, this independent review.

Finally, I want to say I have worked in the dry forests of eastern Oregon for over 40 years. We have seen, with the help of Andy Kerr and John Shelk, a remarkable coming together of different interests that have helped craft and support this legislation. I hope we will not lose this convergence of views in sustaining the wonderful forests of the east side.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF K. NORMAN JOHNSON, UNIVERSITY DISTINGUISHED PROFESSOR, COLLEGE OF FORESTRY, OREGON STATE UNIVERSITY, CORVALLIS, OR, AND JERRY F. FRANKLIN, PROFESSOR, ECOSYSTEM SCIENCES, SCHOOL OF FOREST RESOURCES, UNIVERSITY OF WASHINGTON

S. 2895

I am Dr. K. Norman Johnson and I am here today to give testimony for myself and Dr. Jerry F. Franklin on S. 2895. I am a University Distinguished Professor in the College of Forestry at Oregon State University. Jerry Franklin is Professor of Ecosystem Sciences in the School of Forest Resources at University of Washington. These comments represent our views and not those of our respective institutions.

Our testimony focuses on the national forests of Oregon outside of the area of the Northwest Forest Plan—the eastside forests named in the bill. Collectively, we have studied these magnificent forests and the amazing variety of benefits that they provide for almost 100 years. In addition to our research efforts there, we have served on many scientific panels analyzing forest policy issues, including the Northwest Forest Plan. We recently completed for the Klamath Tribes a comprehensive res-

toration plan for their historic tribal lands, which are currently a part of the Fremont-Winema National Forest. Also, we have just finished a proposal for restoring northwest federal forests which can be found at [http://www.cof.orst.edu/cof/fs/PDFs/JohnsonRestoration\\_Aug15\\_2009.pdf](http://www.cof.orst.edu/cof/fs/PDFs/JohnsonRestoration_Aug15_2009.pdf). That report covers the points made in this testimony in much greater detail.

S. 2895 has goals of restoring forest landscapes, protecting and increasing old growth forests and trees, and creating an immediate, predictable, and increased timber flow to support locally based restoration economies, among other purposes. This testimony provides our advice on achieving these goals in the national forests of eastern Oregon; we believe that the legislation captures many of these elements.

#### RESTORATION NEEDS TO RECOGNIZE DIFFERENT STRATEGIES FOR MOIST AND DRY FORESTS

Division of federal forests into Moist and Dry is the initial step in forest restoration planning. Plant associations provide the basis for assigning sites into these categories; these plant associations reflect contrasting composition, growth conditions, and historic disturbance regimes. We recognize that there is a broad gradient in fire behavior in Pacific Northwest forests considering variability both in site and landscape conditions. “Dry Forests” grow on sites that have pre-dominantly low-and mixed-severity fire regimes while “Moist Forests” grow on sites that are characteristically high-severity fire regimes. We include plant associations typically subject to mixed-severity disturbance regimes (such as moist Grand Fir and moist White Fir) in the Dry Forest category; this reflects their probable shift toward more frequent and severe wildfires on these sites with climate change. While shifts will occur in plant associations with climate change, we expect that they will continue to be valuable ecological reference points.

Moist Forest ecosystems evolved with infrequent but severe, stand-replacement disturbance events, such as intense wildfires and windstorms. The composition and structure of intact existing old-growth forests in Moist Forests have not been significantly affected by human activities. Generally, it is not necessary to conduct silvicultural treatments to maintain existing old-growth forests on Moist Forest sites. Silviculture can, however, be used to create diverse early seral communities and accelerate development of ecological diversity in plantations and other young stands.

Dry Forest ecosystems have evolved primarily with low-and mixed-severity disturbances, including wildfire and localized insect outbreaks. On Dry Forest sites, the composition and structure of existing old-growth forests typically have been significantly altered by human activities, resulting in increases in stand density and compositional shifts toward less fire-and drought-tolerant tree species. Active management often is required to reduce the potential for uncharacteristic and ecologically damaging wildfire and insect outbreaks. Many of these forests that require restoration have existing populations of old-growth trees.

#### EASTSIDE FEDERAL FORESTS IN OREGON FACE A BLEAK FUTURE WITHOUT SWIFT ACTION

The majority of federal forests in eastern Oregon fall into the Dry Forest category. Ponderosa pine and dry mixed conifer plant associations predominate.

These forests have been greatly simplified during the last century by a variety of management actions including fire suppression, grazing by domestic livestock, logging, and establishment of plantations. Consequently, they differ greatly from their historical condition in having much higher stand densities and basal areas, lower average stand diameters, much higher percentages of drought-and fire-intolerant species (such as white or grand fir), and many fewer (or no) old-growth trees.

We will lose many of these forests to catastrophic disturbance events unless we undertake aggressive active management programs. This is not simply an issue of fuels and fire; because of the density of these forests, there is a high potential for drought stress and related insect outbreaks. Surviving old-growth pine trees are now at high risk of death to both fire and western pine beetle, the latter resulting from drought stress and competition. Many fir-dominated stands are now at risk of catastrophic outbreaks of insect defoliators, such as the spruce budworm, as has already occurred at many locations on the eastern slopes of the Cascade Range in both Oregon and Washington.

The potential for loss of our eastside forests—and the residual old-growth trees that they contain—to fire and insects is greatly magnified by expected future climate change. Historically, much of the loss of old growth trees and forests has come during time of drought. The expected longer and more intense summer drought periods with climate change will put additional stress on the forests here. The stress on old growth trees will be especially severe where they are surrounded by dense understories.



We know enough to take action (uncertainties should not paralyze us). Inaction is a much more risky option for a variety of ecological values, including conservation of old-growth related wildlife. We need to learn as we go, but we need to take action now. Furthermore, it is critical for stakeholders to understand that active management is necessary in stands with existing old-growth trees in order to reduce the risk that those trees will be lost.

To avoid the loss of eastside forests, we need to significantly increase the rate of treatments to reduce stand densities. Elsewhere, we have estimated that we need to double or triple current efforts, using both mechanical treatments and prescribed fire.

#### S 2895 IS BASED ON SCIENTIFIC PRINCIPLES FOR RESTORATION OF DRY FORESTS

As Senator Wyden stated when he introduced this bill in late December, 2009, his proposed legislation resulted from months of discussion with stakeholders. The bill resulting from that negotiation (S 2895) contains scientific principles of forest conservation. It is important that these principles be retained in any further negotiation that may be needed to move the bill through Congress. We briefly summarize eight key principles here:

- Undertake comprehensive ecological restoration. Rather than focus on a single goal such as fuel hazard reduction, timber production, or carbon sequestration, the bill addresses comprehensive restoration needs for both forests and watersheds.
- Develop management guidance by plant association—an ecologically relevant way of differentiating forest sites. Plant associations integrate environmental variables; the bill utilizes plant associations as a vehicle for adapting prescriptions to individual sites.
- Conserve existing old growth trees and restore old tree populations where they have been depleted. A maximum diameter limit on harvest is used to protect old growth but exceptions can be allowed to protect small old growth trees and to harvest larger young trees that compete with old growth. To be successful, both ecologically and socially, management needs directly to address conservation of old growth trees.
- Prepare these forests for coming potential threats from climate change. The bill recognizes that current forest conditions can result in uncharacteristic wildfire, insect outbreaks, and disease and that these threats will worsen with climate change. Conditioning forests to be resilient in the face of increased summer temperatures and longer fire seasons is a central theme.
- Start with historical information as a guide to restoration goals and modify as needed to reflect impacts of coming climate change. Historical forest conditions remain a useful reference for ecological restoration, even in a time of environmental change, as they have been tempered by many climatic oscillations in the past.
- Create heterogeneity at both the stand and landscape scale. Increasing the complexity of simplified landscapes and restoring meadows and riparian zones are critical elements of forest restoration as recognized throughout the legislation. That will include leaving dense forest patches scattered through a treated landscape.
- Restore large areas, such as whole watersheds, in restoration projects. The bill calls for planning and undertaking needed forest and watershed treatments on large areas in an integrated fashion.
- Move rapidly in restoring these forests. Given the threats to eastside forests, resource managers will need to move rapidly over the next few decades, treating a large proportion of at-risk landscape. Increasing the rate of activity is an important objective of the legislation.
- Utilize commercial wood products from the restoration to defray costs, maintain processing capability, and provide employment. Investment will be needed, but wood products associated with restoration can help pay for the effort, maintain infrastructure, and support local communities.

As the bill moves through Congress, it is important to retain these principles. With such a solid scientific foundation, this legislation has the potential to model approaches to forest restoration throughout the West. These principles have applicability both to the interim (first three years) projects discussed in the legislation and the longer-run ecological restoration projects.

COLLABORATIVE EFFORTS CAN PROVIDE ESSENTIAL CREATIVE ENERGY,  
UNDERSTANDING, AND SUPPORT FOR FOREST RESTORATION

Citizen-driven collaborative efforts are beginning to break the gridlock that has stalled restoration in eastern Oregon. The creative energy of federal forestry in eastern Oregon runs through local collaboration efforts. Groups such as the Blue Mountain Partners (John Day), the Harney County Restoration Collaborative (Burns), and the Lakeview Stewardship Group (Lakeview) have recently played invaluable roles in engaging local communities in helping to guide forest restoration, working cooperatively with the Forest Service.

The Blue Mountain Partners have invited us to demonstrate the application of the principles discussed here to restoration of the Malheur National Forest. We hope to work with them this summer; I am sure that you and your staff also would be welcome to see how these principles play out on the ground.

These collaboration groups can play a key role in future forest restoration efforts. With their knowledge, understanding, and support, rapid progress can be made. Without their involvement, progress will be much more difficult. Thus, it is important that any new directives support and complement their ongoing efforts.

S. 2895 acknowledges the importance of collaboration groups in long-term achievement of the purposes of the Act. They also can play a crucial role in successful implementation of the interim (first three years) projects.

TRUST BUT VERIFY: MANAGEMENT DISCRETION SHOULD BE COMBINED WITH THIRD-  
PARTY REVIEW

Managers need latitude to adapt general policies to specific problems and places. Successful restoration of these forests will require large-scale actions over space and time, as we have discussed above, and managers will need the discretion to adapt general policies to specific situations. The legislation contains many important concepts to guide restoration, as described above; the Forest Service will need latitude in interpreting and implementing them.

A needed shift to age-based conservation rules will be aided by such an approach. Elsewhere we have argued that an age-based approach would more consistently protect old-growth trees than the current diameter-based approach. Some, though, question the practicality of an age-based approach. We believe that relatively few trees will be in question after development of protocols, as most trees can be readily identified as being either above or below any age limit that might be set. We suggest that age-based rules be designed following a four-step process: 1) have scientists and managers design and test the protocols that will be used, 2) give agencies deference to implement the protocols, 3) monitor the degree of success in implementation, and 4) use independent review by scientists, managers, and stakeholders to suggest improvements. S 2865 begins this process and we believe that its successful completion is essential to restoration of eastside forests.

Demonstration of success and learning will be needed. Public acceptance and support will be needed; the social license for these efforts is tenuous in many places. As mentioned above, collaborative efforts can help here, but more is needed. Key components in gaining public support will be credible evidence that actions are moving the forests toward restoration goals and a mechanism for changing management where the actions do not achieve desired objectives.

Monitoring is necessary but not sufficient. Given the uncertainties that we face in forest restoration, keeping track of the state of the forests and the effects of actions is a first principle of forest management. We believe, though, that people are increasingly skeptical of an agency keeping score on the effectiveness of its own actions.

Third-party review will be essential to gain and retain broad public acceptance. We need mechanisms that provide trusted evaluations of the linkage between actions and goals along with the ability to suggest change as needed. Creation of third-party review as a regular part of forest restoration would go a long way toward this goal.

S. 2895 acknowledges this need through its purpose of providing periodic independent review of agency programs in carrying out the Act and with the creation of a scientific and technical advisory committee which has, as one of its goals, evaluation of the implementation and effectiveness of the Act. Review of the interim (first three years) projects will be crucial in this regard. If the committee is given an assignment of reviewing these projects, year by year, it could go a long way toward instilling trust in the public about the purpose and results of forest restoration programs.

Senator WYDEN. Very well said. I think ensuring that we build on something of a genuine breakthrough, as you have described, is exactly our charge, and very well stated, Dr. Johnson. We thank you.

Mr. Blasing, we welcome you. I know you have had a long trek across the land to come and share your insight. You have had a long career working on forest policy issues and giving more of your time to work on the Grant County Public Forest Commission. So we welcome your remarks. We will make any prepared remarks part of the record, and you just proceed as you wish.

**STATEMENT OF LARRY BLASING, MEMBER, GRANT COUNTY  
PUBLIC FOREST COMMISSION**

Mr. BLASING. Yes, in order to get here, I even had to give up the last game of the Oregon State-Washington series.

Senator WYDEN. Painful.

Mr. BLASING. Yes, it was.

Senator WYDEN. All right.

Mr. BLASING. Yes. Thank you for the kind words about Grant County. The Aryan nation certainly stirred up a hornets' nest when they come around looking for property.

In your introductory remarks and most of the remarks that I have heard here today, I wanted to jump up and say "right on." We are with you. We agree with everything pretty much conceptually, but the devil is in the details, in our opinion.

The bill addresses the wrong problem. Management science is not the problem. The Forest Service knows how to manage lands. The problem is that they don't know how to write an environmental impact statement that will pass the Ninth Circuit Court of Appeals.

Because of this, there have been those who have taken advantage of that, who basically made a practice out of it, that we now have the Forest Service basically going through a mating dance with environmental groups to try to get some project off the ground that they can agree on without having to get into court. This isn't the best way to manage the forests. We need to do it differently, as you say.

Even though some of the groups have agreed not to appeal and to litigate—Mr. Kerr, I thank you—not everybody has agreed to that. You have testimony that is in written testimony from, I believe, the Hells Canyon Preservation Society that says that they do not want to give up that option. We have people in the Blue Mountain collaborative group that Dr. Johnson referred to who have indicated the same thing.

I attend the Blue Mountain collaborative—Blue Mountain Forest Partners—I am sorry—which is a collaborative group. I have been to 3 meetings. So far, we are still discussing the shape of the table. This process is going to take a long time to go through there to come to any kind of a decision that we can actually take a look at.

The goals of the bill do not include any economic jobs or consideration. The goals of the act do not line up with the title. We would like to see those goals reflect the importance of the economy and the jobs.

We are a county of cows and trees. Unemployment is currently over 15 percent. Each timber industry job is critical to our economy since research shows that a direct job in the industry creates seven supporting jobs. As timber goes, so goes our economy.

At this point, we note that Grant County Court has not endorsed the bill, and no other eastern courts that I am aware of. Incidentally, the Grant County Court knew I was going to be here today, and so they asked me to point out one thing.

It says, "Incidentally, the county court a few minutes ago asked me to mention that given the emphasis on stewardship projects, that the bill emphasizes timber as a byproduct. The moneys from the sale of the products from restoration programs will go back to the Forest Service. Funding for the rural insecure schools is only for a limited time. Stewardship returns no funds to schools, the same as those in this bill. If the bill is passed, funding for county roads and schools, for communities associated with the 6 national forests will be greatly damaged."

Back to me. We are advised in conversations with the Forest Service that the timeline for actions under this bill will be impossible to keep. All of the projects under this bill are subject to NEPA, and that law has its own timeline. The requirements of the bill contain numerous nebulous, unclear, and even litigious wording, and management direction with subjective concepts. The terms such as "best available science," "historic levels," "ecologically appropriate," "special complexity" are subjective, subjective terms that should not be codified into law as they are controversial and simply lawsuits waiting to happen.

Old growth is more of a concept than a definable matter. Old growth lodgepole is different from mixed fir stands, which are different from pine stands. This bill defines old growth as an individual tree, and in the bill, it has 2 different definitions. This confuses forest management, as management is done on a stand basis with old growth being one consideration.

The Forest Service has already dedicated many thousands of acres to the preservation of old growth. This bill adds old growth restrictions upon existing old growth restrictions. The Forest Service has more than 100 years invested in the management of these forests. Stands have been modified for fire hazard reduction, growth, forest health, and many other reasons. This bill's program to return to historic conditions basically throws this effort out the window.

Roads are necessary for any forest management program. Codifying road management assures that management costs will rise and long-term problems are a certainty.

Incidentally, pleasure driving is the number-one use of national forests, more than hiking, hunting, or other uses. This bill will restrict the public from its favorite use of their national forests.

In the event that this bill is enacted into law, it must have a real sunset provision including all the provisions of the bill. We are looking at basically a bureaucratic nightmare where replacing one level of—my tongue is sticking to the top of my roof, the roof of my mouth. We are placing a level of bureaucracy over the top of the bureaucracy that we now have in place, and that has never worked well.

We will continue to help resolve these problems. I thank you for your time. I thank you for your effort. We will look forward to doing our part to make sure that these things are resolved.

[The prepared statement of Mr. Blasing follows:]

PREPARED STATEMENT OF LARRY BLASING, MEMBER, GRANT COUNTY PUBLIC FOREST COMMISSION

S. 2895

My name is Larry Blasing, member of the Grant County Public Forest Commission. My forestry career began on the Malheur national Forest in 1956. I eventually graduated from Oregon State University in Forest Management in 1964. I have held positions as logging manager, sawmill manager, consultant and company representative. I have represented the forest products industry including companies such as: Boise Cascade, in Montana, Idaho, Eastern Washington, and Alaska. Much of this experience has been in eastside forest types. I have been involved in most major forest policy issues that affect the western states from the local level to the White House. I have represented the forest products industry in litigation and numerous appeals. At one time I worked with Senator Hatfield on the National Forest Management Act. I am currently serving in a position elected by the voters of Grant County, Oregon on the "Grant County Public Forest Commission". I am presenting testimony as a member of the Grant County Public Forest Commission.

The Grant County Public Forest Commission was established by an initiative of the electorate of Grant County, Oregon for the purpose (in part) to "prescribe actions to promote the efficient beneficial and timely stewardship of public lands and resources". The members of the Commission are elected by the voters of Grant County. The enabling initiative passed by the voters of Grant County in 2002 recognized and stated ... "forest health is paramount to our natural environment, including watersheds, wildlife habitat, fisheries, native ecosystems, timber production, grazing and other beneficial activities". Our purpose as a commission is to work to ensure that these principles are met in a timely fashion.

We are fully aware of the raw material plight of our three Grant County sawmills. We are in support and contribute to any effort to provide relief to the raw material paralysis. We believe that the risks associated with SB 2895 "Oregon Eastside Forests Restoration, Old Growth Protection and Jobs Act of 2009", hereinafter referred to as "Act" far outweigh the benefits and will, in fact, exacerbate our raw material supply problems. This is the primary concern which causes us to oppose the Act in its current form and offer the following comments.

It is highly unlikely that the Act will be successful in the attempts to address several issues that are controversial within the National Forest Management Act. The Act addresses the wrong problem. It is not management science that is the problem. The problem in getting projects initiated on the ground and the inability of the Forest Service to write a NEPA document which is acceptable to the 9th Circuit Court of Appeals. While appeals delay Forest Service programs, they do not entirely stop the programs. It is the continued threat of litigation by the "Environmental Litigation Industry" what stops the process and this Act does not resolve that problem.

The Act's goal was to address process stagnation, a major and systemic problem associated with natural resource management on our National Forests in Eastern Oregon, and provide relief to the economies and industries reliant upon our National Forests. However, the Act fails to limit process, and actually dramatically adds to the process required to get a project on the ground. As for resolving the timber supply and economic accountability problems on the Eastside National Forests, the Act fails again.

Throughout the Act the Commission found that economic and social considerations are always placed secondary to anything else, in stark contrast to the objectives of forest management spelled out in the Forest Service Manual (FSM 2402) which includes six (6) goals and the first is "To provide a continuous supply of National Forest System timber for the use and necessities of the citizens of the United States."

The Goals established by this Act, Section (4)(a)(1), do not include any Economic or Jobs consideration. Economics is only included as a secondary issue in determining methodology of project initiation, Section (4)(a)(2)(B). Then "wood harvests to sustain adequate industry infrastructure" is included as number 9 in a list of 15 things which could potentially be helped to achieve when choosing methodologies for projects.

The Commission advocates and supports the need to expedite providing of raw materials for the local timber industry and ensure the retention of local industrial infrastructure to support local dependant economies. However, Section (9), which defines and describes the projects under the Act states seven criteria that must be met in developing the ecological restoration projects and activities, none of which address economic or jobs considerations. After meeting these criteria the Act states that the projects shall be prioritized based on the degree to which the projects will improve forest and watershed health based on plant association groups and (then lastly) the need to maintain industrial infrastructure to carry out restoration activities.

The Commission does not agree that the Act's attempts to help "local" economies by specifying that the required Stewardship contract "give preference to local businesses" will help local business and workers. The Act defines "local" to be a 100 mile radius around any National Forest, Section (13)(d)(3) which for the Malheur National Forest can reach from the Cascades to the Idaho border and North to the Washington border. The Commission believes this will kill small resource dependant communities within Grant County, Hamey County, Wallowa County, Wheeler County and other small remote communities within the Eastern Oregon national forests.

The new processes spelled out will do little to get more projects on the ground.

1) The Advisory Panel as proposed in the Act is destined for disaster;

a. Legislated advisory panels (like the Committee of Scientists in RPA) have been shown to be ineffective and a waste of taxpayer money;

b. The Advisory Panel specified in the Act will add a cumbersome layer of process to a variety of decisions;

c. How can one, seven (7) person panel be expected to provide the mandated site specific input to the issues on each of the six (6) National Forests and the associated Collaborative Groups? This will easily be a full time job for the panel;

d. The combination of mandates including the Advisory Panel, the Collaborative Groups and coordination with the "Secretary" will absolutely guarantee paralysis; and

e. The addition of the Advisory Panel and the Collaborative Groups will add two (2) additional layers which are being legalized, codified and mandated by Congress which will direct US Forest Service management programs, essentially bypassing the Secretary of Agriculture.

2) The myriad of reports mandated within this Act will by definition increase process and will add layers of administrative work to an already overly complicated process;

3) We are advised in conversations with Forest Service personnel that the timelines for actions required in this Act will be impossible to keep;

4) The Advisory Panel and Collaborative Groups leave out the mandated coordination required by current law to include county government, grazing permittees, neighboring landowners and other valid interest holders; and

5) The new processes, procedures and restrictions spelled out in the act are by definition "more process".

6) The bill places layers of new bureaucracy upon existing bureaucracy, a sure recipe for stagnation.

7) It should be made clear that the Secretary only needs to "consider" the input of Collaborative, as well as others, but the Secretary's decision is final. The Secretary has to run the Forest Service, not Oregon State University or any other group no matter how well intentioned through "Advisory Panels".

The Commission believes that the Act, while attempting to limit appeals and litigation, actually will provide additional fuel to the environmental litigation industry through:

1) Ambiguous definitions including:

a. "Old Growth" which includes a single tree, Section (3)(14), then prohibits harvest or removal, Section (4)(b)(1), then discusses limiting harvest of trees over 150 years old in Section (9)(d);

b. "Forest Health" which includes "to maintain or develop species composition, ecosystem function and structure, hydrologic function, carbon cycling, and sediment regimes that are within an acceptable range that considers-(i) historic variability; and (ii) anticipated future conditions, Section (3)(6);

c. "restoration economies", Section (2)(2); and

d. “Plant Association”, Section (3)(17), which includes as part of the definition “vegetation community that—(i) would potentially, in the absence of disturbance occupy a site ...”; and

2) Nebulous, unclear and even litigious wording and management direction, such as:

a. “restore ecologically sustainable forest stands to incorporate characteristic forest stand structures and older tree populations”, Section (4)(a)(2)(B)(viii);

b. “natural structure” which is undefined and not agreed upon by scientists;

c. “best available science” which is absolutely subjective and a recipe for litigation;

d. “restore historical levels of within forest stand spatial heterogeneity” Section (4)(a)(2)(B)(iv);

e. “the restoration and maintenance of historic population levels of older tree”, Section (4)(a)(2)(B)(vii);

f. “ecologically appropriate spatial complexity”, Section (4)(a)(2)(B)(xi);

g. “In developing ecological restoration projects under this Act, the Secretary shall-(A) ... , and achieve, a net reduction in the permanent road system;”, Section (6)(c)(1), which will ultimately result in zero miles of permanent roads on the forest if carried out as written; and

The Commission believes that Section 10 of the Act while providing codification to the current Collaborative process, goes on to provide for a new process which will certainly result in more process and litigation. The Commission believes that any advisory group or collaborative group must include valid permit holders, valid interest holders, neighboring landowners and local governments to a larger degree than spelled out in the Act. Recommendations from Collaborative groups need to be site specific.

The provisions in the Act that direct the harvesting restrictions on Old Growth and the recruitment of replacement trees will have a negative effect on the economic productivity of the national forest lands. While the Act directs that a single tree is Old Growth the timber resource is managed as a stand. Not all trees in a stand are the same diameter. When a stand reaches the size and condition where harvest is desirable, it is likely that some trees will exceed the 21” dbh screen. Since they cannot be harvested under the provisions of the Act, those trees will occupy a growing site that cannot be used for commercial harvest until that tree dies. Over time this will ratchet down the amount of growing site that is available for commercial harvest.

Restricting the harvest of trees less than 150 years of age and less than 21” dbh is going to cause a management nightmare. In eastern Oregon trees will grow to 21” dbh in about 60 years on the average sites. On higher sites 21” dbh can be achieved in 40 years. The normal rotation for eastern Oregon stands is about 100 years. Therefore, under this Act, 40 to 60 years of the most productive period of timber volume growth will be lost.

“Old Growth Protection” is only a temporary concept at best. First of all, old trees die with or without the help of man. Pine trees weaken, often get diseased and then are killed by insects. Douglas fir, true firs, and others are subject to many diseases and if left without management are the areas where the most serious catastrophic fires occur. Old mixed conifer forests burn up—then what? If you want to reduce catastrophic fires on national forests then you must reduce the hazards on old growth mixed conifer stands. The Santiam Pass is an example and stands as a glaring reminder to everyone who drives through what stupidity looks like.

The forests of Eastern Oregon are dynamic and were constantly changing even before any human forest management began. The attempt in this Act to codify management details (some not even proven) does not fit all conditions in Eastern Oregon and certainly will not be appropriate over time. Conditions such as climate change, yearly weather patterns, insect and disease cycles, windthrow, microbursts, catastrophic fires, etc need to be dealt with as they occur. They are never the same. Therefore, codifying management details to the degree proposed in this Act is destined to failure and provides the “Environmental Litigation Industry” with hundreds of new issues to challenge.

The Commission believes that, as written, this Act will only exacerbate the problems associated with forest management in Eastern Oregon. In reality, the environmentalists will get everything they could hope for, while local communities and dependent industries are assured of a timber program largely based on a weak promise through:

- 1) Codification by Congress of the flawed Eastside Screens;
- 2) Codification and Expansion of PAC FISH and INFISH by Congress;
- 3) Having a congressionally mandated definition of Old Growth which is functionally unattainable;
- 4) A mandated reduction in the National Forest Road system which mathematically will result in NO permanent roads;
- 5) A mandated collaborative process which will result in major stagnation of the entire process; and
- 6) Having congress officially mandate some "historic population level of older trees" (what are older trees?) and those items discussed above 2) (a)—(g) to name just a few of the gains.

The Forest Service has ongoing management projects where they have already invested large amounts of money and manpower. Under this Act, will these projects be allowed to continue? Will the necessary funds come from the normal appropriations process or from the special appropriations for this Act?

The Act authorizes a one time sum of \$50,000,000 that will be available until it is used up. Only 3% of this money can be used for administrative purposes, requiring the balance of the administrative costs including the costs of the Advisory Panel, Collaborative groups and extra assessments and reports to be taken from the already anemic Timber Management budget in these six (6) national forests. It is highly unlikely that: 1) There will be additional appropriations for the increased overhead associated with this Act; or 2) The other National Forests within either Region 6 or the other Regions of the nation will voluntarily relinquish funds from their allocated budgets to make up the increased overhead associated with this Act. Therefore, each of the forests will be required to make up the difference in overhead from other projects.

It is unlikely that the revenues from the sale of forest products generated from the restoration projects can sustain the program of Ecological Restoration Projects on the Large Landscape basis. The restrictions placed on harvest of "Older Trees" and the reliance on harvest of "Biomass" is highly unlikely to provide a sustainable flow of income large enough to fund the intent of this Act. Biomass and small diameter trees have the lowest product value and the highest cost to produce. Biomass barely pays its way to the mill in the best markets and therefore, there will be little revenue to sustain a very expensive program. As a result, the USFS will be stuck trying to comply with a very expensive and legally mandated program with little money to comply.

The tax payers of the United States will again be burdened with an extensive and expensive program mandated by congress. When in fact the products of these six (6) national forests should be easily capable of producing enough income, from the sale of even a minor part of the sustained yield from the forests, to not only pay for the harvest program but the associated restoration work necessary to improve the declining health of the forests. In these times of skyrocketing national deficit and astronomical national debt, congress should recognize that our vast renewable natural resources are one area available to produce the income necessary to dig our nation out of the fiscal mess we find ourselves in at this time. We need less restrictions not more expensive process at this time.

The Commission finds that enormity of the problems associated with this Act are so overwhelming that we can not support it. Any purported benefits pale to the increased process, increased costs and the areas of potential litigation created by this Act.

[Note: Growth, Mortality, Removals graph has been retained in subcommittee files.]

Senator WYDEN. Very good. Anxious to work with you.  
Professor Fitzgerald.

**STATEMENT OF STEPHEN A. FITZGERALD, M.S., PROFESSOR  
AND SILVICULTURE & WILDLAND FIRE SPECIALIST, OR-  
EGON STATE UNIVERSITY, REDMOND, OR**

Mr. FITZGERALD. Thank you, Mr. Chairman.  
I brought a little bit of Oregon's forests here.  
Senator WYDEN. I can tell.

Mr. FITZGERALD. This is the first time I have been to DC, and I feel usually a little bit more comfortable when I am surrounded by trees. I thought you would enjoy it as well.



For my oral remarks, I have a handout—I think it is in the back of your packet—on some diagrams that I am going to describe as I go through. Thank you.

Mr. Chairman and members of the committee, thank you for inviting me here today to testify on S. 2895. My name is Steve Fitzgerald, and I am a professor in silviculture and wildland fire extension specialist at Oregon State University.

I am here on behalf of the Society of American Foresters, a professional organization of over 14,000 forest managers, scientists, and educators. My perspective is somewhat unique in that as extension specialist, I am immersed both in the academic arena as an applied researcher and educator, as well as in the forest practitioner's realm.

First, let me say, Senator Wyden, that you deserve tremendous credit for bringing the opposing sides together to compromise and come to agreement on this legislation, as we heard today. But before I get into the main portion of my testimony, I have a couple of just quick comments.

First, the appropriation of the \$50 million to implement this legislation, if enacted, is essential. I mean, it is vital. Second, this bill, along with other State-specific Federal forest legislation, like that in Montana, are symptoms of a much larger problem, as we know. That is the lack of a clear and consistent national or regional policy for our national forests.

For the rest of my testimony, I would like to talk about forest dynamics and the 21-inch diameter limit specified in the bill. Although I understand the interest in diameter limits, as it assures that large trees won't be cut, it cannot be stated more clearly that permanent fixed diameter limits are not based on ecology and forest science. These artificial limits remain static while forests and the larger ecosystems are constantly changing.

With this in mind, the bill's goals of restoring old growth and improving forest health in younger stands must consider 2 ecological truths. First, the amount of resources available to trees on an acre of land—sunlight, water, nutrients, space—is finite, that this defines the carrying capacity of the site. In other words—and then, second, the resources a tree needs to survive and grow is roughly proportional to its size. In other words, bigger trees need more resources.

Together, these 2 ecological truths demonstrate that a site can support only so many trees of a given size at a particular point in time.

With that background, let me talk about historic old growth structure, and figure 1 is a graph of trees per acre for an old growth mixed conifer stand from 1917. This old growth stand contains 77 trees per acre, ranging from 5 to 42 inches, and note how the number of trees progressively decreases from the smaller diameter classes to the larger. This example represents the carrying capacity for this site.

Because of the wide range of diameters and ages of trees in such forests, old growth cannot be defined by a single age or diameter. Figure 2 is a graph of trees' diameter by age. Looking at the dashed 21-inch diameter line on the graph, notice the large vari-

ation around the diameter along with wide variations in age, and others have shown this poor correlation as well.

Therefore, old growth forests and goals for their restoration should be based upon their structural condition. For a given forest type, this includes a range of tree diameters, multiple age classes, a mix of tree species, snags and downed wood, and a range of trees per acre. Legislation can seek to improve forest health and resiliency, but to be most effective, forest scientists and managers need flexibility to develop specific stand structural objectives and metrics based on plant association, historical information, current research, and local experience.

For dense, younger forests, it is often unclear what the overall long-term restoration goal is. Is it to eventually move these forests to an old growth condition? The 21-inch diameter limit seems to reflect that intent, but what might be the outcome of such a limit? Figure 3A and B shows a dense 80-year-old pine stand that I marked for a thinning as part of a study to enhance forest resiliency and accelerate large tree development.

Because this is national forest land, the trees were marked under the 21-inch diameter limit. The average tree diameter was only 11 inches before thinning. So the 21-inch limit was not an issue at the time that this was implemented.

Figure 4 depicts a computer simulation of this thinning treatment and the subsequent stand growth over 4 decades when the average tree diameter grows to about 20 inches. At this point, the 120-year-old stand will need another thinning to reduce competition and move the stand to the large tree structure. That will include removing trees above and below 21 inches if that was allowed.

Although this is a long-term example, there are many stands that are at this stage right now. See figure 5. Although S. 2895 allows for exemptions to the 21-inch limit, it appears that this would require the agreement of the collaborative group or the science advisory panel or both. How difficult would this process be?

Would the 2 panels need to visit each and every tree proposed to be cut above 21 inches? From my example, this might encompass thousands or tens of thousands of trees on a 25,000-acre landscape.

Fixed diameter limits can be cumbersome and constrain our ability to adjust stand density as appropriate for each site and set of management objectives and may compromise the health of large trees, hinder understory vegetation development, and affect tree regeneration. They can have economic implications as well.

But we have not adequately addressed such questions for future stands in which most trees begin to exceed the diameter limit, and this may result in yet another forest health problem down the road. Although such conditions would take time to develop, experience shows that prescriptions must change as forests change.

In closing, I hope these oral comments and my written testimony are useful to the committee. Thank you for your time and attention and for the opportunity to provide a perspective from the forestry profession on this legislation.

I would invite you, Senator Wyden, to come and see this study and other treatments around central Oregon.

[The prepared statement of Mr. Fitzgerald follows:]

PREPARED STATEMENT OF STEPHEN A. FITZGERALD, M.S., PROFESSOR AND SILVICULTURE & WILDLAND FIRE SPECIALIST, OREGON STATE UNIVERSITY, REDMOND, OR

S. 2895

Mr. Chairman and members of the Committee, thank you for inviting me here today to testify on S. 2895, the Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009. My name is Stephen Fitzgerald, and I am a Professor and Silviculture & Wildland Fire Specialist at Oregon State University. I am here on behalf of the Society of American Foresters (SAF), a professional organization of over 14,000 forest managers, scientists and educators. There are nearly 1,000 SAF members in Oregon, including hundreds who have been directly involved in federal forest management. SAF supports and represents the forestry profession in advancing the science, education, technology, and practice of forestry. SAF has not taken a formal position on S. 2895, but my comments reflect a professional perspective with our mission and members clearly in mind, including the input of experienced SAF leaders who have reviewed the bill. In addition, my views are generally consistent with those expressed in several statements (Oregon SAF 2005, 2007, 2008) developed by the Oregon Chapter of the SAF that address issues and concerns reflected in S. 2895.

My perspective is somewhat unique in that as an Extension Specialist I am immersed in both the academic arena as an applied researcher and educator as well as in the forest practitioner's realm, which allows me the opportunity to evaluate the application of research and silvicultural methods on the ground. Most of my time is spent in the eastside forests of Oregon and my expertise is in the ecology and management of ponderosa pine, a species of high ecological, social, and economic importance to communities in central and eastern Oregon. It is a species that is experiencing increasing impacts from insects, disease and uncharacteristic wild-fire, and, at the same time, it is at the center of debate how to deal with these threats to manage and improve forest health and sustainability in the long run.

First, let me say, Senator Wyden, that you deserve tremendous credit for bringing opposing sides together to compromise and come to agreement on this legislation. I support your goal of creating a strategy to provide for predictability and sustainability for local economies and governments, to address the challenges of climate change, and to restore these forests to a healthy and resilient condition. I am also supportive of your attempts to deal with larger landscapes rather than continuing an approach of random acts of restoration. And, I am grateful that your proposed legislation recognizes the importance of biomass as part of the solution to our goal of energy independence. I hope that this legislation is offered in the spirit of opening a dialogue for further input and discussion. In that spirit, I offer the following comments for consideration as this bill moves through the legislative process.

#### SECTION 4. FOREST MANAGEMENT

Language throughout Section 4 of the bill stresses conservation and restoration. I am in strong agreement that there is much restoration work to be completed in the "covered area" as defined in the legislation. However, the restoration focus could be misinterpreted by some to reflect a light entry everywhere, every time. I would note that some forest types in eastern Oregon, such as lodgepole pine, naturally regenerate via stand replacement disturbance. Some natural disturbances, or management to mimic natural disturbance, would not necessarily meet the stated goals in Section 4(a)(2)(B)—increased mean diameter, maintenance of older trees, or retention of old growth as 100-year old lodge pole pine is typically at a stand replacement age. The legislative language allowing for "ecologically appropriate spatial complexity (xi) and spatial heterogeneity (xii)," may be attempting to address this type of situation. I believe the language could be strengthened to make clear that management intervention may be more aggressive as ecologically appropriate.

I am also concerned that the economics of the scale of restoration activities have not been adequately addressed in terms of both operational feasibility and compatibility with existing management mandates. Although forest restoration often emphasizes environmental concerns, economic and social considerations must also be integrated—contemporary views of sustainability recognize these three elements as mutually supporting (Oregon SAF 2007). Neither Section 4(a) or (b) address the economic viability of these restoration treatments, which is a serious concern given the scale of restoration needs and the projected federal deficits. I believe a Section 4(a)(2)(B)(xvi) could be added that would address this oversight. Language such as, "Integrate economic viability of treatments so as to maximize acres treated within the constraints of ecologically appropriate spatial complexity and heterogeneity,"

could be helpful. In our reading of Section 4(b) (3) (A) (the Ecological exception) it is not clear that such economic considerations are part of the decision tree. Additional language to this section [addition of a subsection (iv) to address economics] would be helpful. Recognition of economic viability in, (B) Administrative Exception section may be appropriate as well.

Paragraph (b), PROHIBITIONS ON REMOVAL OF CERTAIN TREES, calls for a diameter limit of 21 inches above which no trees can be cut. Although I understand the interest in diameter limits—it gives direct assurance that large trees won't be cut—it cannot be stated more clearly: Permanent, fixed diameter limits are not based on ecology and forest science but rather political science. These artificial limits remain static while forests, and larger ecosystems, are invariably dynamic: that is, they grow, compete for resources, and are continually affected by disturbance.

Given this context, I'd like to talk about restoration of old-growth and restoration treatments in younger stands. But first, there are a couple of ecological truths that I need to explain for background. First, the amount of resources available to trees on an acre of land—sunlight, water, nutrients, physical space—is finite. This defines the carrying capacity of the site. In the dry, interior forests of the west, water is the most important of these resources because its limited supply directly impacts tree growth and survival. Second, the amount of resources a tree needs to survive and grow is roughly proportional to its size. In other words, big trees with big crowns (a lot of needles/leaves), require more resources to maintain themselves, grow, and reproduce. And, as trees grow, they consume increasingly greater resources. These two ecological truths combine in the fact that a given site can support only so many trees of a given size. That is, it can support a lot of small trees or fewer large trees.

With that as background, I like to discuss historical old-growth structure. This example is from central Oregon, but it is likely to be similar to other historic old-growth forests in central and eastern Oregon. Figure 1 is a graph of trees per acre by diameter class for a virgin old-growth mixed conifer stand from 1917 in south central Oregon, near Klamath Falls (Munger 1917).

This old-growth stand contains a total of 77 trees per acre ranging from 5 to 42 inches, of which 40 are ponderosa pine. Approximately 25 trees are above 21 inches in diameter, 19 of which are ponderosa pine. Note how the number of trees per acre progressively decreases from the smaller diameter classes to the larger size classes. This multi-aged stand is relatively open as a result of frequent understory fire, which kept the fir species in check (but didn't eliminate them) as they have thin bark and are easily killed by fire. Frequent fire kept stand density and fuels low and favored large fire-resistant pines; however, sufficient small diameter trees usually escaped or survived fire and will eventually replace the larger trees over a long period of time (Fitzgerald 2005). The number of trees per acre by diameter class and the maximum tree size would vary across the landscape according to a site's carrying capacity. For example, a less productive site could have a similar shaped bar graph, but there would be fewer trees in each diameter class and the maximum tree diameter would likely be smaller. This example represents full stocking or the sustainable tree density for this site. However, most old growth stands in this region today have an overabundance of understory trees, placing the large trees at risk to bark beetle attack and wildfire. Reducing stand density can help increase the health and longevity of large old growth trees on the landscape (McDowell et al. 2003, Kolb et al. 2008).

Because of the wide range of diameters and ages of trees comprising interior old-growth forests, old-growth cannot be defined by a single age or diameter. For example, Figure 2 shows a graph of tree diameter by age (courtesy of J.D. Arney (unpublished)). Looking at the 21-inch diameter line (dashed) on the graph, you can see the large variation around this diameter along with wide variations in age. Others have shown this poor correlation between diameter and age (Van Pelt 2008).

Therefore, old-growth forests, and goals for their restoration, should be defined or based upon their structural conditions, consistent with the professional definition of old-growth (SAF 1998). For a given plant association, this includes: a range of tree diameters; multiple age classes; a mix of tree species likely to occur with disturbance; snags and downed wood; and a range of trees per acre. Legislation can provide directives to improve health and resiliency, but to be most effective; forest scientists and managers need flexibility to develop specific stand structural objectives and metrics based on plant associations, historical information, current research and local experience. If, after specifying this "target" structural condition, more trees grow into any one of the specified diameter classes, those excess trees would be thinned to maintain the health of residual trees and promote the desired old-growth structure. This approach would create a working landscape that provides a suite of

benefits: old-growth aesthetics; resilience to insects, disease, fire and climate change; mature forest habitat for wildlife; carbon sequestration; and some level of sustainable timber output.

For dense, younger forest stands, it is often unclear what the overall long-term restoration goal is. In the short run, improving resiliency to insects and fire and improving habitat diversity may be vital ecological needs and will require a variety of management tools (Busse et al. 2009). But, in the long run, is the goal to move these forests to an old-growth condition? The 21-inch diameter limit seems to reflect that intent, but what might be the actual outcome of such a limit? Assuming the objective is to move younger stands to a larger tree structure—or some semblance of old-growth—then the 21-inch limit could become very cumbersome and cause problems in the future. I will illustrate with an example from a research study I have implemented on the Deschutes National Forest in central Oregon.

Figure 3a\* shows a dense 80-year old ponderosa pine stand that I marked for a wide thinning (leaving the larger trees) to promote stand health and vigor, reduce ladder fuels, and to accelerate large tree development. The thinning reduced stand density from 148 to 44 trees per acre (Figure 3b). Because this is National Forest, the trees were marked with the 21-inch diameter limit that is current Forest Service policy in this region. Because the average tree diameter was 10.7 inches before thinning, the 21-inch limit did not pose a significant problem for the thinning objective at this time, and harvest of small-and medium-size sawtimber was possible. Figure 4 depicts a computer simulation of the thinning and the subsequent stand growth over a 40-year period as the average tree diameter grows to about 20 inches. At this point, the 120 year-old stand will need another thinning to reduce competition as the trees will be much larger and consuming more resources (Fitzgerald and Emmingham 2005). With the likely range of tree diameters shown here (Figure 2), removing trees both above and below the 21-inch limit will be needed to maintain forest health and vigor of residual trees and move towards the desired large-tree structure. Although this seems a long way off, there are stands that are at this stage now. A case in point is shown in Figure 5. This is a 130-year old ponderosa pine stand that is already at this stage and will require thinning of trees above 21 inches to maintain the health of this stand and promote even larger trees.

Although S. 2895 allows for exemptions to the 21-inch diameter limit, it appears that this would require agreement of the collaborative group, the science advisory panel, or both. How difficult would this process be? Would the two panels need to visit each and every tree? For the previous example, this might encompass a handful of trees on ten acres; 50 trees or more on a hundred acres; and tens of thousands of trees on 100,000 acres, far too many for either group to realistically examine. How will this be accomplished efficiently, both for stands now in this condition and those that grow into this condition in the future? Fixed diameter limits constrain our ability to adjust stand density as appropriate for each site and set of management objectives, and may result in slow tree growth, hinder understory vegetation development, and affect tree regeneration (Abella et al. 2006), and they can have economic implications (Larson and Mirth 2001). The reduction in treatment effectiveness due to diameter limits depends on how high or low the diameter limit is set relative to the current average stand diameter and density. But we have not adequately addressed such questions for future stands in which a majority of trees begin to exceed the diameter limit and again compete fiercely for site resources. This could result in yet another forest health crisis down the road—the problem that S. 2895 seeks to solve.

Although such conditions would take time to develop, forestry professionals have a long-term perspective and our experience shows that treatment prescriptions must change (sometimes dramatically) as forests change.

I would like to add a few final comments that, while less detailed than the previous discussion, I believe are also very important to consider:

First, my sense is that this legislation is prescriptive and narrowly defines forest management on federal lands. The legislation seemingly redefines the purpose of federal lands by reframing forest management to a “restoration-centric” emphasis with timber as a by-product (e.g., Section 9(c)(5)(A)(ii)). Moreover, it is unclear how this bill meshes with existing federal law and mandates such as those under the Organic Act, the National Forest Management Act, the National Environmental Policy Act, and others. The legislation is vague in this regard. Perhaps your staff could develop a flow chart to help illustrate how this legislation dovetails, overlaps, or is in conflict with these other laws.

\*All figures have been retained in subcommittee files.

Second, the forest management and other issues that S. 2895 seeks to address do not stop at the Oregon border. This bill, and other state-specific federal forest legislation (e.g., Montana Senator Tester's Forest Jobs and Recreation Act), are a symptom of a much larger problem—the lack of a clear and consistent national or regional policy for our National Forests, with specific management goals that effectively integrate the diverse mandates of existing laws. Clearly, federal forest management today is not working and our forests and communities suffer and show the consequences. A piecemeal approach to federal forest policy may provide some local, short-term relief, but over time it is likely to create more problems than it solves. In contrast, a comprehensive approach could leave an enduring legacy, perhaps not unlike the laws that established our National Forests over a century ago. I know that the forestry profession would welcome such a legislative effort and SAF would be ready to assist in any possible way. We need to have a national dialogue to develop a shared vision of what we want our national forests to be and, more broadly, what goods and services we want them to provide society in perpetuity.

Third, in SECTION 15 AUTHORIZATION OF APPROPRIATIONS, the appropriation of \$50,000,000 is extremely important and necessary to implement this legislation. I am concerned that if funds are not authorized by Congress, that some groups will get their objectives met while others won't get what was promised, and the Forest Service and taxpayers are left with unfunded mandates and additional regulation. In the end, forests and communities will lose out if this does not happen.

Lastly, S. 2895 seems process heavy and would add to an already substantial array of regulatory requirements, require much assessment and analysis, and runs the risk of achieving less on-the-ground results. Perhaps your staff could map out all the meetings, reports, assessments, interim periods, etc., directed by S. 2895 alongside the existing procedural requirements for the Forest Service, to clarify the additional process burden it would place on the agency.

In closing, I hope that these comments about S. 2895, Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009 are useful to the Committee. Thank you for your time and attention, and for the opportunity to provide a perspective from the forestry profession on this legislation.

Senator WYDEN. I have seen many treatments in central Oregon, and I am certain to see more. So I thank you, and that is very helpful of you to come. Thank you.

Let us begin our questions with Senator Risch. He has been very patient. I have got a considerable number of areas to get into, but we are going to begin with Senator Risch.

Senator RISCH. Thank you very much, Mr. Chairman.

I am glad I was able to attend the hearing, quite interested in this legislation and commend you for bringing this legislation. I think there have been some legitimate comments here to help further hone the bill.

It gives me some modest pleasure to sit here presiding or semi-presiding with Dr. Johnson, Mr. Fitzgerald. I spent 4 years at the College of Forestry at the University of Idaho and listened to you guys pontificate for 4 years. So it is good to be up here for a change.

I am also an alumni of the Society of American Foresters, Mr. Fitzgerald. So thank you for coming.

Mr. FITZGERALD. I am also a Vandal.

Senator RISCH. All right, you are the man.

I graduated in forest management a year after Mr. Blasing did, in 1965. You know, it is really unfortunate more of our colleagues couldn't be here. I am told I am the only one out of the 435 Members of Congress and the 100 in the Senate with any background in forestry at all. So we wrestle with these issues all the time, and

it is interesting to talk to people. I think the chairman would agree with me that there is a, putting it kindly, modest lack of knowledge of the forest industry and how forests and landscapes work and grow.

Mr. Shelk, when I graduated from the College of Forestry at the University of Idaho, there were 41 operating mills in southern Idaho. Today, there is one. It is the result of a combination of things, but not the least of which is the tension and the acrimony that has taken place between the environmental community and the industrial community.

The only way you are going to continue to cut boards is to do exactly what you are doing right now, and I think most anybody would tell you that that is what the situation is. I am sure you probably recognize that.

Let me see, Mr. Blasing, I listened to what you had to say. By the way, just so you know who you are talking to here, they list me as the fifth most conservative member of the Senate. My wife and I run about 500 pair of black and black baldy cows. So I know trees. I know cows, and I know the area that you are talking about.

But let me say this. I think that some of the suggestions you had were very constructive. I couldn't agree with you more that the Forest Service does know how to manage. I mean, we have been at this a long, long time, since the fires in Idaho, northern Idaho of 1910 and on forward. We have gained a lot of information about how to manage forests.

I agree with you. I don't think that is the problem. It is actually doing it that is the problem. I think that the environmental community is coming to the recognition, and I think it was conceded here that there are parts of the national forest that deserve management. There are certainly parts that deserve our protection and that not be managed, not be used for multiple use, although multiple use is certainly the desired use of the forest.

But there are parts that should be managed, large parts that should be managed. But I want to tell you a little bit about what happened in Idaho. You are probably not familiar with it.

When I was Governor—in fact, it wasn't long after I became Governor—the Bush administration urged the States to take a run at writing an appropriate State rule for the roadless areas in the State. The environmental community had apoplexy, of course. They thought that it could be done better from the banks of the Potomac than in the individual States.

Most of the States declined. My friends all told me don't touch that with a 10-foot pole. But it was a true love for me. There are 9.2 million acres of roadless in Idaho, and I have watched them fight over it. I can't count the lawsuits that have taken place over the last 40 years while we have sat and really abdicated our responsibility to do something about roadless.

So I took it on, and I did it in a collaborative fashion. I got the industry to the table. I got the environmental community to the table. At times, I had to use what a Governor sometimes uses to get those people to the table, but we did get almost everyone to the table. The only one we didn't was the Wilderness Society, and I think they still regret not coming to the table.

We only argued very briefly about the size of the table—or excuse me, the shape of the table. I urged everyone that we had to be working in good faith and trust each other in good faith. We proceeded in a 6-month period of time to write a roadless rule for 9.2 million acres, the largest bloc—well, it wasn't blocs, it was pieces—of roadless of any State in the United States, certainly the most diverse.

We did it in a give-and-take fashion. We did it by starting with counties and engaging the counties in the areas. We went through in a give-and-take fashion and eventually got a rule. That rule now is the law of the land of the United States. We are the only State that has a rule that designates how our roadless areas are to be managed.

I am not going to go into the details of it. But it is a good rule, and it recognizes that there are pristine pieces that have to be left alone, but there are other pieces that need to be managed to a larger or lesser degree of aggressiveness.

But in any event, my point is, don't give up. I heard your criticism of this bill. I think some of the criticisms are probably well founded. I am sure they are all well intended. I suspect that Senator Wyden will be more than happy to sit down with you talk about some of the criticisms that you have with the bill.

I would only urge that you not overreach and that you do attempt to come to resolution of this because if, as you say that your county is so dependent on harvesting and cutting boards, believe me, the process that is on the table here is going to be the process that is going to get you to the point where you can employ people in your county.

So, given that, and it sounds to me like there are people who have signed off on this that need to sign off on it. It sounds like people are willing to give and take. So, I would urge you to go forward, and certainly, the academics that are here are willing to lend their support, it sounds like. They know a lot about this.

The Forest Service, we all get frustrated with the Forest Service. They are back here with the enviros pulling on one arm and the "God gave us this resource to use" people like myself pulling on the other arm, and they have a difficult time. But in the end, they can't do it by themselves, and they really need the help of people like Senator Wyden, people who are willing to do that.

So I have pontificated long enough. I got even with Dr. Johnson and Mr. Fitzgerald a little bit.

[Laughter.]

Senator RISCH. I appreciate you giving me this opportunity. Thank you, Senator Wyden, for what you are doing.

Senator WYDEN. Thank you, Senator Risch.

You have once again made the point, "Blessed are the peacemakers," because I think what you did in Idaho in bringing people together is very much a part of where we have an opportunity to go now in Idaho and Oregon and this subcommittee. We are very pleased you are on this subcommittee. We are going to have a chance to work together often in the days ahead, and I thank you very much for your very helpful comments.

Senator RISCH. I appreciate that, and I think what Mr. Kerr said about—in his paper about the maturing of the environmental



movement is really quite an observation. I couldn't agree with you more. I think both sides have matured, and I think both sides have realized if, indeed, a side is not particularly interested in just fundraising or just philosophical argument, I think that both sides have realized the way this stuff is going to get done is through a collaborative method and both sides giving because you can't do it without both sides giving.

So, with that, Mr. Chairman, I apologize. I am 20 minutes late for my last meeting. I am going to excuse myself.

Senator WYDEN. Thank you very much for staying and your patience.

Mr. BLASING. Thank you for your comments, Mr. Risch.

I just wanted to point out that one of the last jobs I had for the Forest Service was being the ranger alternate for the Big Creek Ranger District, which is a big bunch of the Frank Church-River of No Return Wilderness Area.

The other thing I would only say is that if you had—when I represented the forest products industry in north Idaho, when you had Dick Bennett and Potlatch on the same board of directors, you do know how to negotiate.

Senator RISCH. Amen to that.

Senator WYDEN. He does. You are on target on that point, too, Mr. Blasing. We thank you, and thank you, Senator Risch.

Senator RISCH. Thank you.

Senator WYDEN. So let us see what we can do to find some kind of common ground here because it seems to me on this question of unanimity—I mean, it is almost like elections. There has never been a unanimous election.

What we are looking for is common ground, and it seems to me, Mr. Kerr, you are, for all practical purposes, acknowledging one of Mr. Blasing's concerns about not all the environmental groups are on the program. Your written statement for the record notes that the conservation community is not of one mind as the need for restoration thinning.

Then you go on to sort of amplify it in a whole number of areas with regard to restoration, thinning, burden of proof, standards of evidence. You make that point, I think, very well. Can you elaborate on what you are trying to say? Because I think it is another opportunity to start bridging the gap and continuing to bring more people together.

Mr. KERR. Thank you, Senator.

I would like to think that when the facts change that I at least consider changing my mind. Now, and that is easier said than done for anybody. It is just kind of human nature sometimes.

So, the facts have changed on the eastside forests, and the science has come along and said, you know, they need some active treatment. The conservation movement originated and is still steeped in a preservation paradigm. There are pieces of wild nature that ought to be left alone, and we will continue to fight for those. You have been instrumental in getting additional wilderness areas and wild scenic rivers in Oregon, and thank you for that, and we would like more.

But more and more, the conservation community is moving into a restoration paradigm on public lands on these degraded land-

scapes, as been pointed out here today. So, not all people move at the same rate, and so some of the objections of my colleagues are scientific. They do not agree with the science. They cite other science and such, or they are philosophical. They just feel that public lands should not have commercial activities because they have historically equated commercial activities with harmful activities.

They also—there is an aesthetic objection. You know, we are talking about to restore the ecological health of these forests to often remove a lot of trees, not the biggest ones, but a lot of little ones. That leaves a lot of stumps, and that bothers people. So, as Aldo Leopold spoke to being an ecologist is living in a world of wounds when you know something. So, you could look at these forests, and they look pretty. They are nice to hike in, but they are not healthy. They are not in good ecological condition.

So the conservation community has been wrestling with this, but the majority of the science says action is needed. Not all of the science. There is differences of opinion among scientists. But what are you going to do? When most of the science says a certain thing, you should go with that.

I think the analogy that I use is there are 3 legal standards we use in this country. One is beyond a reasonable doubt. When you are going to deprive somebody of their liberty, you need to be absolutely sure that the evidence says that is the correct thing to do.

The science of the forest management and forest ecology is not beyond a reasonable doubt. It is subject to change. There is dispute. But it is far more than simply merely the preponderance of the evidence. It is not just a question of, well, 51 percent of the information from the scientific community says that action is necessary. It is far greater than that.

I think the appropriate standard to use is clear and convincing evidence. There is clear and convincing scientific evidence that to restore the ecological health to these forests that aggressive treatment across the landscape is going to be necessary—not on every acre, but many of them. So, the conservation community has—is wrestling with that.

I think that much of the conservation community is there. I believe there is a strong critical mass in favor of this legislation, but not everybody is. What I like about this legislation is that it says experts shall be impaneled to advise the Forest Service on what is the best available science, and that is a good process.

This legislation does not dictate a particular, specific outcome. It says we are going to use good information. Here are broad goals, and we are going to engage all the stakeholders in a collaborative way. That is working. There is evidence that that is working already.

If you go to the Fremont National Forest in Lakeview, much of what this bill would do wouldn't change what is going on down there. The Forest Service is doing an excellent job. Similarly, our conservationists and the timber industry on the Colville National Forest in Washington, on the Siuslaw National Forest in western Oregon are all doing excellent collaboration. On the Siuslaw National Forest, there hasn't been litigation over a timber sale in well over a decade.

Senator WYDEN. That last point that you made is a very striking one, and we are going to want to work with you on that point, Mr. Blasing. I just had a town meeting over in Lakeview, and I think this was the first time when we didn't really hear those kinds of concerns. I think it is reflective of the fact that you and Mr. Shelk, in particular, have picked out a model that, based on the evidence, can work in the real world, can deliver the economic benefits, can help us to stay out of the litigation derby that I think Mr. Blasing is correct to be concerned about.

I want to turn to Mr. Shelk now to hear a little bit about how you 2 began this. But we sit here today with the American Forest Resources Council, the premier group for the timber industry, in support of this effort. They stood with Mr. Shelk and Mr. Kerr at the kickoff, and I think the point Mr. Kerr just made about how there are models out there—smaller models, obviously—that, in effect, helped us as we tried to make our judgments about how to go forward demonstrate that this can work.

So I think those are valuable points, and I think I want to go to Mr. Shelk to tell us a little bit about how the discussions began and how you pulled this off. There is a pretty amazing story, as I understand it, about this whole process, where you and Mr. Kerr found a way to lead folks who haven't agreed a whole lot.

So just for the record, let us hear how this came about, how the process unfolded and how did you do it?

Mr. SHELK. It initially started with a walk in the woods. I think that there was some hesitancy on both of our parts to begin a dialog with each other because, for my part, there was a lot of pain and a lot of distrust and a lot of anxiety with talking with the devil incarnate next door here. But as we—

Senator WYDEN. Wearing a suit today.

Mr. SHELK. Pardon me?

Senator WYDEN. Devil incarnate wearing a suit today.

Mr. SHELK. Yes. As we continued our discussion, I recognized, No. 1, a facile mind, one that picked up on concepts and, as Andy mentioned earlier, recognized that things change and is capable and the thought that he is capable of adapting to that. I recognized that things have changed, too.

We were—in 1980, things were good for us. By 1994, we were in a lot of trouble, just the change in national forest policy and where it went. At that point, I think we both recognized that there potentially was some mutual goodwill that we could bring to the table and some creative things that we could put together that might benefit the forest and the industries at the same time.

I think jokingly the first or second time we talked, we said, well, heck, we can make some legislation up. We can put something together that is going to work. It was said in a joking fashion, but I think that both of us were testing the other to see whether there was the will, whether there was the inclination to go forward and actually make this move.

Enter your office and your encouragement and then a movement forward to other people in our industry and the environmental community that either were of like mind or could be brought about to a sort of collaborative discussion. It was awfully helpful to have the people from Collins Companies participate in this process with

us because they had seen it actually work on the Fremont in Lakeview.

So we moved forward, and it was—we were not always holding hands. We were occasionally perhaps holding each other's hands so that the dagger couldn't be put in to the opposing party. But it was a gradual agreement on things, recognizing where there were points that we could not come together and, in some cases, choosing to leave those discussions aside. Essentially, the elements of collaboration working between the 2 of us and then expanding that amongst a somewhat like-thinking group of industry and environmental participants.

Senator WYDEN. The walk in the woods, almost like a great foreign policy agreement, is how it began. I will have some more questions in a moment, but I wanted to get that on the record.

Dr. Johnson, your thoughts in response to your colleague, Professor Fitzgerald, who I think is a little concerned that maybe there is a little bit too much prescription here and concern that you won't get timber. How would you react to your colleague?

I know professors are kind to each other, and we are not going to have any blood bath here. But what is your reaction to your colleague's comment, particularly on those 2 points?

Mr. JOHNSON. First, I congratulate him on some well representation of the dynamics of the eastern Oregon forests. I, of course, was involved in the development of the Northwest Forest Plan and involved in also much eastside policy. One thing I learned over the last 20 years was that the Forest Service is best able to move forward when they have clear boundaries. The 2 examples I will give are the 80-year limitation on thinning and plantations under the Northwest Forest Plan and the 21-inch limit on the diameters to cut in eastern Oregon.

What we learned is that, yes, these policies do restrict the agency, but they also protect its discretion. That is something I didn't fully realize. So, in Oregon in the last decade, in both western and eastern Oregon, we have actions by the Forest Service are largely associated with these clear directions. It is imperfect, but that has taught me something.

I have found that with the agency and the many, many good people in it, that they kind of go through a process of first resisting these limits, growing to accept them, growing to need them, and it is very—there is a tension here. It is very important that they make some sort of sense from a forestry standpoint, but given the lack of trust that we have on Federal forest management and given the dynamic, this has been—these clear directions have an important element in the agency being able to undertake action.

Senator WYDEN. Dr. Johnson, that is very helpful. I am going to ask a question of your colleague in a minute, and maybe we will have some back and forth with the 2 of you.

Mr. Blasing, for you, first of all, I want to make sure that it is clear on the record that we are very much committed to the economic benefits here, the saw logs getting to the mills. It is practically the first words in the proposal. It says create an immediate, predictable, and increased timber flow. That is at page 2. At page 38, the emphasis on the need to maintain industry infrastructure.

I mean, that is all about keeping those mills. So we very much share your concern about the economics.

As you know, I have open meetings in every county every year and have been out to Grant County many, many times, talking to folks there that you work with and the county commissioners. What I consistently hear is about the endless appeals, the appeal, an appeal, an appeal. So we were able with Mr. Kerr and Mr. Shelk—and this took a lot of effort—they were able to eliminate some of these appeals in this legislation.

I want to kind of follow up on your concern because it seems to me perhaps what you are saying is even eliminating appeals isn't going to speed things up. So how would you—and you can even take some time after you get home and work on this, too. How would you propose streamlining the appeals effort?

Because now, we have something that is acceptable to not all, but a significant number of environmental groups, a significant number of people in the forest products sector, whether it is Mr. Shelk or the American Forest Resources Council. So we have been able to get a pretty good collection of folks in the industry and the environmental community to say they think this is a sensible way to proceed with respect to appeals. What would be your suggestions on this point?

Mr. BLASING. First of all, I wholeheartedly agree with the efforts to streamline the appeals process. I am not nearly as concerned about appeals as I am about litigation, and I understand people are talking about appeals because more appeals happen. But it isn't the appeals that stopped the process. The appeals get the Forest Service's attention, and they can tinker around with their program a little bit and still have a program go forward.

But when it gets into court, even if they get a favorable decision, say, in the district court, it is ultimately regularly appealed to the Ninth Circuit Court of Appeals, which has a wholly different idea on how the law should be interpreted. Because this has been going on for so long, the Forest Service is adjusting their programs not on the basis of forest science, but on the basis of what they think they can get past the Ninth Circuit Court of Appeals.

Again, it isn't the appeals that bother me. They are basically a part of the public participation process with national forests. The part that bothers me is that it is so easy to take this and go through and litigate it, and you don't even—the people that are doing the litigations don't even have to win the case and they still get paid costs and other things. So it is a no loss or a no risk situation for them.

You mentioned you want to get away from running out the door and filing a lawsuit. So do I. But I am not sure—I am not attorney enough to tell you how to fix that part of the process. But that, to me, is where the issue is.

Senator WYDEN. I just want it understood that I am very open to getting any suggestions and ideas you might have. I think that we now have a significant part of the forest products industry and a significant part of the environmental community that on this issue of appeals/litigation thinks that we have hit a good balance.

I just want to keep building on it. We will keep the record opened so that any ideas you would like to offer on litigation or appeals,

we will be very open to it. Again, you made the longest trek to be back here from beautiful Grant County, and we really appreciate your coming.

Mr. BLASING. Thank you.

Senator WYDEN. Let us go to Professor Fitzgerald. I think almost we are probably getting close to the end. People's blood sugar is starting to wind down.

But I have got to ask you about old growth. No forestry hearing, probably no topic gets more attention before this subcommittee. I think Professor Johnson is smiling as well because he has only spent a gazillion hours on this topic. How would you recommend this subcommittee define "old growth," Professor Fitzgerald?

Mr. FITZGERALD. I probably gave you a surrogate definition. But it really depends on the forest type. Lodgepole old growth would be way different than Ponderosa pine or mixed conifer. So what we tend to look at are the composition, the species composition, the range of tree diameters that would typically occur there, the layers—the canopy layers, the amount of dead wood.

So an old growth forest would likely have much wider range of diameters and ages than, say, a young forest or even age forest. So it is much more diverse, has a lot of gaps and openings depending on the forest type.

Senator WYDEN. All right.

Mr. FITZGERALD. That is kind of why I spent some time talking about the structure. When we look at where we are restoring forests, we need to not just look at the short-term, that we are going to do a thinning or a burning, but where we are going to take that stand over the long run? We really need to have the long run in mind.

Senator WYDEN. Let us get Professor Johnson into it, and I also just want to make sure that everybody has a chance—if they are watching on C-SPAN or somewhere else—that they know that this report by Professor Johnson and Professor Franklin, I think, is really an extraordinary document, an extraordinary public service. It is called "The Restoration of Federal Forests in the Pacific Northwest: Strategies and Management Implications."

I can tell the people of the Pacific Northwest how much sweat equity went into this effort on the part of Dr. Johnson and his spouse, I would note, who was also very much involved in it, and Professor Franklin. So it is an extraordinary document, and I would recommend it to anybody who wants to really understand Restoration Forestry 101.

So, Dr. Johnson, tell us your response on the old growth definition question because, generally, having heard you hold forth on this eloquently in the past, I have sort of gotten the sense that you feel at some point you have got to get a definition. You have got to get a set definition. Why don't you lay out for us if that is actually the case? If so, why and how?

Mr. JOHNSON. Yes, thank you, Mr. Chairman.

Yes, Dr. Franklin and I stewed over this for quite a bit. In our report, we talk about stand age for the moist forest, but today, we are talking about the dry forest, and we are talking about tree age. We actually use started with diameter limits and realizing that they were a first approximation.

But we were concerned then. We are concerned now that unless we directly address over time the—directly address old growth, that we might high center or make much less productive the restoration efforts that Andy Kerr and John Shelk are talking about on 2 ends.

First off, there are many Ponderosa pine trees less than 21 inches that are very old. I doubt for long that we can cut those without some uproar. Second, there are trees greater than 21 inches, young trees, that are threatening other old growth trees by their proximity.

So we then began to say, OK, if we did this directly, how would we do it? We did first try to look at some broad structural definitions, which are very satisfying to scientists but are incredibly difficult to get agreement on from collaboration groups, or as we move forward.

So then we got interested, more and more interested in just using age. Age is one component of old growth. Everyone agrees with that. We would not argue, and we don't argue, that there is a single age ecologically or physiologically when a tree becomes old growth.

However, it is pretty clear that when trees—these are, say, Ponderosa pine and mixed conifer trees. I agree. I put lodgepole in another category. But the Ponderosa pine and the Douglas fir, when they are over 200 years old, they generally would be called old growth. We started there.

OK. But where would we set the age? Any age that we set has a lot of social component to it. It is not strictly an ecological definition. But we did realize that when we have these problems about maturity and where to say something is mature or old, we in society often use age—for when people can drink alcohol, for when they can learn to drive, for when they can vote and when they can fight for their country.

We thought if we can use it for those important decisions, then as a social decision, we would choose—we can find an age. We happened to pick for the Ponderosa pine and mixed conifer 150 years. It could be other ages for the individual trees. But I am very concerned that unless we directly address this, unless we make that social decision, that we will get a high centered over this, and many of the dreams that are expressed today won't be realized.

I think that diameter is very much an interim measure. Now, people have rightly said, well, we don't yet have the protocols to do that, and we don't want to totally—on the other hand, if you suddenly switch to age, you could high center everything. OK, fair enough.

The way you wrote the legislation, which I must tell you, Dr. Franklin and I, when we first read it, we read it with great apprehension. "What has happened to our favorite ideas?" We were not very much liking where you ended up. Start with diameter. Work hard on age. We plan to help on that and, over the next couple of years, help make that shift and have the protocols—help develop the protocols where people can do that without greatly slowing things down.

So we concluded age is central for really dealing with some of the ecological and some of the social issues, that we could pick an age.

It will be a social decision based on ecological and other information. That we need to get started and working on how to do that on a practical level. We don't think we are far off.

Senator WYDEN. Very good. I think at this point, we have been at it a little over 2 hours. I have had a tradition over the years that when Oregonians make this very long trek to come back here, I think it is very fitting that our guests ought to have the last word.

Now, you aren't compelled to say anything else if you don't want. You have been at it for a couple of hours. But if there is anything any of you 5 thoughtful Oregonians who want the best for our State would like to add, we will give you the last word. Not required, but welcome.

Mr. SHELK. Senator, as I mentioned earlier in my remarks, our company has been managing timberland for over 80 years in central Oregon. I have some issues with Professor Johnson and some of his artificial designation of old growth.

But what we are putting in place here is an educational process. The process of collaboration is—just automatically implies a lot of education in this. It is going to be informed education because the scientists and the technical people are going to be able to have their input. But ultimately, there is going to be the exchange of an awful lot of information, and that information is going to inform our decisionmaking down the road.

We can then hand that information to the Forest Service and give them a larger bank of knowledge with which to go forward. That is what I hope is going to come from this process.

Senator WYDEN. I think I can call that the Shelk spirit because that is exactly the way you have always done it, and we are very appreciative of it.

Anyone else? Mr. Kerr? Dr. Johnson? Mr. Blasing? Mr. Fitzgerald?

Go ahead, Mr. Blasing, and we will give everybody a chance.

Mr. BLASING. OK. I am concerned about what is essentially an artificial diameter limit for the designation of old growth. In eastern Oregon on any average site, we can grow a 21-inch tree in 60 years. On good sites, we can do it in 40 years.

The typical rotation for forests in eastern Oregon from a timber harvest standpoint is about 100 years. So, basically, what we are doing on those stands where we are going to perpetuate timber harvests, we are giving up either 40 or 60 years, depending on the site, of the very best volume production, which will produce the most economic benefit as well as the other benefits in the management program.

I don't want to cut all the old growth trees. I love old pine trees as much as anyone else. But I am extremely concerned when I go out south of Prairie City and I find literally hundreds of what you would consider to be old growth pine trees, which are the highest value trees in the stand, that are either dead, they are dying, or they are going to die very shortly.

I was lucky enough to, when I worked for the Forest Service, to mark a couple of hundred million feet of timber out in that area in the late 1950s. I am really old.

[Laughter.]



Mr. BLASING. In going back out there after being gone for quite a long time, going back to the same area, I go out there, and we spend some time camping out there every Fourth of July. Those forests are in worse shape now than they were when we marked the virgin stands.

The problem is that—I think I heard some agreement here, but I am not sure. But my assessment of the problem is that the dry cycle that we are in climate wise has stressed these large, old trees, and they are probably being taken out by bark beetles because of the stress. Nonetheless, they are dying.

Any one of these trees out there probably is worth, in good times, 1,000 bucks apiece in stumpage value to the national forest. To John Shelk, in terms of product value, I am not sure what clears are worth now in molding, but I would imagine it is a hard thing to imagine. I would think in terms of product value on some of these trees, you are looking anywhere upwards of maybe \$15,000 to \$20,000.

So I am out there watching these trees die, and it just bugs the heck out of me. We need to be salvaging this material. When we first marked those stands out there, the process was going to be that we went through and put our forests in shape. Then we would go through—at that time, they were planning every 10 years—and put it back in shape again. This is the type of program that I would like to see.

When we marked those stands out there, we cut everything over 3 feet in diameter. Now there are all kinds of 4- and 5-foot trees, and this is in a 50-year period. So we can manage old growth. We can manage large diameter trees. We can retain the value out of them. The process can go on.

Senator WYDEN. I think that there is certainly no disagreement, not for me or any of the panelists, on how bad the condition of the forest is. We have got a lot of material dying out there.

What I don't want to do is miss the opportunity, when we have some of the most influential voices in the forest products sector—Boise Cascade, the American Forest Resources Council, people like John Shelk and their compatriots who hold similar positions in the environmental community—I don't want to miss the opportunity when they agree about how to go in there and do something about the horrendous state of the forests you are talking about.

I think we all just got to keep at it and keep working together, and that is what I am committed to doing.

Any last words, Mr. Kerr? We will go to Mr. Kerr, and then we will go to Mr. Fitzgerald.

Mr. KERR. A couple of closing points. The legislation also addresses roads, which are a big problem. We talk a lot about forest health today, but watershed health is equally as important problem, and this legislation does address that as well.

There are too many roads out there. There are too many roads from an ecological standpoint, a hydrological standpoint. No single citizen could drive all those roads, and the taxpayers can't afford to maintain all those roads. So we have a problem that is ecological and fiscal that needs to be addressed.

This legislation would urge the agency to reduce the number of unnecessary roads and to make the roads that remain more storm proof so they are not causing harm to the environment.

The question is on appeals, I want to state that that was probably the toughest thing for the conservation community that is endorsing this bill. We didn't want to give up administrative appeals. We think that they are an important process. But when we looked at this legislation in total, and the opportunity that it affords and the protection that it affords and the fact that the administrative appeal process would be foregone for a relatively short time period and be replaced by a similar process that saves a significant amount of time, primarily by putting the Forest Service on a schedule with the aggrieved parties.

Right now, the aggrieved party has to file an appeal and a statement of reasons in a certain period of time, and then the Forest Service often sits on it. So the Forest Service should either defend or abandon their plan, but not just sit on it. That is a big problem for things going forward.

In terms of old growth, it was in a different context. But a Supreme Court justice named Potter Stewart said—and I will paraphrase. He was actually thinking of something else, but he said he couldn't define it, but he knew it when he saw it. That is sort of old growth.

Twenty-one inches is arbitrary, but rational for the reasons that Norm said. You could do age. You could do structure. There is legislative exception in this bill that speaks to if the scientific panel and a case could be made that there are trees over 21 inches that need to be removed to restore ecological function, they can be. If there are trees under 21 inches in diameter that need to be retained for ecological structure and function, they can be.

So it is a—there is a diameter limit. It is actually more of a landmark than a limit because there can be exceptions either way. The reason that is important to have is that if there is no standard, the conservation community gets very nervous with the agency abusing their discretion. As Dr. Johnson pointed out, the agency works well with boundaries. What this legislation does is provide boundaries. It says the old growth is important. Forest health is important. Watershed health is important. Manage for those things.

So, in closing, I think this legislation provides an excellent opportunity. One of the issues that we did not agree on was question of the relative worth or the ultimate value of trees that are no longer transpiring. We like dead trees. They have ecological value. There is more life in a dead tree than a live tree. Many species of wildlife depend upon standing dead trees and fallen trees and things like that.

So that is an example of an issue that we did not come to agreement on, but we are not going to let that difference get in the way of the tremendous potential that this legislation provides to move us beyond the historic places that we have been to be—the forest to be a better place.

Thank you.

Senator WYDEN. Very good.

Dr. Fitzgerald.

Mr. FITZGERALD. Yes, I would like to make a comment about the scientific advisory panel and perhaps a suggestion for adding a discipline. We have economics on there, but it is like timber economics, ecosystem economics. We really need, really, a social or community stability, which kind of helps to integrate economics and viability on that.

The other part is—

Senator WYDEN. Sure sounds sensible to me.

Mr. FITZGERALD. When you have a group of scientists together, they are very good at what they do. Norm is good at policy. I am good at silviculture. But many scientists don't have their foot on the ground.

So, what I would recommend is integrating that committee with forest managers so that when the scientific committee comes up with kind of the broad goals and stuff, that it is implementable. Because scientists, you get them in a room and they can really think up some creative things, but is it implementable? So, that is a very important part of that.

Thank you.

Senator WYDEN. Sounds good to me.

Norm.

Mr. JOHNSON. I just want to finish—I think we are coming to a close—that Steve Fitzgerald and I may disagree on some things. We definitely agree about some managers, a manager on that committee, and I think it is safe to say we both like the color of your tie.

Senator WYDEN. Yes. Orange. I am the Duck. So I have got to keep the peace. I will wear green tomorrow.

[Laughter.]

Senator WYDEN. Let me leave you with one last thought. This subcommittee has been involved in all of the major forestry issues before the Senate in the last decade. You look, for example, at the timber payments legislation. I wrote that a decade ago. A Democratic president didn't really want to sign it, and I got it reauthorized in the last Congress when a Republican president didn't want to sign it.

Our State got \$2.7 billion by the time we were done, and I think Mr. Blasing knows that Grant County folks have told me often when I have been out there that, without that, a real question about how the county could pay for essential services.

We did the same thing with President Bush's effort on the Healthy Forest Restoration Act. When that came over from the House of Representatives, that pretty much didn't have a pulse. A big group of us stepped in, Democrats and Republicans. We came together. We got close to 80 votes for that piece of legislation. I think that was a sensible step.

I am just as committed to getting this done because I think it is urgent. Mr. Blasing is spot on about how serious the problem is in eastern Oregon about forests dying. We do not have time to wait. If we wait, we lose the mills. We lose loggers. We lose all of the infrastructure in order to deal with the problem that all of you have correctly identified.

So we are going to put every bit of persistence and tenacity into this cause that we can. We are going to do it in a bipartisan way,

which is what I think is essential for balanced forestry. You all have been great. You make me proud, 5 Oregonians out offering thoughtful ideas to the U.S. Senate. It doesn't get any better than that.

I thank you for it, and the subcommittee is adjourned.  
[Whereupon, at 5:04 p.m., the hearing was adjourned.]

## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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##### RESPONSES OF JOHN SHELK TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* To all of the Panel 2 witnesses: You have all heard each other's testimony and that of the Administration. I have a question that I want each of you to answer: If there were one thing that you could change in this bill what would that be?

Answer. The change I would most like to see is a limitation on the use of appeals and litigation as a tactic to kill projects through delay and/or analysis paralysis. The bill currently eliminates administrative appeals for interim projects, which will last approximately 3-4 years. The legislation does not protect against injunctions once a project has been advertised and sold. This is a particular problem in the Ninth Circuit, where the courts are more inclined to issue nearly-automatic injunctions when a challenge is based on environmental grounds, without regard to the balancing of harms tests used in other circuits.

Projects now moving through the approval process on Eastern Oregon forests demonstrate the apparent unwillingness of the Sierra Club and other environmental organizations not directly involved in the negotiations that led to this bill to forego appeals and litigation as a tactic to get what they want, regardless of the outcome of collaborative processes involving the local community. As a consequence, our forests capitulate to the demands of these groups and modify projects or withdraw them altogether rather than face the costs and time delays that result from going through the litigation process.

My wish is not to deny anyone the right to challenge a project they honestly see as potentially detrimental to the environment. We all want healthy, sustainable forests.

Should this obstructionism continue, one possible solution would be to require all parties to submit to some form of binding arbitration before a panel of experts, rather than relying on the current, antiquated system under the Administrative Procedures Act and the National Environmental Policy Act. This would assure that the legitimate interests of all parties were weighed in the final solution and would relieve the Forest Service of the burden of defending itself in court.

*Question 2.* Are you certain that layering on new process while legislating current and new restrictions is really going to be good for the Forest Products companies that are struggling to survive on the eastside?

Answer. It is a certainty that continuing the status quo will lead to the demise of our industry on the eastside. We are currently being held hostage by the demands of extremist environmental organizations, such as the Sierra Club, Blue Mountain Biodiversity Project, Hells Canyon Preservation Council and others, whose objective is to prevent all commercial timber harvest on our national forests. This bill responds to the willingness of moderate environmental organizations to recognize the role of timber harvesting in forest health restoration and community stability. It is our hope that its passage will lead to greater cooperation among reasonable environmental groups, the industry and community members while increasing our chances of survival as an industry.

*Question 3.* Don't you think that having shut out the eastside environmental groups is only going to make them more motivated to head to court on the sales that do get through the Scientists?

Answer. No one was shut out of the process. Initial negotiations involved those environmental organizations, companies and associations willing to work toward

consensus. Once an initial framework was achieved, it was shared with other organizations and companies. Not surprisingly, there were those within both the environmental community and the industry who were not supportive of various aspects of the process. We negotiated long and hard to achieve as much consensus as possible. This is not the bill that any of us would have written if we had only our own interests to address.

Included in our working group that crafted the bill are environmental representatives that have been most active in Eastside timber issues. Primary among these is Oregon Wild, the former Oregon Natural Resources Council, the primary litigant on former national forest timber sales in this region. They were joined by Defenders of Wildlife, who have also been very active in Eastside national forest activities for the past twenty or so years as well as the Pacific Rivers Council whose focus is on clean water and riparian protection. We were mindful of the problems associated with earlier attempts to reach consensus in other states where failure to include representative environmental organizations led to the downfall of the final product. Since the legislation includes no changes to judicial reviews it is possible that the most extreme environmental organizations may continue attempts at blocking all projects. This is certainly the case today as well.

*Question 4.* Do you think the scientists are somehow better at coming up with defensible projects? If so, why?

Answer. Under this bill, the Forest Service planners will continue to identify areas in the forest that are most in need of forest health treatments or other silvicultural work. The collaboratives will discuss the projects and offer suggestions as to how they might be improved. The Scientific and Technical Advisory Panel (STAP) will provide initial oversight and prioritization regarding the general forest health needs of Eastern Oregon's federal forests and the stakeholders that depend on them. The STAP will also act as a consulting body to the collaboratives. The STAP will, it is envisioned, render recommendations that could provide additional scientific support to allow projects to withstand a court challenge, if that happens. It is hoped the STAP's input will provide a basis for the courts to confirm the work of the Forest Service so that projects can go forward without being enjoined.

*Question 5.* In the past your company looked, first to Siberia for a raw log supply and then eventually to Lithuania for a manufacturing facility to allow your company to sell lumber both in Europe, and also to the east coast of the United States.

Help us understand your experiences in Siberia and Lithuania as compared to dealing with the federal government here in this country.

If you started on a timber sale today in Siberia how long would it before you began logging and milling that timber? And in Lithuania? And finally on the Ochoco or National Forests?

Answer. Our businesses in Russia and Lithuania are now largely defunct. In Lithuania, we were stopped by the banking crisis that hit the Baltics harder than nearly anywhere. We had our line of credit frozen, then cancelled. Even before the banking crisis, we were destined for failure because we relied primarily on Russia for our raw material. Our business model had worked well for ten years, but relied on a continuously rising market to purchase raw material from the Russians. When the market began to decline about four years ago, the Russians didn't understand or accept that we could not continue paying high prices for their product and so gradually curtailed their deliveries to us.

In Siberia, we have recently had our port facility in Sovetskaya Gavan nationalized by the Russians. It was confiscated by Vladimir Putin and is going to be used as a major port to support the oil exploration venture on Sakahlin Island, opposite our port facility. We currently have an insurance claim registered with the Overseas Private Insurance Company. There is no way to compare our experiences in Siberia and Lithuania with the Ochoco National Forest.

*Question 6.* If this bill were to be passed today and consensus can only be found on half the projects, could you describe the forest conditions and the type of forest products industry that is likely to exist 40 years from now?

Answer. There are currently only three sawmills manufacturing Ponderosa Pine in the operating area of the six National Forest which encompass most of the National Forest area east of the Cascade Mountains in Oregon. For the last decade and a half, we have been able to access a moderate amount of private timber to keep our plants in operation. However, studies by the Oregon Forest Resources Institute show this private timberland has been overharvested by roughly 20 percent per year during the past decade and a half due to lack of supply from Forest Service lands. This harvest rate cannot continue, and in fact has dropped off significantly in the past two years. Therefore, we need a doubling or tripling of volume from our federal forests in Eastern Oregon just to keep existing plants and shifts in operation. If, as Sen. Wyden's bill directs, there could be a tripling of volume sold from the East-

ern Oregon National Forests, then cutting that volume in half, as your question poses, would still allow the existing mills to operate on a single shift. However, you must understand that we are in competition with other sawmills nationwide that are working two shifts per day and historically all sawmills in Eastern Oregon were working a two-shift basis. Not only does our industry need the extra volume that Senator Wyden's bill would offer, the forests need these treatments to reach the targeted number of acres treated through thinning, or run the risk of falling prey to the massive insect outbreaks that currently plague Colorado, Wyoming, and inland British Columbia. This would in turn increase the risk of catastrophic wildfire and could include the possibility of large swaths of public and private land being burned and made non-productive for our lifetimes.

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RESPONSES OF K. NORMAN JOHNSON TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* To all of the Panel 2 witnesses: You have all heard each other's testimony and that of the Administration. I have a question that I want each of you to answer: If there were one thing that you could change in this bill what would that be?

Answer. In the testimony by Jerry Franklin and myself, we state:

Third-party review will be essential to gain and retain broad public acceptance. We need mechanisms that provide trusted evaluations of the linkage between actions and goals along with the ability to suggest change as needed. Creation of third-party review as a regular part of forest restoration would go a long way toward this goal.

S. 2895 acknowledges this need through its purpose of providing periodic independent review of agency programs in carrying out the Act and with the creation of a scientific and technical advisory committee which has, as one of its goals, evaluation of the implementation and effectiveness of the Act. Review of the interim (first three years) projects will be crucial in this regard. If the committee is given an assignment of reviewing these projects, year by year, it could go a long way toward instilling trust in the public about the purpose and results of forest restoration programs.

We could not tell from reading the bill if the scientific and technical advisory committee would evaluate the effectiveness of the interim (first three years) projects. We feel that the scientific and technical advisory committee should have the assignment of doing such a review.

*Question 2.* Would you agree that the scientific process by its very nature evolves and the accepted thinking today, could well be debunked tomorrow or in the future?

Answer. Scientific knowledge changes sometimes in increments and sometimes with major shifts. However, the more fundamental the knowledge the less likely it is to change. Hence, general principles about how forest ecosystems are organized and respond to disturbances is quite stable, while very specific and detailed knowledge may undergo constant revision as more research occurs.

*Question 3.* Can you tell me if there is broad agreement in the world of academia as to the meaning of "uncharacteristic disturbance event"?

Answer. Generally, there is much agreement. This particular terminology is used and defined in a review of ecological conditions in western US forest ecosystems by Dr. Reed Noss and others in a recent article in *Frontiers in Ecology and the Environment*.

*Question 4.* Can you tell me if there is broad agreement in the world of academia that leaving a 21-inch diameter tree is better than a 20-inch diameter tree vs. say a 30-inch diameter tree?

Answer. I suggest that you query a spectrum of members of academia to answer this question.

*Question 5.* Would you agree that protecting individual large and old trees does not mean that one is necessarily protecting old growth?

Answer. Old trees are a key element of all old growth forests and this is profoundly the case in the dry forests of the western US. Therefore, protecting old trees is an important part of a strategy to protect old growth forests and, particularly, to restore dry forests to conditions that are within their historic range of variability.

*Question 6.* Can you give us a definition of old growth that is widely accepted in academia or with most forest scientists? If so, what is that definition?

Answer. Again, I suggest you query a spectrum of members of academia to answer this question.

*Question 7.* You have to be fairly excited about the provisions of this bill that hand over management decisions of the Forest Service lands to the Scientific and

Advisory Committee. In the bill what responsibility does that committee have to ensure the outputs called for in the bill are achieved?

Answer. We have not proposed that the Forest Service hand over management decisions to a Scientific Advisory Committee.

*Question 8.* If I am not mistaken, weren't you on the Gang of Four and then FEMAT that wrote President Clinton's Pacific Northwest Forest Plan?

Answer. Yes, that is right.

*Question 9.* It would seem to me that part of the problem in the failure to implement that plan was that the agencies and Department of Agriculture did not listen and failed to implement much of what the scientists called for—is that correct?

Answer. For our evaluation of implementation of the Northwest Forest Plan, please see the attached article by the Gang-of-Four.\*

*Question 10.* Do you think the Eastside Scientific and Advisory Committee should have full sufficiency from all environmental laws to implement what they believe is needed, if they conclude violation of one or more of those laws is needed to restore the health of the eastside forests?

Answer. No.

*Question 11.* If this bill were to be passed today and consensus can only be found on half the projects, could you describe the forest conditions and the type of forest products industry that is likely to exist 40 years from now?

Answer. Please see our testimony for our description of the future of the dry forests without comprehensive forest restoration.

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#### RESPONSES OF STEPHEN A. FITZGERALD TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* To all of the Panel 2 witnesses: You have all heard each other's testimony and that of the Administration. I have a question that I want each of you to answer: If there were one thing that you could change in this bill what would that be?

Answer. We need a national/regional policy that sets management priorities for our national forests. But short of that, I would eliminate the diameter/age limits and have the legislation primarily define the overall (umbrella) restoration and related socio-economic priorities for this region. Professional foresters and other resource specialists would use their local expertise and experience to define or prescribe the desired forest structure and other outcomes, and then apply the best tools to get the job done.

*Question 2.* Would you agree that the scientific process by its very nature evolves and the accepted thinking today could well be debunked tomorrow or in the future?

Answer. The scientific process is reflected in the "Scientific Method," which is a set process for gaining understanding about a particular question (a hypothesis) that the researcher wants to answer. Science, and the body of knowledge that it generates, does evolve as additional studies and study designs add information and knowledge that address the question we are asking. Not all current scientific thinking will be completely debunked in the future, unless particular studies are flawed or the questions weren't framed correctly. Scientific studies in forest ecosystems often produce only partial answers because of their complexity and site-specific nature. The results of those studies generate additional questions, which spur additional studies. Collectively, over time, the body of science can help answer the question(s) more completely and consistently. In essence, the scientific process is a continuum.

Some studies may appear, at times, to conflict with one another. For example, I can find fire studies that show that fire is beneficial, detrimental, or neutral when it comes to effect on ponderosa pine tree growth. Does this mean these studies conflict? Not necessarily. In interpreting these studies, one has to delve closer to see under what conditions these studies were conducted, what assumptions were made by the researchers, and over what time timeframe the studies considered. In addition, what may be true on one forest site may not be true on another. You can often find a single study to support any management premise, but it takes a body of studies to show the broader patterns and enduring responses of ecosystems.

*Question 3.* Can you tell me if there is broad agreement in the world of academia as to the meaning of "uncharacteristic disturbance event"?

Answer. For some forest types there is agreement on what constitutes an "uncharacteristic disturbance event." For example, in the ponderosa pine and dry mixed conifer forests, fires today are much more destructive (stand replacing and high severity) and out of character than fires historically in these forest types,

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\* Articles have been retained in subcommittee files.



which were frequent but of low and mixed severity. This change in fire behavior is due to a buildup surface and ladder fuels, increasing stand density, and the loss of large, fire-resistant trees. In lodgepole forest, we know that fires were typically of stand-replacement and of high severity, even to the point of damaging soils and watersheds. However, what we don't know is how large these fires were historically. Some evidence suggests that they were patchy or mosaic type of fires of several hundred to several thousand acres, rather than the larger fires we see today of tens of thousands of acres. In mid- to high-elevation moist forests (mixed fir, hemlock, and spruce), it appears that fires were a mix of high- and moderate-severity and were patchy. Again, there is no agreement on the extent or size of these patches of high- and moderate-severity.

*Question 4.* Can you tell me if there is broad agreement in the world of academia that leaving a 21-inch diameter tree is better than a 20-inch diameter tree vs. say a 30-inch diameter tree?

Answer. No, there is not. What is meant by the term, "better"? Better for what: habitat, wood, carbon sequestration? It's really not a science question as it depends on the objective, which is determined by individual or societal values. And even from a science standpoint in evaluating a specific forest value, those trees would need to be assessed in the context of the surrounding forest and its unique conditions.

*Question 5.* Would you agree that protecting individual large and old trees does not mean that one is necessarily protecting old growth?

Answer. I agree with that statement because old-growth is not comprised individual old trees. From a science perspective, we need to talk about old growth forests. It takes several trees per acre comprised of different ages, sizes, and, sometimes, species (in most forest types) to comprise an old growth forest, as mentioned in my testimony. Having said that, individual old trees can add structure, habitat, and genetic diversity within stands and landscape comprised mostly of younger forests.

*Question 6a.* Can you give us a definition of old growth that is widely accepted in academia or with most forest scientists? If so, what is that definition?

Answer. I gave a definition in my written testimony. Here is a definition that would be widely supported, as it was developed and reviewed by knowledgeable forestry professionals:

The (usually) late successional stage of forest development. Old growth can be defined in many ways; generally, structural characteristic used to describe old-growth forests include (a) live trees: number and minimum size of both seral and climax dominants, (b) canopy condition: commonly including multi-layering," [although some may be a single canopy layer, such as in some dry pine forests] "(c) snags: minimum number of specific size, and (d) down logs and coarse woody debris: minimum tonnage and the number of pieces of specific size.

*(from The Dictionary of Forestry)*

*Question 6b.* You have to be fairly excited about the provisions of this bill that hand over management decisions of the Forest Service lands to the Scientific and Advisory Committee.

Answer. Actually, I'm concerned that most scientists and other members of this Committee would have little or no forest management experience, so would be ill-prepared to make such decisions. Some forest scientists have had academic training in forest management but this is not a consistent trait, and even fewer have had experience managing forest lands. And, having managed forests myself, I can appreciate how essential such experience is in good decisions and outcomes from management. The scientists and other members of the Committee could provide some valuable perspective about proposed projects but their most appropriate role is advisory rather than decision-making.

*Question 7.* In the bill what responsibility does that committee have to ensure the outputs called for in the bill are achieved?

Answer. The committee should not only have the responsibility to develop broad goals and related recommendations, they should have the responsibility of reviewing results of short- and long-term monitoring and of preparing reports on whether the targets have been met.

*Question 8.* Do you think the Eastside Scientific and Advisory Committee should have full sufficiency from all environmental laws to implement what they believe is needed if the conclude violation of one or more of those laws is needed to restore the health of the eastside forests?

Answer. This is a complex political and legal question. I am neither a lawyer nor a policy specialist.

*Question 9.* If this bill were to be passed today and consensus can only be found on half the projects, could you describe the forest conditions and the type of forest products industry that is likely to exist 40 years from now?

Answer. On half of the projects that are not implemented due to non-consensus, stand conditions would be expected to worsen; that is, stand density and tree competition would increase and mortality would increase. These stands would remain susceptible to fire and bark beetles. We can use forest growth models to predict forest conditions 40 years out, as I demonstrated in my testimony. We can also use the same models to show potential management options and their consequences, including no action.

With respect to the second part of the question regarding what the forest products industry would look like, that depends on the amount and type of timber that comes off the other half of the projects that have consensus. If the timber volume and quality are less than what is currently being offered, then we would expect some further declines in milling infrastructure, which would reduce the ability of the National Forests to do ecological restoration treatments. A quantitative study to develop a milling infrastructure model could provide more detailed answers to this question.

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RESPONSES OF ANDY KERR TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1a.* To all of the Panel 2 witnesses: You have all heard each other's testimony and that of the Administration. I have a question that I want each of you to answer: If there were one thing that you could change in this bill what would that be?

Answer. As I said in my written statement:

In sum, the proposed Oregon Eastside Forests Restoration, Old Growth Protection and Jobs Act is not the bill I would have written. It is the product of what Senator Wyden could convince a critical mass of the conservation community and timber industry to agree on. While not a perfect bill, it is nonetheless a great bill.

Since the legislation introduced by Senator Wyden and supported by Senator Merkley is the product of thoughtful and intense discussions between interests with an epic history of animosity, the product of compromise is quite delicate. If I, as a conservationist, were to want significant changes, so would my timber industry counterparts. While it is likely that some minor changes could occur to the bill and not jeopardize the unprecedented and path-breaking compromise that is S. 2895, changes to the core of the bill that brings together conservationists and the timber industry would certainly destroy the coalition that has developed in support of this bill and therefore result in a failure to enact the legislation. Therefore, I can honestly say, I prefer that the Committee mark up the bill as introduced.

However, since you asked, a provision for an automatic appropriation would be nice.

*Question 1b.* The Hell's Canyon Preservation Council was supposed to testify here today but backed out and sent a fairly insightful letter to Senator Wyden commenting on his bill. In that letter they make a variety of points that I would like your insight on.

Answer. I too found the comments of HCPC instructive and constructive.

*Question 1c.* In that letter they said: "The non-inclusive process by which the bill was developed was not an auspicious start. We find it highly ironic that a bill encouraging eastside local collaboration was developed without any eastside conservation groups."

Answer. I would think it is the prerogative of a United States Senator to use any kind of process they want to aid them in drafting legislation that they introduce. I will leave it to Senator Wyden to answer, if he so wishes, why he and his staff under his direction did what they did.

An auspicious ("conducive to success") start I think it was. Perhaps a better word in defining the start is that it was not congruous ("in agreement or harmony"). While the bill was initially developed came out of talks that included a subset of the conservation community and the timber industry, it is important to note now that the bill has been introduced it is subject to the long-established process of congressional consideration which includes hearings, comments, analyses, and lobbying.

The zip code of where a conservation organization receives its mail is not dispositive to neither its credibility nor its commitment. To my knowledge there is only one "eastside conservation group" if defined by the zip code of their headquarters. There are several other conservation organizations that commit significant resources

to Oregon's eastside forests, though their headquarters are on Oregon's westside, out of state or even in Washington, DC.

Oregon Wild is headquartered in Portland, in the state's westside, but has a full-time staff person that lives in and works exclusively on Oregon's eastside forests. Defenders of Wildlife, based in Washington, DC, has a staff person that, while living on Oregon's westside, spends most of his time working on eastside. The Wilderness Society, based in Washington DC, has staff that commit significant resources to eastside forests though they live in Washington state. The Pacific Rivers Council, though based on Oregon's westside, also has a distinguished record of conservation on behalf of eastside forests and watersheds. Klamath-Siskiyou Wildlands Center, though based on the westside and primarily focused on westside forests and watersheds does do some of its work in Oregon's eastside. Finally, The Nature Conservancy, works both domestically and internationally—its Oregon Chapter, while headquartered in Portland, has 4 field offices in eastern Oregon with over a dozen employees, and dedicates significant resources to the restoration of eastside forests.

Before coming to Senator Wyden with the news that critical masses of the conservation community and timber industry had reached a broad, very tentative and skeletal agreement in concept for the conservation and restoration of eastside forests and watersheds, John Shelk and I had convened a group of seven card-carrying conservationists and seven representatives of milling companies. John and I each chose six colleagues, wanting to keep the number of participants large enough to be representative of our respective interests, but small enough to have a workable group dynamic.

Our choices were based on a multitude of factors and, at least in my case, far more than six of my colleagues could have fit the bill. John and I both chose six that I felt that—if an agreement could be reached—could deliver a critical mass of the conservation community or timber industry respectively.

In choosing my team, I considered expertise, experience, credibility, diversity (biological and political), risk-taking ability, ability to play well with others, and clout. There are several conservation colleagues that were similarly qualified but not chosen.

*Question 1d.* I also note that none of the counties have come out in support of the bill. But that none have come out against it either. My guess is they may not like it, but do not want to embarrass the sponsors by speaking out against it.

Answer. Rather it might be the case that the elected county officials are responding to their divided political constituencies by not responding to their two Senators. Imagine county commissioners being told that the county's largest manufacturer supports the bill—but so do most conservationists. Having battled so long the latter in concert with the former, it may take awhile for local elected officials to recalibrate. Given the game-changing nature of S.2895, it may be politically prudent for local elected officials to wait and see.

*Question 2.* Should Congress accept this bill if none of the eastside environmental groups and none of the County Commissioners were involved in its development or are willing to speak in support of it? Why?

Answer. Congress has often designated Wilderness Areas and Wild and Scenic Rivers in eastern Oregon over the objection of local county commissions. Bitterly opposed by local interests, such protected areas designated in the 1980s on the eastside of Oregon now enjoy widespread local support.

Congress should enact S.2895 because it would be good public policy for a portion of the National Forest System that is a public trust for the benefit of all Americans.

*Question 3.* If this bill were to be passed today and consensus can only be found on half the projects, could you describe the forest conditions and the type of forest products industry that is likely to exist 40 years from now?

Answer. Two decades from now I expect and desire to see millions of acres of eastside forests of Oregon on a trend of improving forest and watershed health with more jobs in the woods and in the mills than is now the case.

Four decades from now is not something I can even imagine with any high likelihood. I began my conservation career about 35 years ago (by the way, an effort to prevent the roading and logging of an eastside roadless area [it's still roadless]). At that time I did not imagine, nor could I have imagined, today's forest conditions and what the wood products industry would be like today.

I can only tell you my expectations and desires two decades from now, which are based on hope, evidence and commitment.

I have hope that people change; if not the individuals themselves, then the successors.

While most change comes at funerals or retirements, I offer as evidence the changes in my views and tactics, which I detailed in my written statement for the record. Permit me to, perhaps immodestly, quote from an editorial in the state's

largest newspaper that ran a week after the hearing on S.2895: "It was a remarkable sight, with Andy Kerr, once the most hated environmentalist in timber country, standing with John Shelk, the mill owner who fought the hardest to keep the industry alive east of the Cascades" (The Oregonian, March 18, 2010).

There is even better evidence that people change and forests can be restored while mills can be kept running. The Lakeview Stewardship Group has been in operation for a decade, focusing on ~500,000 acres of the Fremont National Forest. "Consensus" has been found on nearly all restoration projects. There have been a few administrative appeals that have been resolved without litigation. Each year, the number of treated acres each year has been generally increasing and is expected to continue to do so. Lakeview is a model for multi-stakeholder collaboratively based engagement that S.2895 seeks to emulate across Oregon's eastside.

I project I have 20 years left in my conservation career. I am committed to seeing this legislation not only enacted into law, but also effectively implemented.

I must also note that S.2895 is drafted in ways that strongly encourage collaboration, but do not require "consensus" of a recognized collaboration group for the Forest Service to act. Consensus groups would be advisory.

Though advisory, as in the case of the Lakeview Stewardship Group, consensus groups are critical to conserving and restoring forests and watersheds and getting those ecologically problematic trees converted to economically profitable logs. Based on the Lakeview and other experience, I would project that most projects will go forward with the agreement of most parties most of the time.

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#### RESPONSES OF LARRY BLASING TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* If there were one thing that you could change in this bill what would that be?

Answer. The most scary aspect of the Bill (there are several) is the codification of processes and management program details that should be nothing more than administrative decisions made on a site specific basis. Many of the concepts of the Bill are worthy objectives and in fact, should be a part of regular practice. However, codification of an advisory committee; collaborative groups; management concepts that are unproven, not universally accepted and maybe just the current management craze; specific road management requirements; trees to cut or not to cut; and more. It will tie land managers hands to the point where they cannot effectively manage the forest resources.

*Question 2.* Mr. Blasing, am I correct that you are an elected member of the Grant County Public Forest Commission?

Answer. The Grant County Public Forest Commission was established by an Initiative of the voters of Grant County. The Commission members, of which I am one, are elected to four year terms.

*Question 3.* Were you or any of the other members of the Grant County Public Forest Commission invited to participate in the development of Senator Wyden's Bill?

Answer. None of the members of the Grant County Public Forest Commission were invited to participate in the development of Senator Wyden's Bill. None of the members that I am aware even knew the Bill was being considered.

*Question 4.* In your experience which takes longer, appeals or litigation?

Answer. The Administrative Appeals process has a set schedule of times that have to be met, therefore, keeping the process moving. Litigation typically moves on the Courts schedule and often takes much longer.

While Appeals are irritating and often delay programs where scheduling is critical to the success of a project, they generally do not stop the project. It is the subsequent threat of Litigation by the Environmental Litigation Industry's misuse of the Equal Access to Justice Act that stops the projects.

The environmental litigation industry uses the threat of litigation to stop scientifically sound projects, even where there are no legitimate issues and only philosophical differences, just because they can. Under the Equal Access to Justice Act, the Forest Service gets to pay the legal bill, from appropriated funds whether or not the environmental litigation industry wins or loses. This causes a shortfall in funding for projects that are already approved. The Forest Service has to balance losing the funds or paying for a frivolous lawsuit against not completing a project that provides critical jobs for local economies. The decision becomes coerced capitulation on the part of the Forest Service.

*Question 5.* In reading the HCPC letter to Senator Wyden do you detect a threat that they will litigate on the sales that they used to appeal? And if so, what do you

think the chance of this bill successfully resulting in timber sales in the Eastside of Oregon over the next three years?

Answer. My reading of the Hell's Canyon Preservation Council written testimony clearly tells me that they do not plan to stop the use of Appeals or Litigation if it suits their purpose. The details of their land management objectives tell me that there is little chance that land management programs where commercial timber is harvested will go unchallenged. The Forest Service will again have to look at coerced capitulation.

*Question 6.* If this bill were to be passed today and consensus can only be found on half the projects, could you describe the forest conditions and the type of forest products industry that is likely to exist 40 years from now.

Answer. At the present time we have the remnants of a diverse forest products industry that can provide the infrastructure to manage all of the forest types in eastern Oregon. This includes trees over 21" dbh—Incidentally, logs over 21" dbh go by my house regularly to local mills. They are coming from Idaho where they have never heard of eastside screens -. If this Bill is passed as written, there will be no need to have a sawmill that is designed to manufacture large logs. Malheur Lumber is an example. In addition the high quality products that come from these larger trees provide the raw material that goes into cut-stock plants. Both of these types of plants are more labor intensive than the ones that use smaller logs. The products that come from smaller logs have lower product value and, therefore, the manufacture plants that use them must be more efficient and use less labor to be competitive. The result will be a smaller less flexible infrastructure.

The forest products industry as a whole has been moving toward utilizing more biomass. The products are low value with large investment costs in manufacturing facilities. This means that profits are lower and much more subject to market fluctuations. In many cases the raw material must be subsidized in some fashion for the operation to be feasible.

Even with the emphasis on science and forest restoration, the forest health and conditions after the Bill may be worse than before. Eastside forest health is deteriorating due to lack of management and in my estimation, climate cycle. The Bill will attempt to improve forest health in less than 21" dbh trees (not stands) and that should be positive. These positive effects will be lessened when wildlife requirements, watershed requirements, diversity requirements, etc. are incorporated.

As trees move into the 21"dbh plus category to live until they die, they will be the carriers of disease, insect infestation, and the lightning rods for catastrophic fire. Even with the emphasis on small timber restoration, we can expect the overall forest health conditions to deteriorate. We stand to lose many of the forest management gains that we have made in the past.

If you have any additional questions we will be happy to respond.

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#### RESPONSES OF HARRIS SHERMAN TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* As I recall the last time you testified before this Committee you came to deliver some fairly negative testimony on S. 1470 Senator Tester's Forest Jobs and Recreation Act of 2009.

Over the weekend I came across an article that said: "The Obama administration could support the logging mandate in Montana, Sen. Jon Tester's wilderness bill as a 'pilot project,' said U.S. Agriculture Secretary Tom Vilsack."

That same article reported that "At the time, Agriculture Undersecretary Harris Sherman said the logging targets were 'unworkable' for the agency and could set a precedent in which each national forest is managed differently by Congress."

Can you explain what a "pilot project" is and what changes from S. 1470 the Administration will make to that "pilot project" to make it acceptable to Secretary Vilsack?

Answer. The Secretary's comments helped convey general support for the broad goals of S. 1470 because they align well with his vision for collaboratively restoring America's forests. There are increasing demands on the Forest Service to undertake forest restoration at a scale and in a manner that benefits forest health while protecting local jobs. S. 1470 potentially provides a mechanism that allows for such restoration with broad public support. As such, the Secretary expressed his willingness to test such approaches, particularly when they are developed collaboratively with diverse interests. There have been no decisions made regarding what the term pilot project means or how it could be implemented.

*Question 2.* Now the Secretary has announced S. 1470 acceptable as a "pilot project" is it your view that this can be implemented without legislation? Could this

just be done by having the Secretary wave his administration wand to deem these other bills acceptable too?

Answer. Many of the restoration aspects of S. 1470 could be completed administratively since this title contains very little new authority for the agency. However, as I testified in December, I am very concerned about placing priority use of existing resources on portions of these three national forests which would result in transferring much needed resources from other units of the National Forest System where priority work must also be accomplished.

Title II requires congressional action for the land designations it contains.

*Question 3.* Do you think the same changes to Senator Wyden's S. 2895 converting it into a pilot project would make this bill we are hearing today acceptable to the Secretary?

Answer. As I testified at the March 10th hearing, the administration is generally supportive of S. 2895, although we have several areas of concern we wish to discuss with Senator Wyden and the committee. We look forward to those discussions, and, if there is a need to test some of the provisions of S. 2895, we would be open to discussing how best to do that. S. 2895 was also developed through a collaborative process which brought diverse stakeholders together to address forest health issues and the needs of local communities.

*Question 4.* If the Secretary can just turn the Tester logging mandates into a "pilot project" and find that an acceptable investment; can he do the same for S. 2895 or for S. 2798 Senator Udall's National Forest Insect and Disease Emergency Act of 2009?

Answer. Each of the bills you mention must be reviewed carefully and thoughtfully. We have provided our testimony on both S. 2895 and S. 2798 conveying our general support and indicating areas we wish to discuss further.

#### RESPONSES OF HARRIS SHERMAN TO QUESTIONS FROM SENATOR BARRASSO

*Question 1.* I noted that Secretary Vilsack made comments in Montana over the weekend in support of logging mandates related to Senator Tester Montana Wilderness bill, S. 1470. As you know, Senator Tester has proposed legislation that includes a provision similar to Chairman Wyden's bill, S. 2895, that we discussed at Wednesday's hearing. Both bills require certain parameters of timber harvest to benefit local communities.

Secretary Vilsack was discussing Senator Tester's bill when he made those comments. However, you testified on Senator Tester's bill that it: "could set a precedent in which each national forest is managed differently by Congress."

Could you explain whether USDA has changed its mind about mandated timber sales?

Answer. The administration has not changed its position on S. 1470, and I still believe that mandated levels of mechanical treatment may create unrealistic expectations on the part of communities and forest products stakeholders that the agency would accomplish the quantity of mechanical treatments required.

The Secretary did not endorse "logging mandates" while in Montana, his comments conveyed his willingness to try new approaches to achieve his vision of restoring America's forests. The Secretary's comments included statements that expressed that passing legislation for 155 national forests and grasslands would be in appropriate.

*Question 2.* Will you support a mandate for timber sales in Wyoming National Forests?

Answer. Each piece of legislation must be individually evaluated for its content, purpose and potential outcomes. The Secretary's comments in Montana, and my testimony in December, both include statements that convey the administration's concern about the precedent of site specific legislation because it may lead to each forest operating under different authorities which would add further complexity to the management of our forests. Senator Tester's legislation draws upon years of effort by diverse local stakeholders to advance forest restoration, protect wilderness areas, and provide a sustainable supply of timber to forest products companies. We would welcome the same type of collaborative process in Wyoming, or anywhere else, particularly when such efforts promote forest restoration for the benefit of water resources, the climate and local communities.

[Responses to the following questions were not received at the time the hearing went to press:]

QUESTIONS FOR EDWIN ROBERSON FROM SENATOR MURKOWSKI

We are told that the Forest Service has enjoyed a timber sale contract provision called Market Related Contract term addition since the early 1990's. And that provision was developed as a result of past lumber market slumps in the early 1980's and again in the late 1990's.

*Question 1.* Why did the Bureau of Land Management never put such a provision in its timber sale contract or ask Congress for that type of contract relief before?

*Question 2.* If this bill were to be signed into law next week, how long would it take before the holders of BLM timber sales that qualified to get their contract extensions?

*Question 3.* In relative number or on a percentage basis, what percent of the timber sale volume under contract is located in the State of Oregon compared to the rest of the states?

*Question 4.* Is this not just a bail out for the timber industry in Oregon?





## APPENDIX II

### Additional Material Submitted for the Record

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#### STATEMENT OF OPPOSITION TO S. 2895

We the undersigned strongly oppose Senate Bill S. 2895, introduced by Senator Ron Wyden (D-OR), the name of which—the Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009—belies its true effects. S. 2895 represents a concerted effort on the part of the timber industry and its political allies, with support from some not-for-profit organizations, to cripple essential environmental laws in order to increase logging across 8 million acres of publicly-owned forests—forests which have already been severely degraded by logging. This bill is the latest in a series of bills that increase logging on our national forests, weaken legal protections, and consign the trees from our national forests to be burned in wood energy plants all across our nation.

We oppose this and all other legislation that will increase logging on our public forests, whether federal, state, or local, especially when the “product” will be utilized as fuel for biomass-to-electricity plants or biofuel plants creating cellulosic ethanol. S. 2895 is unacceptable and cannot be fixed or improved by amendments, and we urge you to vote against it.

S. 2895 claims it will protect, restore and increase the old growth forest stands and trees, but offers heavy logging of these forests as the supposed magic elixir that will “restore” them. Logging is what caused the tragic degradation of these great eastside forests in the first place.

The only proven method of growing—or regrowing—natural old growth forest ecosystems is for natural processes—nature, not humans with chainsaws—to manage the forest—a process that takes centuries. The remaining primary old-growth forests on Earth are living proof of nature’s ability to grow forests hundreds or thousands of years old.

However, there is not a single example anywhere on Earth of a natural centuries-old forest “grown” by humans using chainsaws. Therefore, there are no scientific studies of these non-existent old-growth forests “restored” by chainsaws. This legislation’s assertion that using heavy logging will “restore” old-growth forests is without scientific foundation.

S. 2895 claims that the increased logging mandated by this bill will somehow mitigate the effects of climate change. Recent scientific studies (Public land, timber harvests, and climate mitigation: Quantifying carbon sequestration potential on U.S. public timberlands, Depro, B.M., et al, Forest Ecology and Management, 2007; Forest carbon storage in the northeastern United States: Net effects of harvesting frequency, post-harvest retention, and wood products, Nunery, J.S., Keeton, W.S., Forest Ecology and Management, 2010) have shown conclusively that forests which grow without logging grow more biomass, and subsequently sequester more carbon, than forests that are logged, and that it takes a newly-planted forest from 50 - 100 years to attain the level of carbon sequestration the logged forest was providing when growing. Further, another study (Peters, W. et al., An atmospheric perspective on North American carbon dioxide exchange: Carbon Tracker. PNAS, 2007) concluded that North American ecosystems, mostly forests, remove 0.65 Pg C/year, offsetting one-third of the country’s estimated 1.85 Pg carbon emissions. Compromising the capacity of forests is therefore equivalent to increasing emissions. Therefore, the increased logging mandated by this bill will not only increase forest destruction, it will decrease the amount of carbon stored by these forests, diminishing the ability of our public forests to combat global climate change.

However, this legislation goes even farther in contributing to global climate change. It instructs the Forest Service to take the wood logged from these forests and burn it in wood-energy plants. Nothing could possibly contribute more to global climate change than increasing logging on our national forests and then burning the wood in biomass plants. According to a recent study (Matera, Chris, Wood-Fueled

Biomass Power Plants and CO<sub>2</sub> Emissions, <http://www.maforests.org/MFWCarb.pdf> February 2010) wood-burning energy plants contribute greatly to global climate change. Using data from a permit application in Massachusetts and from the Department of Energy, the study concludes, "Overall, wood fueled biomass power plants emit about 50% more CO<sub>2</sub> per MWh than existing coal plants, 150% more than existing natural gas plants, and 330% more than new power plants."

But there are also tremendous amounts of carbon released by the use of petroleum when logging and chipping the forests and the burning of gasoline used by the trucks that will make thousands of trips totaling thousands of miles transporting the cut wood fiber to the biomass/biofuel plants. Burning trees from our national forests in biomass plants is a net carbon-loss disaster for global climate change. A recent article (Searchinger, et al., Fixing A Critical Climate Accounting Error, Science, 2009) reveals that emissions from biomass burning are entirely uncounted, either under land use change or under smoke stack emissions from utilities. This failure in accounting has resulted in the claim that biomass burning is "carbon neutral" and led to a flow of public-funded subsidies into these biomass burning facilities. This accounting error must be fixed. Doing so will reveal that logging and burning of forest biomass is not a viable solution to climate change. The claim by this legislation that burning wood in biomass plants will reduce global climate change is no more than a disproven, unscientific fabrication.

S. 2895 goes so far as to suspend all applicable laws in favor of biomass removal. In Section 12 of the bill titled, BIOMASS, the specific language reads:

(a) IN GENERAL.—Notwithstanding any other provision of law (including regulations) relating to the use of biomass energy, in accordance with each purpose and goal of this Act, and any applicable recommendation of the advisory panel, the Secretary shall take such actions as are necessary to further enhance the use of woody biomass in the covered area.

The area covered by this legislation is more than 8 million acres of public forestlands across Eastern Oregon.

S. 2895 also tilts towards commercial interests, stating;

On a determination by the Secretary that forest conditions, commercial interests, and an adequate supply from a combination of Federal and non-Federal sources indicate a viable economic supply and demand for establishing a regional biomass project, the Secretary may designate an area within the covered area in which—

- (A) the removal of biomass is necessary to restore forest health; and
- (B) a sufficient volume of material is expected to be available to support a 20 year-lifespan of capital investments for biomass use.

S. 2895 is honest in at least one respect, when it admits its purpose is to supply the wood industry with a guaranteed supply of wood from our federal forestlands. S. 2895 guarantees a minimum of 20 years of vastly increased logging to supply these newly constructed wood energy plants. This mandated amount of logging will devastate the very forest ecosystems that S. 2895 claims to be restoring. Biomass burning utilities require about 13,000 tons per megawatt per year, and transportation logistics require sourcing feedstocks from a limited distance (generally around 50 mile radius). Providing and maintaining sufficient feedstocks to biomass burning facilities is unlikely to be harmonious with the goal of forest protection and "restoration."

The stripping of our forests for biomass means that woody debris that previously had been left for mulch in the forests and which enriched the forest soil and provided essential habitat for biodiversity will now be taken away from the forests and burned. If this legislation and other bills like it proceed, our national forest soils will be stripped of nutrients and our forests will die of starvation.

S. 2895 clearly cripples environmental laws which have given our forests some level of protection, not only by unconscionable suspension of the laws, but also by rushing the normal environmental enforcement procedures. S. 2895 would effectively circumvent NEPA by having pre-made decisions come out of advisory committees, even though NEPA will ostensibly be followed. NEPA requires an objective analysis of alternatives before decisions are made. Under this process, in effect, the decision is made before the analysis, making NEPA a pro-forma exercise. The process is further tilted toward increased logging of these forests by the use of advisory groups made up primarily of paid employees of the timber industry and others who are forced to either agree with this increased logging program or be denied from participation. This disenfranchises the American people of our and our children's heritage, the national forests of Oregon—it is no less than grand theft and destruc-

tion of federal property. This bill is the equivalent of allowing a small number of people from New Jersey, subsidized by federal tax dollars, to dismantle the Statue of Liberty and sell it for scrap metal while claiming it is good for the economy.

S. 2895 claims that one of its goals is to protect large trees, trees larger than 21 inch diameter, and it even lists exceptions for protecting trees smaller than 21 inch diameter. However, S. 2895 gives all final authority, stripped of any legal check and balance, to the Secretary of Agriculture to determine what trees can be logged, rendering the supposed protections of trees of any size, including any and all large trees, completely meaningless. This legislation is a green light to demolish our public forests, even allowing logging of the giant old trees the bill is allegedly supposed to protect.

Roads are one of the greatest causes of forest degradation. S. 2895 will allow an unlimited number of new roads, including permanent roads, to be constructed.

A new scientific report (Bond, Monica L., et al., Influence of Pre-Fire Tree Mortality on Fire Severity in Conifer Forests of the San Bernardino Mountains, California, *The Open Forest Science Journal*, 2009) suggests that bark beetle outbreaks will not lead to greater fire risk, and that tree thinning and logging is not likely to alleviate future large-scale epidemics of bark beetle. The report's findings apply to millions of acres of lodgepole pine and spruce-fir forests across North America. This report completely contradicts the goals and unscientific claims of this bill that increased logging will reduce these naturally occurring events.

"Drought and high temperature are likely the overriding factors behind the current bark beetle epidemic in the western United States," said Scott Hoffman Black, executive director of the Xerces Society for Invertebrate Conservation. "Because logging and thinning cannot effectively alleviate the overriding effects of climate, it will do little or nothing to control these outbreaks." (Black, S. H., et al., *Insects and Roadless Forests: A Scientific Review of Causes, Consequences and Management Alternatives*, National Center for Conservation Science & Policy, Ashland OR, 2010).

S. 2895 will lead to hundreds of millions of dollars of additional subsidies to log our national forests at a time when Americans are saddled with a soaring national debt.

Since the rise of large scale civilizations around 8,000 years, over 80% of the Earth's forests have been either completely wiped out or severely degraded by humans. Logging by humans is the greatest threat to the survival of the remaining natural forests on Earth, yet this legislation will increase logging. All the verbiage in S. 2895 about so-called ecological forest restoration, watershed health, conservation, ecosystem function, carbon cycling, and scientific advisory panels are thin cover for a timber industry logging bill.

S. 2895 was written without public participation, contrary to the claims of some of the bill's supporters. It is undemocratic in conception and would also be so in implementation. Senate Bill 2895 is an environmental disaster-in-the-making for our national forests and an economic disaster for the American people and will contribute greatly to lost biodiversity and increased atmospheric carbon dioxide levels. We urge you to completely oppose it.

Signed,

Michael Donnelly, *Friends of the Breitenbush Cascades*, OR; Tim Hermach, *Native Forest Council*, OR; Tom Giesen, MS, *Citizens for Public Resources*, OR; Samantha Chirillo, M.S., M.P.A. *Cascadia's Ecosystem Advocates*, OR; Shannon Wilson, *League of Wilderness Defenders*, OR; Carl Ross, *Save America's Forests*, Washington, DC; Rachel Smolker, *Biofuelwatch*, VT; Michael Garrity, *Alliance for the Wild Rockies*, MT; Ara Marderosian, *Sequoia ForestKeeper*, CA; Scott Mathes, *California Environmental Project*, CA; Ernie Reed, *Heartwood*, TN; Gary Macfarlane, *Friends of the Clearwater*, ID; Sherman Bamford, *Virginia Forest Watch*, VA; Jonathan Carter, *Forest Ecology Network*, ME; George Wuerthner, *RESTORE: The North Woods*, ME; Jana Chicoine, *Concerned Citizens of Russell*, MA; Chris Matera, *Massachusetts Forest Watch*, MA; Margaret E. Sheehan, *The Biomass Accountability Project, Inc.*, Massachusetts.

STATEMENT OF ROBERT FREIMARK, SENIOR POLICY ANALYST, THE WILDERNESS SOCIETY, ON S. 2895

The Wilderness Society is a national, non-profit conservation group with about 500,000 members and supporters. The mission of The Wilderness Society is to protect wilderness and inspire Americans to care for our wild lands. S. 2895 applies to six national forests in eastern Oregon, totaling nearly 10 million acres. Lands

covered by the Northwest Forest Plan (parts of the Deschutes and Winema National Forests) are not affected by the legislation.

Since its establishment in 1935, The Wilderness Society has advocated for the protection and wise stewardship for these National Forests (Umatilla, Malheur, Wallowa-Whitman, Deschutes, Ochoco, and Fremont-Winema). We have been involved in all stages of land and resource management planning for these forests since the implementation of the National Forest Management Act of 1976, and have advocated for Wilderness and Wild and Scenic River protection, roadless area conservation, and other protective designations for those lands with high conservation values.

We are pleased that Senator Wyden has a strong interest in the protection and stewardship of these lands belonging to all Americans, and which contain incredible resources including old growth forests. We respect the collaboration efforts that made this legislation possible. Collaboration is not easy especially among interests who traditionally had opposing viewpoints. Because the values and resources of these National Forests are so substantial and do belong to all the American people, we are concerned that others who have a stake in these National Forests were not adequately involved in the discussions. When key public processes impacting public involvement on these National Forests may be altered because of this legislation, it is very important to allow a robust public discussion about the merits of such a proposal. We commend Senator Wyden for holding a Congressional hearing and encourage other hearings and forums where the merits of this legislation can be discussed.

In the spirit of constructive collaboration, we are submitting the comments below to demonstrate our support for key provisions, and in hopes of the legislation getting modified to address concerns we have identified.

#### FOREST AND STREAM PROTECTIONS

We support the old growth protection provision in the legislation. The bill prohibits the cutting of live trees over 21 inches in diameter (which is comparable to the administrative protection of live old growth trees), currently provided by the "Eastside Screens." However, neither the bill nor the Eastside Screens (the current administrative requirement) directly addresses the controversial issue of salvage logging of large dead trees. Since fire is such a common ecological force in the geography covered by this legislation and there is usually considerable pressure to have a timber sale after a fire, we recommend that timber salvage sales and other post fire projects be covered by this legislation.

We also support the watershed protection provision of the bill which requires the Forest Service to comply with the PACFISH and INFISH administrative requirements for riparian area protection (Sec. 5(b)(1)). These protections are already administratively in operation, but legislation would ensure the protections will not be weakened and/or eliminated with future Administrations.

We support the bill's general prohibition on the construction of permanent roads (Sec. 6(a)) and several limitations on construction of temporary roads, such as requiring prompt decommissioning after a project is completed (Sec. 6(b)). In addition, we support the bill's requiring the Forest Service to reduce the density of permanent roads when it designs Ecological Restoration Projects (ERPs, Sec. 6(c)). However, we believe the bill could be made stronger by defining the term "decommissioning" in the legislation and by requiring a 3 year deadline in which temporary roads are decommissioned.

#### MANAGEMENT GOALS AND PURPOSES

We support the four management goals stated in the legislation: to conserve and restore forests and watersheds; reduce the risk of uncharacteristic natural disturbances; allow for characteristic disturbances; and increase resistance and resiliency to uncharacteristic events. Essential to these goals is restoring fire as a natural disturbance to low and moderate fire regimes. We believe the purposes of the legislation should be more aligned with these goals. For example, an increase of quantity and predictability of timber is likely from successful achievement of the four management goals, but should not be a key purpose of the legislation. One suggestion is to include a "findings" section of the legislation, and to edit the many purposes to fit into that section. We are concerned that one purpose (number 11) concludes an "emergency" status for threats to forest health, watershed health, and rural economies. A Congressional emergency determination is serious, and we do not believe the legislation provides enough information to understand why such a determination is warranted in all three categories listed: "forest health, watershed

health, and rural economies.” Again, we believe a findings section might provide an opportunity to articulate the threats to eastern Oregon economies and environment.

#### INTERIM TREATMENT TARGETS

Until the Forest Service initiates mechanical treatments under an ERP within each Eastside national forest, the bill requires the Forest Service, “to the maximum extent practicable,” to plan and implement specified acreages of interim projects or other projects during each of the three years after the bill is enacted (Sec. 9(c)(5)). The projects must be predominantly comprised of mechanical treatments and emphasize sawtimber as a byproduct (Sec. 9(c)(5)(i) and (ii)). The minimum project acreage targets are 80,000 acres in the first year, 100,000 acres in the second year, and 120,000 acres in the third year (Sec. 9(c)(5)(i)). The acreage of interim projects must be evenly distributed across the roaded, at-risk forest lands within the Eastside national forests (Sec. 9(c)(5)(C)).

We have concerns with the language in Section 9(c) “Location of Treated Acres,” which states, “to the maximum extent practicable, the Secretary shall. . .” The direction provided by this language for the Secretary is direct and makes clear that treating the acreage targets defined in the legislation is a priority over other considerations. Our concern is that there may be other considerations in managing these lands that will not be adequately addressed because of the pressure of this legislative language. We support the bill’s intent to increase a predictable supply of timber to mills to keep the timber manufacturing infrastructure intact, but we believe this provision could be misinterpreted by the agency and result in trading off environmental protections for making sure mechanical treatments are expedited.

#### RESTORATION ASSESSMENT AND 10 YEAR PLAN

We support the bill’s requirement for the Forest Service to prepare an Eastside Landscape Forest Restoration Assessment within two years (Sec. 8(a)). The assessment would include identification of proposed ERP areas, along with evaluation of the existing road system and local infrastructure and workforce needs (Sec. 8(b)). It would also contain a 10-year restoration plan comprised of activities aimed at restoring forest and watershed health (Sec. 8(c)). The public would have an opportunity to comment on the assessment (Sec. 8(d)). The Forest Service would have to incorporate the findings of the assessment into its forest plans (Sec. 8(e)). We recommend that the legislation should clarify the relationship between the Section 8 assessment and the collaborative strategies and proposals that may be developed pursuant to the Collaborative Forest Landscape Restoration Program established by Congress last year in the Forest Landscape Restoration Act (FLRA). For example, the Long-Range Strategy for the Lakeview Federal Stewardship Unit in the Fremont-Winema National Forest, which The Wilderness Society has helped to create and update for the FLRA, contains elements that are similar to those in the Section 8 assessment. The bill should not complicate efforts by collaborative groups and the Forest Service to comply with the FLRA by imposing redundant or conflicting requirements.

#### ECOLOGICAL RESTORATION PROJECTS

We support the legislation directing the Forest Service to prepare landscape-scale ERPs in consultation with local collaborative groups and specifying several factors the agency must consider in prioritizing ERPs (Sec. 9(a)). The bill requires the Forest Service to plan one or more ERPs covering a gross planning area of at least 25,000 acres in each of the six Eastside national forests per year, starting within three years (Sec. 9(b)(1)). The bill states that each ERP “shall provide a quantity of timber based on the need to maintain a sustainable industrial capacity to perform the ecological restoration activities under this Act” (Sec. 9(b)(2)). However we believe the “shall” should be changed to “should,” since we believe that timber production in this instance should be a by-product of restoration projects, and not a rationale for developing the projects. Indeed, the inclusion of similar mandatory language in the Tongass Timber Reform Act—requiring the Forest Service to “meet market demand for timber”—has provided the basis for litigation and injunctive relief that has resulted in less timber being sold on the Tongass National Forest.

#### INTERIM PROJECTS-ADMINISTRATIVE APPEALS EXEMPTION

The bill provides direction to the Forest Service for “interim projects” until the Forest Service begins mechanical treatments under an ERP in an Eastside National Forest. The interim projects, which include “all vegetation management contracts (including commercial timber sales and stewardship contracts),” must comply with

the bill's provisions on old-growth logging, riparian area management, and permanent and temporary roads, as well as with the recommendations of the science advisory panel (Sec. 9(c)(1)). The bill exempts interim projects from administrative appeals (Sec. 9(c)(2)).

We oppose the administrative appeal exemption. We believe administrative appeals provide the public with a non-polarizing mechanism for addressing their grievances with the federal government. Without an administrative appeals option, the public will quickly need to consider formal litigation if the public believes their concerns are not being adequately heard and addressed. Once litigation commences, it is likely that conversations and dialogue by stakeholders will end, and the natural resource decisions will end up in the court room. Such a result is contrary to the intent of the collaboration desired by this legislation. In addition, we believe that, from a national perspective, including this provision will set a negative precedent whereby public involvement processes, such as administrative appeals, are offered as trading stock in return for environmental protection considerations. We believe the appropriate forum for determining National Forest System public involvement processes, including grievance procedures, is through the nationwide federal agency rule making process, rather than regional or forest-specific legislation.

#### EXPERIMENTAL PROJECTS

We support the bill requiring the Forest Service to test ways of identifying and protecting old-growth trees based on their age (>150 years) instead of diameter (>21 inches) (Sec. 9(d)(1)). We understand the prohibition on cutting trees greater than 21 inches in diameter would not apply to experimental projects (Sec. 9(d)(2)).

#### NEPA ANALYSIS AND OBJECTION PROCESS

The bill requires the Forest Service to prepare no more than one environmental impact statement on each ERP (Sec. 11(b)(2)). At the end of the NEPA process, the Forest Service would issue a "proposed decision" (Sec. 11(c)(5)). For the next 30 days, persons who submitted comments on the ERP would be able to file an administrative "objection" to the proposed decision (Sec. 11(d)(1) and (2)). If the objector and the Forest Service agree to have an objection resolution meeting, members of the local collaborative group would be able to attend (Sec. 11(d)(3)). The Forest Service would have to respond to any objections within 30 days after the end of the 30-day objection period (Sec. 11(d)(4)). Until then, the Forest Service would not be able to implement the ERP (Sec. 11(d)(5)(B)(i)).

The bill's objection process is similar to the one used for projects authorized by the Healthy Forest Restoration Act. We question whether HFRA objection process has any advantage over the standard administrative appeals process. In fact, a recent study by the Government Accountability Office found that hazardous fuels projects have been challenged twice as often by HFRA objections as by normal administrative appeals, which suggests that the HFRA objection process may be causing more controversy. We believe that further analysis of the GAO study and its underlying data is warranted before Congress attempts to expand the usage of the HFRA objection process.

#### JUDICIAL REVIEW

The bill "encourages" the court reviewing a lawsuit challenging an ERP to expedite the proceeding "to the maximum extent practicable" (Sec. 11(e)(1)). The court would be required to consider the short- and long-term impacts of undertaking and not undertaking the ERP (Sec. 11(e)(2)). Any person who commented on either an ERP or an interim project would be allowed to intervene in any lawsuit challenging those projects (Sec. 11(g)). We do not think it is necessary or appropriate for Congress to tamper with the separation of powers between the legislative and judicial branches of government in this way. The federal courts should be allowed to prioritize its case load and weigh the equities of each side in accordance with the courts' best judgment and normal judicial standards.

#### BIOMASS

The bill requires the Forest Service to "take such actions as are necessary to further enhance the use of woody biomass" in the Eastside national forests (Sec. 12(a)). The Forest Service would be required to estimate the volume of biomass—consisting of slash, brush, and trees that are too small for sawtimber—that could be supplied sustainably over a 20-year period (Sec. 12(b)(2)). The bill authorizes the agency to enter into biomass supply contracts for a term of up to 20 years, with an option of adjusting the contracts after 10 years (Sec. 12(b)(4)).

For the most part, we support this provision of the legislation. The Wilderness Society sees biomass as a potential resource that these Eastside National Forests have capacity to produce sustainably for at least the next few decades. However, we want to be assured that the biomass studies and evaluations will be produced realizing an honest appraisal of supply. Otherwise our National Forests could become biomass fiber farms instead of providing a balance of multiple uses to the American people. Overall, we believe that biomass should be a tool and not a master of forest management. Not every acre of National Forest is appropriate for providing supplies for biomass. There are locations in these National Forests where there is general agreement that materials for biomass supply are appropriate. In other areas there may be disagreement and/or uncertainty. Any evaluations should insure scientific and public disagreements and uncertainty are included in its study of biomass supply potential on these public lands. However, we are concerned about the long-term (20 year) contracts authorized in the legislation. We understand the importance of these long-term contracts to investors considering biomass plants, but we believe any contract agreed to should have provisions which enable the federal government to terminate, as well as effectively modify, the contract based on new scientific information that significantly alters the government's understanding of the environmental, economic, or social impacts of the contract.

#### STEWARDSHIP CONTRACTS AND COUNTY PAYMENTS

The bill requires the Forest Service, "to the maximum extent practicable," to use 20-year stewardship contracts to carry out restoration projects, with an option to adjust the contract after the first 10 years (Sec. 13(a) and (b)). Local businesses located within 100 miles of the project's National Forest would receive preference in contractor selection (Sec. 13(d)).

The Wilderness Society supports stewardship contracting for bona fide restoration projects in our National Forests and supports this provision of the legislation with a modification in the length of contracting time. We believe 10 years, not 20 years, should be the maximum time frame for long-term stewardship contracts, since there should be an opportunity for the agency to change contract terms and for other contractors to compete at least once a decade. We also recognize the strong dependency of Oregon counties on revenues from the federal government whether through the existing Secure Rural Schools program, or through the 25% federal logging receipts sharing that would presumably be re-established in the event that the Secure Rural Schools program is not reauthorized or replaced with a similar program during the next two and a half years. Congress needs to determine a mechanism for providing additional revenue to counties with large acreages of federal lands in their borders. Our concern is that stewardship contracting would not provide funds for the counties under a re-established 25% revenue-sharing system, and would result in counties not supporting needed and beneficial stewardship projects for fears of receiving less federal funds.

#### APPROPRIATIONS AND RETAINED RECEIPTS

The bill authorizes appropriations of \$50 million, of which no more than three percent could be used to pay for Forest Service overhead (Sec. 15(a) and (b)). Any sale receipts generated from projects authorized by the legislation would be retained and used by the Forest Service for project planning and implementation (Sec. 15(c)(1)). The Wilderness Society's concerns for county revenues extends to these provisions of the legislation as well (see prior discussion).

#### CONCLUSION

S. 2895 is a complex bill that would fundamentally change the management goals and procedures of national forests in Eastern Oregon. The Wilderness Society supports key provisions of this legislation, especially the protections for old growth forests and the riparian areas within the geographic region. We believe the emphasis of the legislation on landscape forest restoration assessments and projects will have the additional benefit of providing the timber industry with an increase and predictability of timber supply.

We have concerns with the modification of the public involvement mechanisms, including the elimination of the administrative appeals process. We believe that such elimination is not appropriate and could result in a negative national precedent. We believe there should be broader stakeholder discussion regarding this provision. We believe that not dealing with fires and resultant timber salvage sales is a major omission of the legislation which will likely put stresses on the collaboration the legislation is hoping to foster and encourage. Finally, we have concerns that county governments may be put in a position of not supporting the stewardship and

restoration projects encouraged by this legislation because of the potential reductions on county revenues that may result.

We commend Senator Wyden, his staff, and the stakeholders who participated in developing S. 2895. The collaboration that resulted in the introduced legislation is impressive. The Wilderness Society believes there is merit in many of its provisions, and we would like to offer our experience and expertise to improve the legislation as it moves forward.

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SUSTAINABLE NORTHWEST,  
Portland, OR, March 12, 2010.

Hon. RON WYDEN,  
U.S. Senate, 223 Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR WYDEN, Sustainable Northwest appreciates the opportunity to comment on the Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009 (S.2895). Recognizing the need for landscape-scale restoration throughout the forests of eastern Oregon is commendable. These forests and the communities that depend upon them are currently facing increasingly significant threats, such as, but not limited to, uncharacteristic wildfire, decline in economic viability, lack of trust, poverty, and unemployment. We applaud the effort made by the negotiators to craft a solution that addresses these issues from opposing perspectives and interests. Sustainable Northwest encourages thoughtful and open discussion by diverse stakeholders working together to solve a common problem or achieve a common objective.<sup>1</sup>

Our comments focus on the bill's management goals, composition of the technical advisory panel, recognition of collaboration, biomass considerations, and contracting structure. We also recommend the creation of a Collaboration Support Grant Program to be funded with a small portion of the appropriation allocated for the implementation of this Act. Section specific opinions and recommendations are offered in an attempt to recognize and improve upon critical components and aims of the bill.

Sustainable Northwest is a regional nonprofit organization based out of Portland, Oregon established in 1994 to bring people, ideas, and innovation together so that the environment, local economies, and communities can flourish. We work with communities, businesses, local elected officials, tribes, agencies, and other interest groups in Oregon, California, Washington, Idaho, Montana, and others across the West and the nation. Our efforts seek to create the conditions that enable communities to thrive in harmony with the landscape, and contribute to and participate in resilient and sustainable local economies that provide quality jobs that benefit human and natural communities. Sustainable Northwest distinguishes itself in the natural resource conservation sector through an ability to bring together multiple, often opposing sides of an issue, and to craft and promote solutions through a collaborative process.

Sustainable Northwest has worked in eastern Oregon since we were founded in 1994. We helped to create Wallowa Resources, in Enterprise, Oregon; Lake County Resources Initiative and the Lakeview Stewardship Group in Lakeview, Oregon; have been involved in the development of the Blue Mountains Forest Partners in John Day, Oregon; and have partnered and supported other eastern Oregon nonprofit organizations and collaborative groups such as Central Oregon Intergovernmental Council, the Harney County Restoration Collaborative, and several other collaborative groups in that part of the state. We are intimately aware of the acrimony and degraded forest health conditions that have characterized this region for decades. We recently raised over \$2.5 million dollars from private foundations, USDA Rural Development, and individual investors to support community capacity building, forest stewardship for multiple value streams, and integrated biomass utilization across a twelve county area of eastern Oregon and the three most northern counties of California. We know that any solution to the environmental, social, and economic problems of this region will have to be integrated in nature and create systemic change in order to be lasting.

We are deeply committed to working with the rural communities of eastern Oregon to solve the ecological and economic problems facing the region. However, we are also cognizant of the fact that the challenges facing the forests and communities of eastern Oregon are not theirs alone: the fire adapted ecosystems of the interior West are all suffering from past management, insufficient reinvestment, lack of social agreement on forest management, and loss of local capacity to perform land

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<sup>1</sup>Refer to the Rural Voices for Conservation Coalition's issue paper on Collaboration here: <http://www.sustainablenorthwest.org/resources/rvcc-issue-papers/Collaboration%202007.pdf>



management, as well as the processing infrastructure to utilize the material. We are concerned about the trend of state specific legislation, but understand that the frustrations with transforming the broader systems that have created these conditions are too large and complex to change within the context of political viability and social agreement. Nonetheless, we think it is unfortunate that our community partners in similar dry ecosystems in other parts of the West, or those in the wet, coastal systems on the west side of the Cascades will not benefit from the increased financial investment associated with this Act. Sustainable Northwest believes that at some point, as a nation, we will have to commit to reinvesting in all of the landscapes and rural communities that sustain the American West.

Furthermore, the short title of this bill states that the bill is a “Jobs Act.” We believe that creating healthy, resilient communities requires the establishment of systems that will shape a strong economy, which in a public land setting necessitates looking at the procurement systems that determine who benefits and has access to the work on public lands. We have offered comments below, which we believe will strengthen those components of the legislation.

The following comments (by section), are offered in the spirit of collaboration. We hope they will strengthen the legislation and influence and catalyze thoughtful and fruitful discussions in order to ultimately establish a successful solution to the problems the forests and communities in eastern Oregon, and other communities across the nation currently face.

#### SECTION 4: FOREST MANAGEMENT

(a)(1): Insert additional Management Goal as (E) to read;

*(E) to increase the economic viability and stability, including job creation and utilization of woody biomass, of forest-dependant communities located within the covered area.*

#### SECTION 7: EASTSIDE FOREST SCIENTIFIC AND TECHNICAL ADVISORY PANEL

Our comments related to the Eastside Forest Scientific and Technical Advisory Panel relate to 1) The role and purpose of the panel, 2) The composition of expertise represented on the panel, and 3) The relationship of the Advisory Panel to the collaborative group recommendations.

Sustainable Northwest believes that any solution to the forest health problems facing eastern Oregon must reflect an integration of ecological, economic, and social strategies. The current make-up of the Advisory Panel does not recognize this basic principle of sustainability. To remedy this oversight, we suggest the following modifications (*in italics*):

##### SEC. 7. (a) In General

(2) To advise periodically the Secretary, collaborative groups, and the public regarding the development and implementation of—

- (A) forest and watershed management goals;
- (B) the restoration assessment, *including workforce, contractor and manufacturing capacity*;
- (C) ecological restoration projects; and
- (D) *social and economic impacts of these activities.*

##### SEC. 7. (b) Composition

(1) APPOINTMENT—The advisory panel shall be composed of 9 members, each of whom shall be appointed by the Secretary, in consultation with the appropriate committees of Congress.

(2) REQUIREMENTS—

(A) (i) *the Panel shall be comprised of individuals with expertise in fields relating to the areas they will advise of as described in SEC.7 (2)(A),(B), (C), and (D)—*

*(VIII) Environmental Economics;*

*(IX) Natural Resource Economics;*

(and adding)

*(XV) Natural Resource Social Science,*

(c) Duties—

(1) RECOMMENDATIONS REPORT—

(B) REQUIREMENTS—In carrying out subparagraph (A), the advisory panel shall ensure that the recommendations contained in the report—

- (i) are based on the best available science; and
- (ii) provide management guidance to the Secretary regarding—

(adding)

*(VIII) the types of business processes that will increase local capacity to compete for projects within the area of legislation;*

*(IX) opportunities to increase coordination and technical assistance provided to businesses, existing and new, that will compete for contracts of-fered under this Act;*

*(X) opportunities to secure bonds and other financial support to enable small and local contractors to participate in federal contracting; and*

*(XI) lessons that could be applied across the covered area, beyond the scope this legislation that do not require new legislation.*

As part of the initial assessment required under this Act (in section 8 (b)(7)), base-line information on ecological, economic and social conditions shall be established. However, long-term measures relating to these are not required data to assess the success and impact of this Act on the covered area. We urge you to include both economic and social along with ecological impacts on the covered area in the assess-ments.

(d) Report—

(2) REQUIREMENTS—

(A) conduct an assessment regarding the implementation and effective-ness of this Act with respect to—

(i) quantitative and qualitative improvements to forest and watershed health, including resiliency, aquatic function, and the restoration of plant composition, structure, and function in the covered area;

ii) the development of—

*(Modify (iii) to read:)*

*(iii) quantitative and qualitative improvements to maintaining industry infrastructure through the provision of supply to mills and biomass energy facilities, creating local jobs, development of local markets for biomass and other value-added wood products, and improvements to the process and projects of existing and new collaborative groups.*

#### SECTION 10: COLLABORATION

Sustainable Northwest supports the use of collaborative processes and the involvement of collaborative groups to participate in the design, implementation, and monitoring of projects on National Forest System lands. We are pleased that this legislation attempts to raise their stature and importance in the process. However, we have several concerns which are elaborated below.

(a) Collaborative Groups—

(2) RECOGNITION—

Requiring that collaborative groups receive formal recognition by the Secretary, coupled with a process to submit a complaint about a collaborative group, creates the potential for political gridlock. Collaborative groups, unlike FACA chartered groups, are self-convened, develop their own systems for making decisions, and generally are based on willing participants sitting down to solve problems together. The best practices for collaborative groups are well known, and include: 1) Operate in an open, transparent, and inclusive process, 2) Include and encourage a diverse set of interests and community leaders to participate, 3) Articulate clear sets of ground rules and operation procedures to assist the group in moving forward together, 4) Make decisions through a consensus process, and 5) Generally have some paid staff capacity to carry forward the work of the group.

The recognition process as outlined in the bill legitimizes certain interests over others, by requiring that the minimum requirements for diverse representation come from just three interest group categories: the environmental community, timber and forest interests, and county government. This means if any one of these in-terests refused to participate, or withdrew their participation from a collaborative process, or lost staff capacity to participate, the “recognition” of the group could be in jeopardy. Furthermore, we are concerned that the recognition process creates un-necessary federal oversight over non-federal entities. The bill does not provide any

mechanism for funding the operation of these collaborative groups. In addition, the requirement that members of a collaborative group be from the state of Oregon is too restrictive. Any individual who is willing to participate in the process of a collaborative group and adhere to their operational procedures should be able to count toward the composition of the collaborative group. Several collaborative groups that Sustainable Northwest has worked with have benefitted from the participation of interest groups from outside their state, and even their region, and as these are national forests, the threshold for involvement should not be based on where you live, but on your willingness to engage, learn, and find solutions.

(a) Collaborative Groups—

RECOGNITION:

(A) APPLICATION—

(B) STANDARDS FOR RECOGNITION—To recognize a collaborative group under subparagraph (A), the Secretary shall ensure that the collaborative group *provide documentation of—*

- (i) a commitment to involving a diversity of perspectives in their process;*
- (ii) operation procedures and decision-making protocols that support consensus-based or voting procedures to ensure a high degree of agreement among participants and across various interests;*
- (iii) processes for resolving decisions when they cannot come to agreement;*
- (iv) processes for transition and replacement when staff changes occur at any involved organization and ways to engage new participants at any point in the collaborative process;*
- (v) a way to share and disseminate information to people interested in the work of the collaborative group; and*
- (vi) a level of participation sufficient to ensure that members of the collaborative group are adequately informed before each vote.*

(C) WITHDRAWAL OF OFFICIAL RECOGNITION—

(i) REVIEW OF COMPLAINTS—The Secretary shall:

- a) not accept any complaints regarding collaborative group recognition status for the first three years after receiving recognition to ensure that the groups have the opportunity to work together without the threat of complaint or withdrawal of one the interest groups;*
- b) only accept complaints from individuals who are currently participating in, or have participated in recognized collaborative groups; and*
- c) once a qualified complaint has been filed, it will be promptly reviewed to determine if a recognized collaborative group has failed to meet the requirements described in subparagraph (B).*

(4) ROLE OF COLLABORATIVE GROUPS—

We do agree that the recommendations of collaborative groups should be weighted heavily by the Secretary, and support the increased stature provided by the legislation to collaborative group involvement and recommendations. It is unclear how the recommendations of the collaborative groups and the Eastside Forest Scientific and Technical Advisory Panel would interact. Please see our comments on SECTION 7 of the legislation.

(5) MULTIPARTY MONITORING—

We are pleased to see that the legislation recognizes the importance of monitoring within the collaborative process and its role in building trust and increasing understanding across diverse stakeholders. However, the US Forest Service currently prohibits the use of retained receipts from stewardship contracting to pay for multi-party monitoring, and is positioned so that the programmatic multi-party monitoring required by the stewardship contracting authority should be narrowly focused only on process monitoring.

Sustainable Northwest disagrees with this narrow approach to funding multi-party monitoring. Multi-party monitoring is an important tool to increase trust and understanding, can help improve the type of information that is collected, and can contribute to real understanding of the outcomes of specific management actions.

In addition, we believe that it is time that the U.S. Forest Service considered how its business procedures, especially how it offers contracts for work and access to material on public lands, affect rural economies. We believe

this Act should require the agency to report on how this legislation creates and maintains jobs and contributes to the manufacturing sector essential to a vibrant rural economy.

Therefore, we believe section (5) Multiparty Monitoring should be amended as follows (*italics indicate our suggested language additions*):

(5) MULTIPARTY MONITORING—

(A) AUTHORITY OF COLLABORATIVE GROUPS—Each collaborative group may monitor and evaluate each ecological restoration project carried out under this Act *and may use retained receipts generated from stewardship contracts or other funds appropriated by this Act to support their activities.*

(B) SCOPE OF EVALUATION—In carrying out an evaluation under subparagraph (A), a collaborative group may assess each aspect of the ecological restoration project, including—

(i) the status of the development, execution, and administration of the ecological restoration project;

(ii) each specific accomplishment that has resulted from the ecological restoration project; and

(iii) each ecological, economic, and social benefit, and the cost, to local communities and the Federal Government resulting from the ecological restoration project.

(C) REPORTS.—A collaborative group may submit to the advisory panel a report containing the results of the evaluation of the ecological restoration project that is the subject of the evaluation.

(D) AGENCY ACCOUNTABILITY.—*The Forest Service shall submit to Congress on an annual basis a report that accounts for the:*

i) *number and percent of jobs retained or created as a result of the activities under this Act;*

ii) *number of people trained to perform restoration work or other activities related to this Act;*

iii) *number and percent of local businesses awarded contracts using the authorities described in Section 13;*

iv) *amount and percent of woody material removed from projects implemented under this Act that is processed at local facilities;*

v) *the result of local multi-party monitoring efforts; and*

vi) *areas of needed improvement and steps to be taken to improve implementation of this Act.*

(E) PUBLIC ACCESS TO DATA.—*The Secretaries shall ensure that all data collected and analyzed under this Act are made available to the public in an electronic format that is easily shared and understandable. The Secretaries may collect and disseminate data related to this Act using contracts, cooperative agreements, and/or grants with nonprofit organizations, universities, community colleges, small or micro-enterprises, youth groups or other entities.*

Adding in new subsection 6 establishing a “Collaboration Support Grant Program”. In order to establish this Program, we suggest the new following language (*in italics*):

(6) COLLABORATION SUPPORT GRANT PROGRAM—*The Secretary shall establish a portion of the funds obligated by this Act to establish a “Collaboration Support Grant Program” to provide financial and technical support to collaborative groups within the region. The program shall make funds available for:*

(A) *staff support, including facilitation of collaborative groups;*

(B) *travel related to collaborative group activities;*

(C) *workshops related to scientific, facilitation, and other topics that will assist collaborative groups in advancing the goals of this Act;*

(D) *dissemination of ecological, social, and economic information;*

(E) *training; and,*

(F) *collaborative group involvement in multi-party monitoring.*

SECTION 12: BIOMASS

Sustainable Northwest has been a strong supporter of utilizing the woody biomass byproducts of forest restoration as a means to offset the associated costs of land

management activities. From our perspective, options for utilization include both manufacturing of solid wood products and energy, or densified energy products. We have promoted the distribution of appropriate-scale facilities that capture the ecological restoration goals and economical efficiencies associated with co-location and an integrated business model to add the most value to woody biomass.

Subsection (b): Establishing an estimate of available supply over a 20 year period is a worthwhile request from the Agency. These estimates are needed for business owners and entrepreneurs seeking to diversify their business models and invest in utilization infrastructure in eastern Oregon. However, subsection (b)(1) directs the Secretary to make this estimate based on a “viable economic supply” and not explicitly based on an estimate of carrying out the ecological objectives in the bill. Sustainable Northwest has long promoted the need for restoration to drive the amount of potential supply available to business interests. This tenet has led us to support the development of “appropriately scaled” facilities. Depending on the scope of ecological need for restoration and forest harvesting economics, an appropriately scaled facility may be:

- using wood-based heat in a community facility (annual supply need: 300-1000 dry tons),
- an integrated facility such as proposed in Wallowa County (annual supply need: 35,000 dry tons) or
- a 15 MW combined heat and power facility (annual supply need: 150,000 dry tons).

We believe the determination to cite a particular biomass utilization business over another—particularly in the case of energy infrastructure—is the role of the private sector and should be driven by the estimated volume of ecologically appropriate removals provided by the Agency. In addition, while biomass supply from private land will undoubtedly be factored into a business decision to build any facility, it is not the role of the Secretary to make a supply estimate on private forests, but could provide funding to support the development of those estimates if the public benefit is clear. The private sector will factor in the estimate from public forests and obtain similar estimates from private landowners as due diligence of developing a business plan.

Barriers to developing the biomass utilization sector have been the inability of the Agency to deliver “consistent” volumes due to necessary environmental rigor, reduced Agency staffing and budgets, mistrust among various stakeholder groups, and lack of access to capital markets in a public lands setting due to the previous factors. Even with a 20-year supply contract, several of these barriers will not be addressed. In the past, no mill had a guaranteed contract for supply from the Agency, yet the industry was able to grow its capacity. We would caution that a single, long-term contract limits the ability of forest managers to capture markets developed in subsequent years that may utilize biomass more efficiently and provide a larger revenue stream to offset the costs of treatments. We strongly believe that it is the role of the private sector, using current market dynamics, to successfully bid on contracts offered by the Agency.

Subsection (b)(2)(A): In estimating the volume of biomass available, this subsection provides some language for what material qualifies as biomass, but stops short of using this language as a definition of renewable biomass. This issue has been particularly relevant in the Federal policy dialogue with respect to renewable energy legislation. The language used here prevents some challenges in implementation, specifically the use of “minimum size standards for sawtimber.” These standards are out of date with current forest products markets and would disallow some large, unhealthy or “cull” stems from being utilized. Other similar attempts at a biomass definition have used language similar to “otherwise not used for a higher value purpose”, which more effectively provides a reasonable ecological sideboard and allows for low-value material (diameter not specific) to be utilized to offset costs.

Subsection (b)(4): This enables the Forest Service to develop contracts for biomass utilization that can be authorized for a twenty year period, with a review at the 10 year point. However, the legislation is unclear if this a different contracting authority then the one described in Section 13, or a separate authority that applies to a uniquely designed “biomass project contract.” This should be clarified to avoid confusion in implementation. Sustainable Northwest does not believe that a separate, new contract instrument specifically for biomass utilization should be created; we strongly believe that stewardship contracts and

agreements, service contracts, and timber sales, if administered to the best of the Agency's ability, offer a sufficient suite of tools.

Although only focused on public forests, this bill should capitalize on the common ground built elsewhere in the bill to propose a workable definition for renewable woody biomass from Federal lands. In previous efforts, you have introduced legislation (S. 536) to address the definition of renewable biomass. Section 3 (Definitions) of this bill should include a definition of 'renewable biomass'. We suggest the following language that builds upon Senator Wyden's previous work:

*RENEWABLE WOODY BIOMASS—The term 'renewable woody biomass', in respect to woody materials harvested from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976, means—*

*(A) materials, pre-commercial thinnings, or removed invasive or exotic species;*

*(B) residues or byproducts from milled logs from wood, paper, or pulp products facilities;*

*(C) byproducts of ecologically-based restoration treatments (such as trees, wood, brush, thinnings, chips, and slash) that are removed—*

*(i) to reduce hazardous fuels;*

*(ii) to reduce or contain disease or insect infestation; or*

*(iii) to restore ecosystem health;*

*(D) would not otherwise be used for higher-value products, such as sawtimber, pulp or composite panelboard products*

*(E) are harvested in accordance with—*

*(i) Federal and State law and*

*(ii) applicable land management plans;*

*(F) are not harvested from:*

*(i) components of the National Wilderness Preservation System,*

*(ii) Wilderness Study Areas, Inventoried Roadless Areas,*

*(iii) old growth stands,*

*(iv) late successional stands, unless material is harvested in accordance with (C),*

*(v) components of the National Landscape Conservation System,*

*(vi) National Monuments,*

*(vii) National Conservation Areas,*

*(viii) Designated Primitive Areas,*

*(ix) Wild and Scenic Rivers corridors, or*

*(x) any areas designated by Congress to be administered for conservation purposes.*

In addition, a clarification needs to be made to the section that explicitly qualifies woody biomass (as defined above) as a feedstock for renewable energy. We suggest the following language:

*(5) RENEWABLE ENERGY—Any renewable woody biomass produced as a by-product in accordance with carrying out the purpose and goal of this Act shall qualify as a feedstock for renewable energy.*

#### SECTION 13: LOCAL CONTRACTING

Sustainable Northwest has been actively engaged in the development and implementation of stewardship contracting. We have supported the Forest Service in its use by assisting with training sessions, providing technical assistance to collaborative groups, providing comments on their procedures and guidelines, and participating in the programmatic multiparty monitoring that is required. We are pleased to see stewardship contracts, as well as stewardship agreements recognized in this legislation.

However, the section, as currently written, is confusing. Current law requires that all stewardship contracts or agreements offered by the Agencies be awarded on a best value basis and consider: 1) Past Performance, 2) Technical Approach, and 3) Price. Furthermore, the Forest Service handbook requires that all stewardship contracts be developed collaboratively and ensure that local community benefit is considered when awarding contracts. We agree with the current language in the law, and agency guidance may not be specific enough to support increased local capture of stewardship contracts or agreements, or ensure that the contract is awarded to

the bidder who is most able to meet the ecological objectives of the project. However, we do not believe the bill will do much to change the impact of existing authorities. We believe the language in this legislation should be modified to ensure that contracts help to: 1) Retain existing contracting capacity and processing infrastructure, 2) Rebuild capacity where it has been lost, 3) Ensure the ecological objectives of the project can be achieved, and 4) Help to contribute to the creation of local markets for products resulting from the restoration activities. Therefore, we suggest that (d) be amended to read:

*1. PROCUREMENT PROCEDURE.—In selecting a source for performance of an agreement or contract under subsection (a), the Secretary shall award all stewardship contracts and agreements and service contracts related to forest management on a best value basis, and shall consider the following evaluative criteria:*

*a. The ability of the offeror to benefit local economies through the retention or creation of employment and/or training opportunities;*

*b. The ability of the offeror to ensure that wood and other by-products are processed locally to the maximum extent feasible and contribute to the development of a low-carbon economy, including thermal applications of wood utilization, integrated utilization strategies and facilities, and/or other value added products that can be marketed in existing or emerging markets;*

*c. The ability of the offeror to meet the project's ecological objectives with appropriate attention to the sensitivity of the resources being treated, especially soils and water;*

*d. Consider past performance, including, but not limited to, past employment and hiring practices, such as instances of wage, safety, or other violations; and*

*e. To ensure price factors are considered but do not override non-price factors, confirm that nonprice factors are weighted heavily enough to make certain they will receive significant consideration in selecting contractors.*

Thank you, again, for the opportunity to provide comments to this bill. We look forward to working with you and your staff to strengthen the bill and incorporate our ideas and suggestions. We believe that these suggestions will make the goals of this bill more achievable, fair and successful. If you have any questions, please feel free to contact me or our Policy Director, Maia Enzer (menzer@sustainablenorthwest.org or (503) 221-6911 x 111).

Sincerely,

MARTIN GOEBEL,  
*President.*

*March 16, 2010.*

DEAR PRESIDENT OBAMA AND MEMBERS OF CONGRESS: As scientists conducting research in the fields of forest and fire ecology, we feel compelled to provide input to Congress when proposed legislation does not accurately represent the current state of scientific knowledge. Some current bills, including the "Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009" (the "Act"), sponsored by Senator Ron Wyden (D-OR), propose measures to increase logging levels on national forests based upon the assumptions that the current levels and intensities of wildland fire and beetle mortality in these forests are "uncharacteristic", are harmful to the forest ecosystems, and increased logging will reduce the extent or intensity of these natural processes. Because these assumptions are not based upon a sound scientific foundation, and because of the concern that these bills include annual logging-level mandates that might undermine existing environmental laws, we urge you not to support such proposals as currently written. Ecological considerations should guide what we do on our national forests, rather than setting logging targets independently of ecological considerations.

Below, we briefly outline some important current scientific information that should be reflected in any Act dealing with forests of eastern Oregon or elsewhere in the western United States:

- There is currently a significant deficit of large snags (dead trees) in Oregon's forests relative to the minimum habitat needs of many native cavity-nesting wildlife species, especially in eastern Oregon (Donnegan et al. 2008). This Forest Service report, based upon thousands of field plots, concluded that large (over 20 inches in diameter) snags are "currently uncommon" in eastern Oregon,

at only 1 per acre presently, and determined that “management may be necessary to produce a greater density of large snags” (Donnegan et al. 2008 [pp. 47-48]).

- Fire and insect-mortality are probably the most effective natural processes for providing the snags and large wood that are currently in deficit in these forests.
- Where snag densities are relatively higher, these areas do not tend to burn at higher severities (Bond et al. 2009).
- The scientific data contradicts the assumptions that, prior to fire suppression, wildland fire in eastern Oregon’s forests burned only at low-intensity levels and patches of high-intensity fire are somehow “uncharacteristic” or unnatural. We now know that forests of the intermountain west, including ponderosa pine forests, have burned at various severities historically, and high-severity fire is a natural part of this mix (Pierce et al. 2004, Sherriff and Veblen 2006, Baker et al. 2007, Hessburg et al. 2007, Sherriff and Veblen 2007, Klenner et al. 2008, Whitlock et al. 2008, Baker 2009).
- In the eastern Cascades, high-severity fire occurrence is very low, with a current (since 1985) rotation interval of 889 years, i.e., at current rates, high-severity fire will only affect a given stand every 889 years—well beyond the normal lifespan of the conifer species (Hanson et al. 2009, Hanson et al. 2010). Moreover, fires are not getting more intense in eastside forests (Hanson et al. 2009, Hanson et al. 2010), and overall fire occurrence is far below historic extent (Medler 2006). It is also apparent that recent levels of fire occurrence make it highly unlikely that fuel treatments could affect fire behavior even in the forest types that tend to burn most frequently (Rhodes and Baker 2008). There is no good evidence that current high-severity fire in eastern Oregon exceeds the natural range of variability.
- Fuel treatments do not always reduce fire severity in the relatively rare cases when fire affects treated areas.
- Fuel treatments are not effective in maximizing carbon storage relative to fire alone (Mitchell et al. 2009).
- Fire has numerous ecological benefits, even when it is high severity. Patches of high-severity create the forest and montane chaparral habitats that are some of the most ecologically important, highly biodiverse, and rarest forest habitat in our western U.S. forests (Hutto 2006, Noss et al. 2006, Swanson et al. 2010). Many rare and imperiled wildlife species native to eastern Oregon, such as the Black-backed Woodpecker, depend upon unlogged patches of high-severity fire for nesting and foraging (Hutto 1995, Hutto 2006, Hanson and North 2008, Hutto 2008, Swanson et al. 2010). High-severity fires also provide a bonanza of downed wood which benefits aquatic systems (Beschta et al. 2004, Karr et al. 2004, Swanson et al. 2010).
- Fuel treatments in many widespread forest types are likely to be ineffective in restoring natural fire behavior (Veblen 2003; Schoennagel et al. 2004; Noss et al. 2006; Baker et al. 2007).
- The Act’s diameter limit of 21 inches is excessive, and allows far too many mature, old trees to be removed unnecessarily.
- Extensive logging typically involves road activities, including the construction of “temporary” roads and landings which have negative impacts on watersheds and aquatic systems. The negative watershed impacts of so-called “temporary” landings and roads are not temporary, but persistent (Beschta et al. 2004, Karr et al. 2004).
- Many imperiled fish species depend on habitats that are affected by land use on public lands in Oregon (USFS and USBLM 1997). Many of these habitats are already widely degraded (Henjum et al. 1994). Additional degradation from extensive logging, elevated use and/or construction of roads and landings is likely to further imperil these fish species and increase the likelihood of extirpation.
- Remaining roadless areas are critical to biodiversity and larger roadless areas typically have the lowest potential for altered fire regimes, especially due to their location at higher elevations (Henjum et al. 1994). Such areas should be protected from logging.

Due to the foregoing, we urge that any legislation aimed at restoring forests on public lands include the following:

- Explicit statements that all activities must fully comply with existing environmental laws.
- Retention of citizen review provisions. As stated in Karr et al. (2004): “Managing public lands for the benefit of present and future generations is challenging—a process most likely to succeed in an open atmosphere that actively uses existing scientific and technical information and expertise.”



- Restrict fuel treatments only to areas where multiple lines of empirical evidence clearly indicate that the fire regimes have been altered and that there is currently more high-severity fire than there was prior to fire suppression. In such areas, limit thinning to small-diameter trees beneath the forest canopy. Ensure that treatments do not occur in systems where fire regimes have not been altered.
- Prohibit construction of new landings and roads. Require significant levels of permanent road decommissioning and closure prior to any fuel treatments.
- Retain all mature trees, including those that pre-date settlement (Baker et al. 2007).
- Significantly curtail fire suppression in areas where human infrastructure is not at risk. Curtail domestic livestock grazing in areas where it has contributed to fire regime alteration.
- Exclude treatments from roadless areas greater than 1,000 acres. These areas are scarce, biologically important, and serve as important controls for monitoring effectiveness of any fuel treatments.
- Require sound scientific analysis and disclosure of the potential ecological costs and benefits of fuel treatments, prior to initiating treatments.

We are happy to answer any questions about these issues. Please feel free to contact us.

Sincerely,

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