

OREGON Fish & Wildlife JOURNAL



Furthering The Concept of Multiple Use of Our Lands For Over 40 Years!

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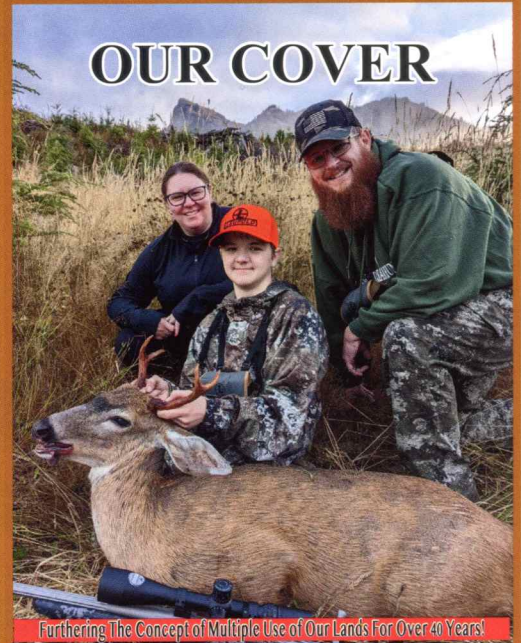
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OREGON **Fish & Wildlife** JOURNAL

Fall Issue 2022

Volume 44, Number 4



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Our cover is of Northwest Dream Hunts Recipient Clayton and his parents, Jim and Nicky with his Black Tail Deer.

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Oregon Fish & Wildlife Journal

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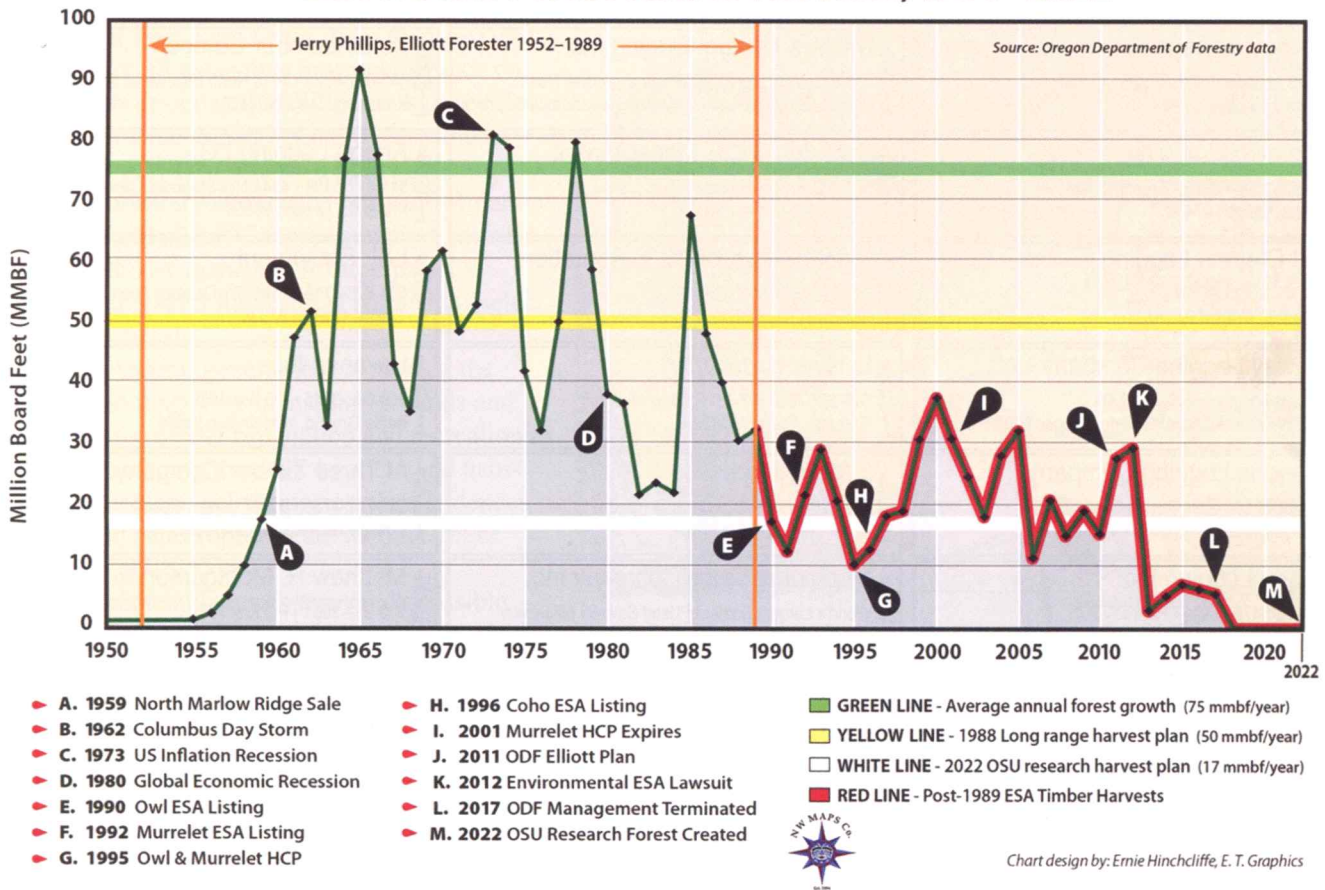
PO Box 1325, Clackamas, Oregon 97015 • email RZPublish@aol.com

One Year (4 issues) \$24.95 • Two Years (8 issues) \$46.50 • Four Years (16 issues) \$83.95

HCPs, LSRs, the ESA & Western Oregon Wildfires, 1987 - 2022

By Bob Zybach, Ph.D

Elliott State Forest Timber Harvests, 1950–2022



The Green Line represents average annual amount of growth of Elliott State Forest trees; The Yellow Line represents average allowable cut for the Elliott in the 1988 harvest plan; The White Line represents OSU's planned annual harvest of the Elliott w/ no snag salvage; The Area between the Green Line and Red Line represents Elliott fuel increases since 1989.

During the past 35 years, beginning in 1987, western Oregon has experienced the greatest number and extent of catastrophic forest wildfires in its history. Almost all these deadly events took place or began on federal lands managed by the US Forest Service (USFS) or Bureau of Land Management (BLM) under regulations developed from the 1973 Endangered Species Act (ESA) and administered by the US Fish & Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and/or National Oceanic and Atmospheric Administration (NOAA).

It's the government, so acronyms are obligatory. They are also a form of purposeful obfuscation that help conceal

the fact that management of our nation's forests has largely transitioned from the long-term profitable management of trees, wildlife, and recreational facilities by professional foresters, to costly passive management of "critical habitat" by wildlife biologists and computer modelers. Tax-producing loggers and tree planters have largely been replaced by taxpayer-funded agency "ologists," their university modelers, and seasonal wildfire fighters in the process.

This transition took place slowly at first, beginning in the 1960s and creation of Wilderness Areas and the National Environmental Protection Act (NEPA); accelerated in the 1980s with invention of ESA "Habitat Conservation Plans"

(HCPs) and the development of taxpayer funded lawsuits made possible by the Environmental Access to Justice Act (EAJA); and then was almost entirely completed on federal lands in 1994 with the adoption of the Clinton Plan for Northwest Forests (NWFP). Federal access to, and control of, HCPs on state, private, and tribal lands remains a work in progress [see Graph].

From 1952 until 1987 -- also 35 years -- there was only one forest fire more than 10,000 acres in western Oregon, the 1966 43,000-acre Oxbow Fire. Since 1987 there have been at least 36 such fires, with at least eight being more than 100,000 acres. Almost all these fires have taken place on federal lands designated as Wilderness or regulated as NWFP-created "LSRs" (Late-Successional Reserves), "AMRs" (Adaptive Management Reserves), arbitrary streamside buffers ("Riparian Reserves") and other "Congressionally Reserved Areas" -- all now managed, in large part, by USFWS and NMFS for "critical habitat" of select plants and animals.

As the federal government is making the transition from actively managing its roads and forestlands for timber production and recreation to passively managing them for hypothetical habitat requirements of select species, the incidences of large- and catastrophic-scale wildfires have increased 3,600%!

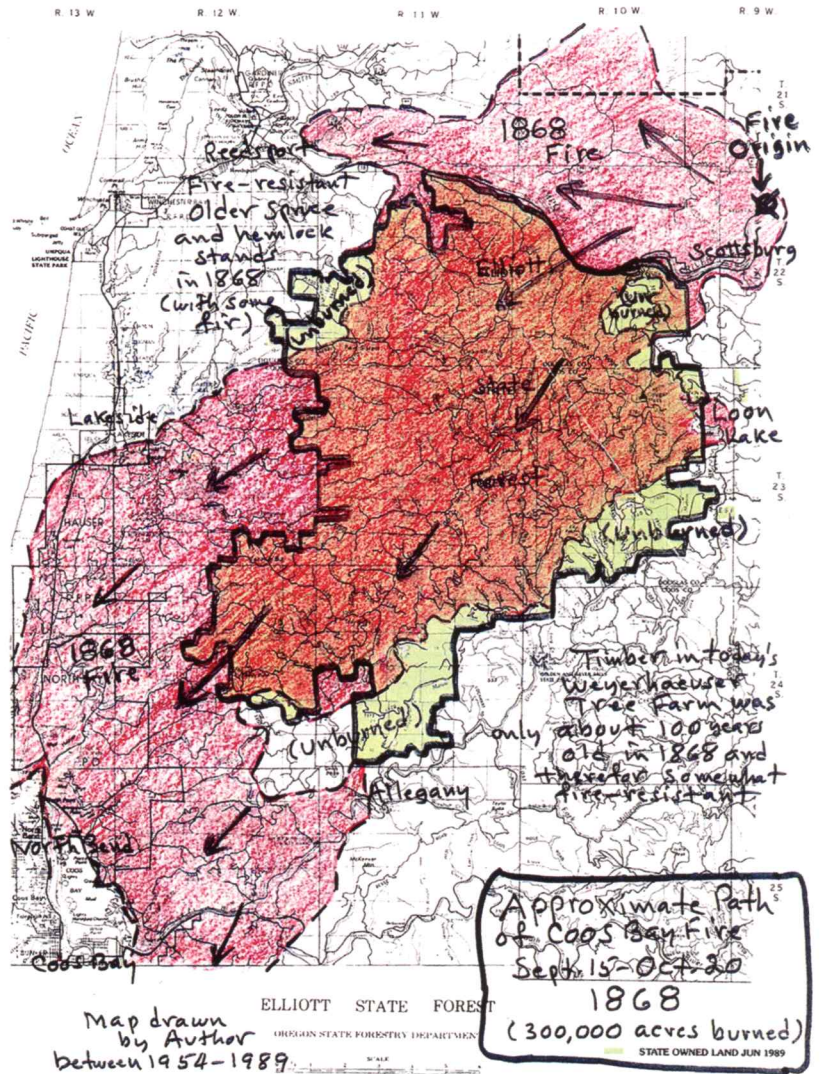
This predictable result was made possible in large part by an endless string of anti-logging lawsuits initiated by a small number of nonprofit environmental organizations.

The Center for Biological Diversity (CBD), Portland Audubon, Cascadia Wildlands, and a few others -- with expensive legal teams often unknowingly funded by taxpayers via the EAJA -- have regularly used ESA listings of spotted owls, marbled murrelets, and coho as surrogates to greatly reduce active management of our public forests. Complex NEPA procedures are often the basis for these "successful" filings, and deadly wildfires have often followed. As predicted.

HCPs and The Elliott

I have been writing about forestry, wildfire, and wildlife issues on a regular basis for Oregon Fish & Wildlife Journal for more than 10 years. My previous article in this series regarded the life and career of long-time Elliott State Forest manager, Jerry Phillips. The Elliott history chart at the beginning of this article was also used to illustrate Jerry's great success during his career on the Elliott from 1954 to 1989.

The Elliott was Oregon's first state forest. It was established in 1930 by trading about 70,000 acres of the Siuslaw National Forest located south of the Umpqua River for Common School Fund properties of similar value that were scattered around the State. Previous articles in this series have looked closely at the history of the Elliott and of



Jerry Phillips' map of the 1868 Coos Fire in relation to present-day Elliott State Forest. This area reburned in 1879, creating the "Big Burn" homesteaded by the Goulds in 1884.

Oregon's Common School Fund -- which has been managed by law since 1859 for the benefit of Oregon schools by the State Land Board (SLB), composed of the Governor, State Treasurer, and Secretary of the State.

In 1930 the Elliott was mostly covered with young Douglas fir and red alder trees that had seeded in following the catastrophic 1879 "Big Burn" wildfire and several subsequent decades of livestock grazing, firewood gathering, logging, and clearing fires by the Gould's, McClay's, and others who had settled in the area.

In 1955 the Oregon legislature gave the Oregon Department of Forestry (ODF) the responsibility to manage the Elliott more actively as its young timber was growing to merchantable size. The first major logging sale on the Elliott was a stand of mostly 200-year-old Douglas fir on North Marlow Ridge [point A on the graph] in 1959.

Then, on October 12, 1962, everything changed. The Columbus Day Storm [point B] swept over the Elliott without warning. Winds exceeding 150 miles-per-hour blew down 100 million board feet (mmbf) of 70-year-old second-growth timber in a matter of hours. The next several years

were devoted to building more than 200 miles of road needed to reach 250 areas filled with toppled “blow-down” -- dead trees that had to be harvested while they still had value and before being infested with beetles or rot. The graph tracks the subsequent annual increases and decreases in harvesting between 1963 and the present. Note the impacts of the 1973 [C] and 1980 [D] recessions on harvest volumes.

In 1988, the Elliott adopted a long-term annual harvest plan average of 50 mmbf, based on the Forest’s continued growth and Jerry’s continuing success managing natural and human events affecting its development. He retired the following year, as spotted owls were first being discovered on the Forest, and the year after that – 1990 -- the federal government listed the northern spotted owl [“NSO”] as an ESA “threatened species” and the Elliott’s 1988 harvest plan was shelved that quick [E].

Two years later, in 1992, the marbled murrelet was also listed [F]. Marbled murrelets are birds that spend their entire lives at sea, mostly offshore from Alaska. They can fly more than 60 miles-per-hour and only come ashore some years in early summer to nest a single egg. Small populations of this bird also live in the ocean offshore from Oregon, Washington, and California and occasionally nest on large lateral limbs of Douglas fir, redwood, hemlock, spruce, or bigleaf maple. Adults gather fish daily from the ocean on a high-speed beeline to feed a hatchling until it becomes a fledgling and can fly after four or five weeks -- at which time it immediately also makes a beeline for the ocean, never to return to its nest.

Then, in 1995, spotted owl and marbled murrelet HCPs were developed by the USFWS and adopted by the SLB and ODF for the management of the Elliott [G]. In 1996, coho salmon were also given federal listing [H]. These three animals, spotted owls, marbled murrelets, and coho, have been the basis for most ESA lawsuits filed to stop active management on western Oregon forestlands ever since.

The marbled murrelet HCP expired in 2001 [I] and in 2011 [J] ODF completed its new Elliott Forest Plan, calling for an annual harvest of 40 mmbf -- well below the conservative 1988 plan, but significantly greater than the average harvest since the spotted owl was first listed in 1990.

The following year, 2012 [K], a coalition of environmental groups – Portland’s Audubon Society, Eugene’s

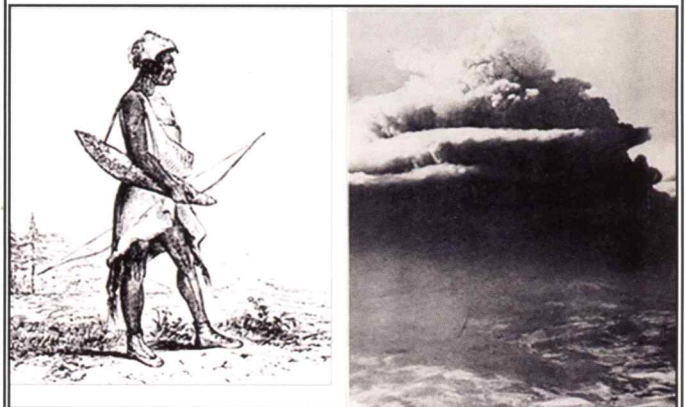


Elkhorn Ranch, ca. 1894. The Gould family homestead was established near the center of the 1930 Elliott Forest and 1879 "Big Burn" reburned snags from ca. 1775 and 1868 wildfires.

Cascadia Wildlands, and Tucson, Arizona’s CBD -- sued the State of Oregon, alleging that the new Elliott plan was illegal. Logging jobs on 28 active sales in State forests were immediately halted as one result.

Rather than contest the court’s ruling, the Governor and SLB decided to sell the Elliott at a fraction of its pre-ESA value instead. When this sale was ruled illegal, they trans-

The Great Fires



Indian Burning and Catastrophic Forest Fire Patterns of the Oregon Coast Range 1491-1951

By Dr. Bob Zybach

Reprinting of Dr. Zybach’s 2003 PhD dissertation. Includes: 364 pages, full text; 60 maps (47 color); 38 figures (17 color), and 26 tables.

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ferred ownership to Oregon State University (OSU) for research purposes, terminating ODF's decades-long management role in 2017 [L]. When this transfer was also ruled illegal, the 2022 Oregon State legislature voted to rename the Elliott as the "Elliott State Research Forest" (ESRF), with OSU responsible for its management.

Currently, remaining tasks for the SLB are to "decouple" the Elliott from its legal obligations to the Common School Fund, to develop a new federal HCP, for OSU to develop a functional operating plan, and to locate funding needed to begin proposed research operations.

The current document "puts the cart before the horse" by proposing a major experiment before conducton such an analysis and without developing on the ground familiarity with the property. In addition, the experiment OSU has proposed as badly flawed, compromises developmentof the long-term research potential of the forest and lacks significant relevance to management of Oregon's forests. The proposed experiment violates basic principals essential to production of statistically vaalid and socially convincing outcomes, Futhermore, the focus on Triad, an academic concept related to land allocations at regional scales, has no relevance to pressing forestry issues facing Oregonians. Jerry Franklin and Norm Johnson, November 28, 2020 review of proposed OSU research and management plan for the Elliott.

In 1994, John Beuter, OSU Forestry economist, was hired by the Oregon Board of Forestry (BOF) to do an economic analysis of the Elliott -- which, despite its new spotted owl status, could still boast 80,000+ forested acres, 2.5+ billion feet of merchantable timber, 550 miles of rocked access roads, and many miles of prime salmon and trout streams. Given recent ODF management history and 1994 ESA restrictions, Beuter concluded: "Selling the Elliott is the only marketing alternative likely to significantly increase net annual income to the CSF [Common School Fund]."

Fifteen years later, in 2009, John Charles, Cascade



Top Left: Ground Fuels. Top Right: Ladder Fuels. Bottom: Crown Fuels.
Photographs by McKenzie Peters, NW Maps Co., Mt. Thielsen Trail, August 23, 2020.

Policy Institute President and CEO, testified:

"Unfortunately, this recommendation has been consistently ignored by the SLB. Had it been followed in 1995, the CSF today would be worth at least \$3 billion, even after the market declines of 2008. Instead, it is only worth about \$1 billion. Even by the standards of legislative appropriations, one would think that \$2 billion in lost asset value for school funding is something to be concerned about."

Following the 2012 environmental lawsuit, the Elliott began losing even more millions of CSF dollars annually to legal costs, and by 2016 its value had deteriorated to an estimated \$220.8 million -- a number determined by Roger Lord, senior appraiser of Mason, Bruce & Girard (MB&G), at the direction of the SLB and developed specifically for the purpose of selling the Forest. This number represented the synthesis of three separate independent Elliott appraisals that

had varied from only \$192 million to \$262 million.

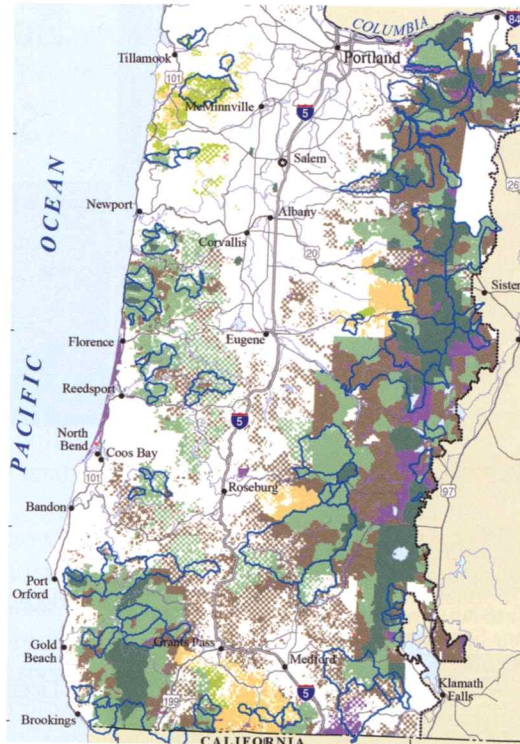
This contracted value was premised on the sale being to the private sector with primary legal constraints to future management only being the Oregon Forest Practices Act (OFPA) and state and federal ESAs. The CSF would somehow be “decoupled” by this sale which, curiously, was not allowed to be even a penny more than \$220.8 million. As stated, the sale to a single bidder (of 50 solicited) was ruled illegal and voided.

In 2017 Senator Ted Ferrioli requested that Wayne Giesy and I develop an independent forest management plan for the Elliott that accommodated wildlife habitat requirements while maintaining regular employment for rural workers and continuing to make payments to the CSF. Wayne met several additional times with Senator Ferrioli and had at least two personal meetings with Governor Brown to discuss this proposal.

The resulting “Giesy Plan Alternative” was publicly delivered as requested and has been described in some detail in earlier articles in this series. In part, it adopted the conservative 1988 standard of 50 mmbf/year average annual harvest for an initial 20-year research period. This amount is only about 2/3 of the annual growth of the Elliott and less than 2% of the Forests’ estimated 2.5+ billion feet of standing timber, so more volume in older trees of greater value -- dollar and habitat -- would have existed by the end of this two-decade experiment.

At Senator Ferrioli’s request, Christine Broniak, then Economist for the Oregon Legislative Revenue Office, estimated potential CSF income based on a 50 mmbf/year average harvest. She used sales prices of Elliott timber for the previous three years of \$367.50/mmbf and the “Producer Price Index” to estimate an annual School income of \$23 million, or \$460 million total for Oregon schools over the proposed 20-year research period.

According to Broniak’s math, Oregon schools have hypothetically lost more than \$100 million potential income since 2017, and several hundreds of millions more if these



- Congressionally Reserved Area
- Late-Successional Reserve (LSR)
(Not shown: LSRs associated with some species sites)
- Adaptive Management Reserve
(Category depicts LSRs within Adaptive Management Areas)
- Adaptive Management Area
- Administratively Withdrawn Area
(Only major categories are shown)
- Other Area
(Category depicts a mix of Matrix, Riparian Reserves, and other unmapped land allocations)

The map and legend on the left are from the 2004 BLM and USFS report on the 1994 Clinton Plan for Northwest Forests. “Congressionally Reserved Areas” are largely Wilderness Areas, created in 1964 and after, and Oregon’s only National Park, Crater Lake. The map on the right shows the Labor Day wildfires in 2020: note the correlations between federal Reserves and major wildfires. This pattern is consistent with the entire 1987-2022 time period -- most fires are on federal Reserves.



numbers are considered for the entire period from 1990. And, despite being publicly and privately requested by the Governor, the Giesy Plan Alternative proposal has never been openly discussed or considered by SLB, Department of State Lands (DSL), Oregon Board of Forestry (BOF), or OSU.

Also in 2017, ODF Forestry Division Chief Liz Dent provided a “conservative estimate of 8.8 direct and indirect jobs for every million feet of harvest” at a public meeting of the SLB. Using that multiplier, the loss of 50 mmbf in timber sales also resulted in the loss of 440 needed rural -- and tax-paying -- jobs when Elliott sales were ended.

In 2022, Lord reduced the MB&G evaluation of the Elliott even more, down to only \$99 million! In an August 29 public letter to Geoff Huntington -- now with DSL rather than OSU -- the reasons given for this devaluation were based on the “Market Value” appraisal method used in 2016 vs. the “Investment Value” appraisal method being used 2022.

The principal reasons for this further devaluation of the

Elliott were given as: 1) less acreage available for timber production and 2) less intensive harvesting of those reduced acreages, resulting in 3) lower annual harvest volumes produced at greater costs. Not a good investment. Worth \$99 million at most.

HCPs and Oregon Taxpayers

In addition to the never-ending Elliott HCP process, two other major HCP projects are currently taking place in western Oregon -- one for the remaining State Forests still being managed by ODF, and another for the 10 million forested acres owned by private landowners.

Beginning in 2019, Kate Brown organized and convened a select number of environmental organizations, forest landowners, and timber industry representatives together in a series of backroom meetings to develop a "Private Forest Accord" (PFA). This "agreement" would pay landowners money in the form of tax credits instead of logging and reforesting their lands -- and producing jobs and tax revenues -- as they otherwise legally and currently do.

According to the Oregon Wild website (September 21, 2022):

"Ever since the Private Forest Accord agreement between Oregon Wild, our conservation allies, and the logging industry was announced in late October 2021, we've been trying to think of ways to describe the magnitude of the changes that are coming to Oregon's private forest laws.

"Much like the adoption of the Northwest Forest Plan, the passage of the Private Forest Accord does not mean that all issues related to private lands logging are settled. There is still more for communities, Oregon Wild, our partners, and the logging industry to do."

In other words, in addition to devaluing the private properties and putting more people out of work, and having unwitting taxpayers cover the loss in profits with "tax credits" -- the environmental community is also assuming there is "still more . . . to do." Best guess is that lawyers are expected to be involved.

By these general methods, politicians, government bureaucrats, university modelers, and environmental lawyers -- through ESA, NEPA, EAJA, ETC -- have taken almost complete control of our federal forests since 1990. And now they are using USFW and NOAA agencies to gain similar legal access and direct control over private, state, county, and



October 2020 unthinned, roadside forest stand on BLM land on Thunder Mountain following Archie Creek Fire. Photo by Matt Hill, Douglas Timber Operators (DTO).



October 2020 photo depicts adjacent roadside stand on BLM land that was thinned and pruned according to prescription, ca. 2015. Photo by Matt Hill, DTO.

tribal roads, streams, and forestlands. If successful, further rural physical and economic damage and increased severity and extent of local wildfires and directly related losses of homes and wildlife are predicted.

HCPs and ODF

In November 2018, the Oregon Board of Forestry (BOF) directed staff to develop an HCP for 17 federally listed species: spotted owls, marbled murrelets, 10 fish (including three separate runs of coho), three salamanders, martens, and the infamous red tree vole. This long-term plan would cover about 640,000 acres of ODF-managed land west of the Cascades, not including the Elliott. If the HCP is approved by USFWS and NOAA, ODF would be assured ESA compliance -- and direct federal access and control -- for 70 years.

For this HCP, "Spotted Owl Habitat" is defined as "includes modeled nesting, roosting, and foraging

habitat,” and marbled murrelet habitat “includes modeled suitable and highly suitable habitat.” Note that these are not scientific documentation of actual birds or habitat -- they are computer “models” of someone’s unstated biases and assumptions.

Who, exactly, is determining “suitability” for these imaginary birds? And how? The only “accountability” we get for these printouts is that they are “peer reviewed” by “experts.” That’s not how science works, and it is certainly not how successful resource management has ever been performed. These are nameless people paid by taxpayers to “model” the directions of committees comprised of professional “experts” and government bureaucrats. What could go wrong?

And the result is a mapping of 275,000 acres of the 640,000 as “critical habitat,” with another 164,000 acres of modeled “nesting, roosting and foraging habitat” to be created over the course of the 70-year agreement, meaning that a total of 439,000 -- or 70% -- of our State Forests would be removed from production and put into the hands of federal managers during all of that time.

My concerns with HCPs are: 1) they give federal access and control to private and state lands for decades; 2) they are expensive and costs taxpayers significant money, instead of generating tax revenues; and 3) these government “critical reserves” have a predictable habit of ending in wildfire and killing millions of wildlife supposedly being served.

LSRs and the Clinton Plan

According to Wikipedia (September 19, 2022), the stated purpose of the Endangered Species Act was to protect species and “the ecosystems upon which they depend.” The detailed entry contains significant links to CBD and other environmental organizations and writings and makes the following claims:

“About one million species worldwide are currently threatened with extinction. North America alone has lost 3 billion birds since 1970. These significant population declines are a precursor to extinction. Half a million species do not have enough habitat for long-term survival. These species are likely to go extinct in the next few decades without habitat restoration.

“As of January 2019, there are 1,467 total (foreign and domestic) species on the threatened and endangered lists. However, many species have become extinct while on the candidate list or otherwise under consideration for listing. A 2019 report found that FWS faces a backlog of more than 500 species that have been determined to potentially warrant protection.”

Certainly, Wikipedia is not an entirely credible source, and some of these statements can be debated, including a general definition of “ecosystem.” Instead, ecosystem dependency is defined as: “the present or threatened destruction, modification, or curtailment of its habitat or range” -- apparently a problem of “destroying” or even “modifying” habitat of a species with a known “range.”

So now we enter the concept of “critical habitat,” which is literally defined as “a habitat area essential to the conservation of a listed species, though the area need not actually be occupied by the species at the time it is designated.” In other words, actual occupancy of an area supposedly critical to stop the extinction of a named animal, isn’t necessary! A computer model can do the job just fine:

Critical habitat must be designated for all threatened and endangered species, under the Endangered Species Act, with certain specified exceptions. Designations of critical habitats must be based on the “best scientific information available” [BAS, really] and in an open public process within specific timeframes. Unless deemed necessary for the species’ continued existence, critical habitat do not include the entire geographical area occupied by a species.

To meet this monumental requirement, the Clinton Plan invented the concept of “Late-Successional Reserves” in order is “to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species including the northern spotted owl.” With millions of species facing extinction and waiting to be listed, there was only so much “critical habitat” research time and expertise available, so LSRs were created over vast areas of our public forests to account for them all.

Professional predictions that these massive reserves, including Wilderness Areas, LSRs, and streamside buffers would eventually turn into bonfires were ignored, and generally remain unacknowledged to this time. Instead, we get “climate crisis” excuses, WUI acronyms, and massive preventable wildfires almost every year now. We can do better, and have in the past. These are new problems, they are self-inflicted, and they can be fixed. If there is a will.

Conclusions

There is no evidence that HCPs have had any positive effect on targeted spotted owl, marbled murrelet, or coho populations in western Oregon over the past 35 years.

There is documented proof that the adoption of passive approaches to forest management greatly increases accumulations of ground fuels, ladder fuels, and canopy closures, and thereby leads to greater likelihoods of deadly major- and catastrophic-scale wildfires.

Attempts to affect targeted wildlife species by creating Wilderness Areas, Riparian Reserves, LSRs, HCPs and computerized “critical habitat” models in western Oregon during the past 35 years have been at a great cost of billions of dollars, tens of thousands of lost rural jobs, hundreds of thousands of burned forest acreages, thousands of lost homes, millions of killed wildlife, episodes of major air and water pollution, and losses of human life.

There is no evidence that these massive investments have resulted in a single additional owl, murrelet, or salmon.

