

The Oregon and California Railroad Lands (O&C Lands): In Brief

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The Oregon & California Railroad (O&C) lands consist of nearly 2.6 million acres of federal land in 18 counties in western Oregon (see **Figure 1** and **Table 1**). The majority of these lands were originally granted to the Oregon & California Railroad Company in 1866 to construct approximately 300 miles of the Oregon portion of railroad from Portland, OR, to Sacramento, CA.¹ The railroad received alternating sections of land for an average of 20 miles on each side of the proposed railroad, resulting in a checkerboard ownership pattern with private, state, local, and federal ownership. As part of the grant, Congress directed the Oregon & California Railroad Company to encourage settlement and development by selling parcels no larger than 160 acres at a maximum price of \$2.50 per acre.² However, the railroad violated the grant, in part by selling larger tracts above the designated price and also by temporarily halting sales to increase timber prices.³ In 1908, the United States sued the railroad company, and in 1915 the U.S. Supreme Court ruled that the railroad violated the terms of the grant.⁴

The disposition of these lands was eventually resolved when the Chamberlain-Ferris Act of 1916 revested all unsold tracts of land back to the federal government.⁵ Management concerns—such as how to compensate the counties for the loss of property tax revenue—persisted and were addressed with the Oregon & California Railroad Lands Act of 1937 (O&C Act).⁶ This act directed that the Department of the Interior (DOI) would administer the lands “for permanent forest production” with the purpose of providing timber, protecting watersheds, providing recreational opportunities, and contributing to the economic stability of the local communities.

The O&C lands now consist of three types of lands: 2.1 million acres of the revested O&C lands, managed by the Bureau of Land Management (BLM, within DOI); 492,000 acres of the revested O&C lands, managed the U.S. Forest Service (FS, in the Department of Agriculture); and 75,000 acres of the Coos Bay Wagon Road (CBWR) lands, also managed by BLM.⁷ The CBWR lands were reconveyed to federal ownership in 1919 after the failure of the Southern Oregon Company to fulfill the terms of a grant to construct a military road.⁸

This report provides background information about the O&C lands, discusses federal payments made to the O&C counties to compensate for the tax-exempt status of these federal lands, and summarizes some of the issues before Congress related to management of the O&C lands.

¹ Bureau of Land Management (BLM), *O&C Sustained Yield Act: the Land, the Law, the Legacy*, http://www.blm.gov/or/files/OC_History.pdf; or Bureau of Governmental Research and Service, School of Community Service and Public Affairs, University of Oregon, *The O&C Lands* (Eugene, OR: 1981), hereinafter referred to as *The O&C Lands*.

² Michael C. Blumm and Jonathan Lovvorn, “The Proposed Transfer of BLM Timber Lands to the State of Oregon,” *Land and Water Law Review*, vol. 32, no. 2 (1997), pp. 353-412, hereinafter referred to as Blumm & Lovvorn, 1997.

³ Michael Blumm and Tim Wigington, “The Oregon & California Railroad Grant Lands’ Sordid Past, Contentious Present, and Uncertain Future: A Century of Conflict,” *Boston College Environmental Affairs Law Review*, vol. 40, no. 1 (February 2013), p. 12. Hereinafter referred to as Blumm & Wigington, 2013.

⁴ *Oregon & California Railroad Co. v. United States*, 238 U.S. 393 (1915).

⁵ Act of June 9, 1916, ch. 137, 39 Stat. 218.

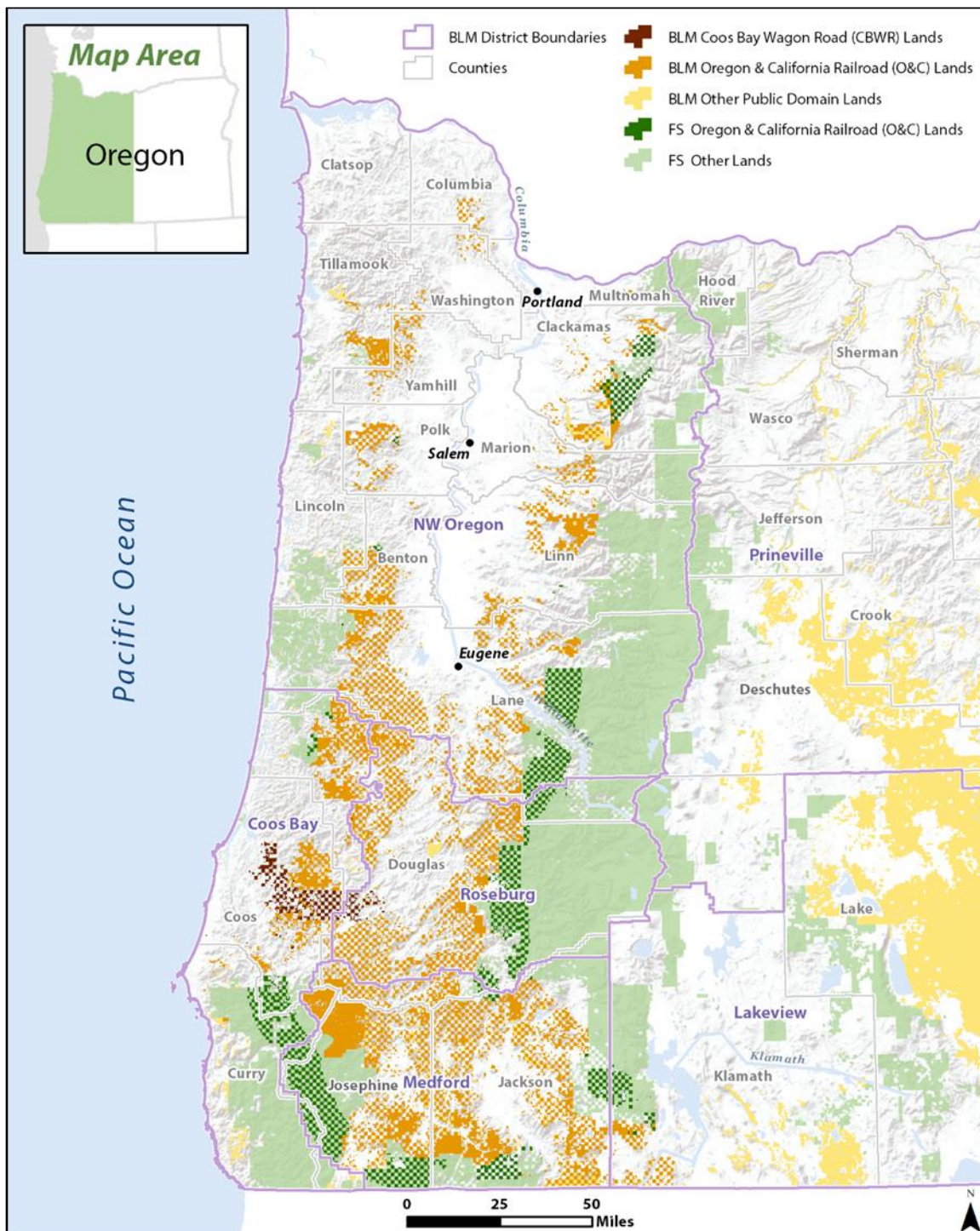
⁶ Act of August 28, 1937, ch. 876 (also known as the McNary Act), 50 Stat. 874; 43 U.S.C. §§2601-2634.

⁷ BLM, *Public Land Statistics 2021*, Table 1-5. The Forest Service (FS) O&C acres consist of unselected and unpatented odd-numbered sections that were within the indemnity limits of the railroad but also were within the boundaries of a national forest established in the 1890s. When the O&C lands were revested back into federal ownership, the FS claimed jurisdiction, despite opposition from the Department of the Interior. The issue was resolved in 1954 when Congress approved a bill affirming the administrative jurisdiction of the FS but directing that the disposition of revenue follow the formula established by the O&C Act. Act of June 24, 1954 (P.L. 83-426), 43 U.S.C. §§2631-2634. Other laws have set aside some O&C acres to be administered by the FS while maintaining their status as O&C lands.

⁸ Act of February 26, 1919, 40 Stat. 1179.

Figure I. The O&C Lands

Managed by the Bureau of Land Management (BLM) and U.S. Forest Service (FS)



Source: CRS, using data from BLM's Oregon District Boundary Land Polygon Hub dataset, available from BLM's Geospatial Business Platform.

Table 1. Oregon and California Railroad (O&C) and Coos Bay Wagon Road (CBWR) Acres

By County and Administering Federal Agency

Oregon County	Bureau of Land Management		Forest Service	Total	% of Total
	O&C	CBWR	O&C		
Benton	52,828	0	1,720	54,548	2%
Clackamas	52,744	0	41,637	94,381	4%
Columbia	10,960	0	0	10,960	<1%
Coos	94,438	59,914	23,002	177,354	7%
Curry	36,681	0	56,735	93,416	4%
Douglas	602,455	14,633	95,641	712,729	27%
Jackson	396,434	0	46,303	442,737	17%
Josephine	269,483	0	109,426	378,909	14%
Klamath	46,199	0	20,962	67,161	3%
Lane	277,253	0	95,293	372,546	14%
Lincoln	8,773	0	0	8,773	<1%
Linn	85,748	0	520	86,268	3%
Marion	20,753	0	0	20,753	1%
Multnomah	4,208	0	0	4,208	<1%
Polk	40,491	0	1,160	41,651	2%
Tillamook	40,775	0	0	40,775	2%
Washington	11,616	0	0	11,616	<1%
Yamhill	33,045	0	0	33,045	1%
TOTAL	2,084,884	74,547	492,399	2,651,830	100%
% of Total	79%	3%	19%	100%	—

Source: Department of the Interior, Bureau of Land Management, *Public Land Statistics 2021*, Table 1-5.

Management of the O&C Lands and Resources

The O&C lands consist mostly of Douglas fir forests, a softwood timber species commonly used for construction purposes. As part of the O&C Act of 1937, the lands were classified as timberlands to be managed for “permanent forest production.” Timber was to be sold, cut, and removed in conformity with the principle of sustained yield to provide a permanent timber supply. The statute established a 500 million board feet annual allowable sale quantity (ASQ), which could be adjusted periodically. By 1972, the ASQ peaked at approximately 1.2 billion board feet, aided in part by a 1960s modification that included the intermixed public domain forestry lands in the calculation formula.⁹ From the 1960s to the 1980s, the average harvest level

⁹ BLM also manages approximately 239,000 acres of land which has never been conveyed out of federal ownership—called public domain forestry lands—and are intermixed with the O&C lands.

regularly exceeded 1 billion board feet per year.¹⁰ Harvest levels began to decline in the 1990s, reaching a low of 13 million board feet in 1994.¹¹ From 2000 through 2020, BLM has offered an annual average of approximately 192 million board feet for harvest.¹²

The O&C Act also provided for protecting watersheds, regulating stream flow, contributing to the economic stability of local communities and industries, and providing recreational opportunities. Although some would see the inclusion of these other management goals as requiring the O&C lands to be managed for multiple uses, others contend it requires management for timber production over other uses—that is, timber production is the dominant use. The dominant-use interpretation has been controversial at times. BLM has adopted the dominant-use interpretation and the courts have affirmed it at various times.¹³

Management direction for the O&C lands is in BLM’s *Western Oregon Management Plans*.¹⁴ The plans describe the management objectives for the lands and resources covered in the plan area, and they allocate the potential future uses of the lands based on achieving the specified management objectives. Additionally, the plans identify the ASQs for sustained yield timber production across the BLM-administered O&C lands.

In 1998, Congress established a “No Net Loss” policy for lands administered by BLM in western Oregon.¹⁵ The act requires BLM to ensure the total acres of O&C and CBWR land, and land available for timber harvest, remain constant over a 10-year period. This means that any sale of O&C lands must be offset by an equal acquisition (through purchase or exchange) of new land, within 10 years.

Federal Payments to the O&C Counties

The counties containing the O&C lands had a financial stake in the O&C lands because they received tax payments from the railroad until 1911, when the railroad stopped paying in anticipation of the land being returned to federal ownership. When the lands were returned to

¹⁰ Deborah Scott and Susan Jane M. Brown, “The Oregon and California Lands Act: Revisiting the Concept of ‘Dominant Use’,” *Journal of Environmental Law and Litigation*, vol. 21 (April 2007), pp. 259-315. Hereinafter referred to as Scott & Brown, 2007.

¹¹ *Ibid.*, p. 279.

¹² Annual data compiled from BLM, *Public Land Statistics*, Table 3-12, at <https://www.blm.gov/about/data/public-land-statistics>. This includes all forest products offered for sale from the BLM’s western Oregon office, which includes the O&C lands, CBWR lands, and public domain forests. Volume of forest products offered for sale in any given year do not directly correspond to volume harvested. For updates regarding BLM timber harvesting activities, see CRS Report R45688, *Timber Harvesting on Federal Lands*.

¹³ For a discussion of the legal interpretations of the O&C Act as a dominant-use statute, see Scott & Brown, 2007, and Blumm & Wigington, 2013.

¹⁴ The Western Oregon Management Plans consist of two separate but coordinated resource management plans providing direction for the management of the lands and resources on the O&C lands, CBWR lands, and other BLM-administered lands: BLM, *Southwestern Oregon Record of Decision and Resource Management Plan*, August 2016, covering BLM’s Medford, and parts of the Lakeview and Roseburg Districts; and BLM, *Northwestern and Coastal Oregon Record of Decision and Resource Management Plan*, August 2016, covering BLM’s Coos Bay, Eugene, Salem, and parts of the Roseburg Districts. The plans and associated documents are available at <https://www.blm.gov/programs/planning-and-nepa/near-you/oregon-washington/rmps-westernoregon>. These plans updated the management direction for these areas previously provided by the Northwest Forest Plan (NWFP). The NWFP is a compilation of federal policies adopted by the Clinton Administration in the 1990s in part as a result of litigation related to the northern spotted owl, which became listed as a federally threatened species under the Endangered Species Act. The NWFP covered 25 million acres of federal land, including 7 BLM districts and 19 national forests managed by the FS in California, Oregon, and Washington. The O&C lands made up 11% of the NWFP management area by acreage.

¹⁵ The Oregon Public Lands Transfer and Protection Act of 1998, P.L. 105-321, 43 U.S.C. §2607.

federal ownership in 1916, the counties lost some of their tax base. Congress debated the federal government's responsibility for compensating the counties for the loss of potential tax revenue until the 1937 O&C Act created a revenue-sharing system dependent on timber sales. The debate was reignited in the late 1990s, when timber revenues declined. Congress then established alternative payment programs based on historical revenue-sharing payments rather than on current revenue generation.

Early Debates over the Payment System

The 1916 Chamberlain-Ferris Act (CFA) appropriated funds for payments to be made to the counties for the railroad's unpaid 1913, 1914, and 1915 taxes; these are known *as tax equivalency payments*.¹⁶ The CFA required that the U.S. Treasury be reimbursed for those payments from revenue generated by the sale of timber from the O&C lands. However, the CFA first allocated receipts to the Treasury for reimbursement of expenses, which included compensating the O&C Railroad Company for the lands reverted to the federal government.¹⁷ Congress (and DOI) anticipated the O&C lands would generate enough revenue from timber sales that there would be funds available after the federal government was fully reimbursed for the acquisition cost and the tax equivalency payments. Therefore, after reimbursing the federal government, the CFA allocated the remaining receipts to the state for schools (25%); to the counties for schools, roads, and port districts (25%); to the Reclamation Fund (40%); and to the Treasury (10%).¹⁸

Initial revenues from O&C timber sales were insufficient to make any payments except to the Treasury for reimbursement of the acquisition cost to the railroad.¹⁹ By 1926, there had not been enough revenue generated to make any payments to the state or counties, and the federal government still had not been reimbursed for the entirety of the 1913-1916 tax equivalency payments. Congress again authorized tax equivalency payments to the counties—for the period of 1916-1926—in the 1926 Stanfield Act.²⁰ The Stanfield Act also changed the priority for receipts to first pay the counties an annual tax equivalency payment going forward and as a second priority to reimburse the federal government any remaining balance for past tax equivalency payments. After those payments, any additional revenue was to be distributed along the same formula established in the CFA, creating both a tax equivalency payment and a revenue-sharing payment for the counties. However, timber sale revenue continued to be insufficient to pay the entire calculated tax burden. By 1936, tax equivalency payments to the counties had been made only through 1933 and the U.S. Treasury was still owed approximately \$8.4 million for those payments, before disbursement to the state and other federal government accounts under the formula.²¹

¹⁶ Blumm & Wigington, 2013.

¹⁷ The CFA directed that the railroad be paid the difference between the revenue the railroad had already generated from the grant and revenue that would have been generated from selling the remaining parcels at the designated price, which came to approximately \$4 million. *The O&C Lands*, p. 10.

¹⁸ The Reclamation Fund is a special account within the U.S. Treasury used to fund water projects in the western United States. For more information, see CRS In Focus IF10042, *The Reclamation Fund*.

¹⁹ *The O&C Lands*, p. 101.

²⁰ Act of July 13, 1926, ch. 897, 44 Stat. 915.

²¹ *The O&C Lands*, pp. 102-103.

O&C Act of 1937 Revenue Distribution

During the debates preceding the 1937 O&C Act, Congress again considered tax equivalency payments or revenue-sharing payments for the O&C counties.²² The Oregon congressional delegation and the Association of O&C Counties (AOCC) supported tax equivalency payments, whereas DOI supported a revenue-sharing payment. Congress eventually settled on a revenue-sharing system, in part to avoid the deficits generated by the CFA and Stanfield Act tax equivalency payments.²³

As enacted, the O&C Act is based on a revenue-sharing system, albeit with a different allocation formula from the CFA. Section 2(a) of the act allocated 50% of the revenue generated from the O&C lands from any source directly to the counties. Section 2(b) allocated 25% to the U.S. Treasury for accrued taxes under the Stanfield Act “until such tax indebtedness as shall have accrued prior to March 1, 1938, is extinguished.” The section then directed that, after such accrued taxes have been paid, 25% of the receipts “shall be paid annually [to the counties].” Section 2(c) allocated the remaining 25% for the administration of the act.²⁴

The final payment for historic accrued taxes on the lands was made in 1951, and in 1952 the O&C counties received 75% of the receipts.²⁵ However, beginning in 1953, language in annual Interior and Related Agencies appropriations bills, which provide funding for the BLM, directed one-third of the counties’ share (25% of total receipts) as “plow-back” money to the federal government to be used for the management of the O&C lands, including road maintenance and reforestation.²⁶ In 1981, Congress began making a direct appropriation for O&C land management activities. From 1982 until the enactment of the alternative payment programs discussed below, 50% of the O&C receipts were paid to the counties, and 50% to the federal government.

As required by the O&C Act, the payments are allocated based on each county’s proportion of the 1915 assessed value of the O&C lands.²⁷ The counties may use the payment for any purpose.

CBWR Payments

A portion of the revenue generated from the CBWR lands must be paid to the two counties containing the CBWR lands. The counties may use the payments for schools, roads, bridges, and highways. The payments are based on tax equivalency as determined by applying the “same rates of taxation as are applied to privately owned property of similar character in such counties.”²⁸ The payments are made from an account that is funded through deposits of 75% of the annual gross receipts from the CBWR lands. Any portion remaining in the account after a 10-year period is to be transferred to the General Fund of the Treasury.

²² *The O&C Lands*, pp. 16-17.

²³ *The O&C Lands*, p. 102.

²⁴ Similar allocations were also made for the CBWR lands, although the CBWR payments of 75% to the counties were limited to tax equivalency, which constrained the payments when timber harvest levels and prices were high, from the 1960s through the 1980s. The CBWR lands have been included with the O&C lands for alternative payment systems.

²⁵ *The O&C Lands*, pp. 103-104.

²⁶ BLM, *Budget Justification and Annual Performance Plan FY2001*, pp. IX-12.

²⁷ *The O&C Lands*, p. 107. The valuation figure was adjusted in 1954, 1955, and 1964 to account for the addition of the controverted lands and various inadvertent measurement errors.

²⁸ 43 U.S.C. §§2621 et seq.

Safety Net Payments

Congress again became interested in the federal payments to the O&C counties in the 1990s. Timber harvests from the O&C lands (and from other federal lands) declined sharply after 1988. Subsequently, payments to the O&C counties also declined.²⁹ While some argue that the declining harvest levels (and revenue generation) were due to successful litigation to protect the northern spotted owl and other resource protection values in the Pacific Northwest, others argue that the declining harvest levels are mostly due to other forest management, economic, and industry factors.

Congress debated alternative compensation schemes, and enacted the Safety Net payment scheme in the 1993 Omnibus Budget Reconciliation Act.³⁰ This program—also called *owl payments*—provided for payments to be made to the counties from FY1994 through FY2003. The payment formula was based on previous revenue-sharing payments: for FY1994, the payment was set at 85% of the average FY1986-FY1990 revenue-sharing payments. The percentage was set to decline by three points annually through FY2003, though the owl payments were only made through FY2000. The owl payments were for the O&C lands, plus other BLM and national forest system lands (managed by FS) in Oregon, California, and Washington.

Secure Rural Schools and Community Self-Determination Act of 2000

Congress supplanted the owl payments with the broader Secure Rural Schools and Community Self-Determination Act of 2000 (SRS).³¹ SRS payments are available to the counties containing the O&C lands and national forests managed by the FS. Similar to the owl payments, SRS payments are determined by a formula based on historic revenue-sharing payments. The SRS formula has been amended several times and now includes adjustments for area of eligible federal lands and county incomes.

SRS was originally intended to be a temporary program of six years, but the payments have been reauthorized for every year—except FY2016—through FY2023. For the first few years of the program, the O&C counties received an average SRS payment of \$100.2 million annually (FY2001-FY2010). After the payment formula was adjusted starting with the FY2011 payment, the O&C counties received a much smaller payment (\$31.1 million annually on average from FY2011 through FY2021, excluding FY2016).³² SRS payments were not authorized in FY2016, and the O&C counties received a revenue-sharing payment of \$20.5 million for that year.

The SRS payments are set to expire after the FY2023 payment, unless Congress acts to extend, modify, or replace SRS. If SRS payments expire, the O&C counties would automatically return to receiving revenue-sharing payments.

²⁹ CRS is unable to locate a comprehensive, authoritative source for historical data on O&C timber production and county payments.

³⁰ P.L. 103-66 §§13982-13983, 107 Stat. 681.

³¹ P.L. 106-393, 16 U.S.C. §§7101-7153. For more information, see CRS Report R41303, *The Secure Rural Schools and Community Self-Determination Act: Background and Issues*.

³² This figure only includes the SRS Title I and Title III payments that are made to the counties; the SRS Title II payment is retained by the agency. For updates on the SRS program and BLM's payments to the O&C counties, see CRS Report R41303, *The Secure Rural Schools and Community Self-Determination Act: Background and Issues*.

Payments in Lieu of Taxes (PILT)

The Department of the Interior's PILT program provides compensation to local governments for certain tax-exempt federal lands located within their jurisdiction, including the O&C and CBWR lands (31 U.S.C. §§6901-6907). PILT payments are determined based on a multipart formula according to several factors, one of which includes an offset for payments received by the counties for other specified federal land payment programs. Payments made under the Secure Rural Schools and Community Self-Determination (SRS) Act are one of the specified programs that offset in a county's PILT formula calculation, but only for the payments made to counties containing national forests managed by the Forest Service. SRS payments made to counties based on the O&C lands, in contrast, are not offset in the PILT formula. For more information, see CRS Report R46260, *The Payments in Lieu of Taxes (PILT) Program: An Overview*.

Issues for Congress

Legislative issues surrounding O&C management include who should manage the lands, how the lands and resources should be managed, how to calculate and define sustained timber yield and allowable timber sale quantity, and whether and how to address county compensation.

Legislative issues surrounding the extension of SRS and similar county payment programs include the basis for compensation, the source of funds, interaction with other compensation programs, and the duration of the program. In addition, any new mandatory spending in excess of the baseline that would increase the national deficit may require budgetary offsets.

If Congress considers reverting to a receipt-sharing payment system, several concerns have been raised. The primary concern for the O&C counties has been the decline in receipts due to the decline in timber sales since the late 1980s. However, returning to 1989 harvest levels is not feasible under the O&C lands' management plan, especially given the economic realities of the current timber market. Another concern has been the annual fluctuation in the payments, which some argue harms the O&C counties by creating uncertainty and interfering with their fiscal planning. Conversely, some may have general concerns about the federal government sharing revenue or otherwise compensating local governments for the presence of federal land.

Congress has considered a variety of other legislative proposals to address the O&C lands. For example, bills have been introduced that would have transferred ownership of the O&C lands to private ownership or transferred management to a nonfederal entity.³³ A bill from the 113th Congress would have retained management authority within the BLM, but would have designated management prescriptions for certain areas and required timber harvests and other specified management activities at regular intervals.³⁴ More recently, the 117th Congress considered legislation that would have changed the management and planning requirements for O&C lands.³⁵

³³ For example, see H.R. 3769 in the 104th Congress and H.R. 1526 in the 113th Congress. For more information, see Blumm and Lovvorn, 1997.

³⁴ S. 1784 from the 113th Congress.

³⁵ H.R. 4614 from the 117th Congress.

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