

Testimony by  
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Regarding

S. 1784, the Oregon and California Land Grant Act of 2013

U.S. Senate Energy & Natural Resources Committee  
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I wish to thank you, Chairman Wyden, Senator Murkowski and members of the Committee for the opportunity to testify today regarding the Oregon and California Land Grant Act of 2013. Chairman Wyden, we appreciate your leadership on this important issue for the State of Oregon.

My name is Mike Matz and I am the Director of U.S. Public Lands at The Pew Charitable Trusts. Our U.S. public lands work is focused on achieving lasting protection for threatened wild lands. We proactively work to preserve some of the nation's last, best wild places in three ways:

1. Secure new legislatively protected designations for special areas on federal public lands across the country as a part of the National Wilderness Preservation System;
2. Secure legislative or administrative protection for other ecologically important areas as national monuments, national conservation areas or national recreation areas; and
3. Secure enhanced protection for critical ecological gems on Bureau of Land Management holdings through administrative procedures.

To conduct this work we partner with local wilderness organizations across the country to provide expertise in campaign planning and implementation. We are currently working with over 20 local groups in 12 states on 24 separate wilderness bills that are before Congress.

We engage in campaigns where we believe our expertise and efforts can help bring about balanced protections for the lands for which we care deeply, and needed stability for the local communities whose residents often depend on the natural resources around them for their livelihoods. We don't shy away from complex, or "tricky," issues. We have found that by talking these matters through with stakeholders, asking questions, and throwing out ideas, you can often find solutions where it was assumed none existed. We've discovered that one can simultaneously protect many thousands of acres of ecologically important wild lands while providing some economic stability for local communities and certainty for resource-based businesses.

It was with this balanced approach that we engaged in the Oregon and California Lands issue over a year ago. We are working with conservation partners – both local and national – as well as local business owners to ensure that any agreed-upon solution is balanced, protects water resources and sensitive old-growth habitat in western Oregon, *and* promotes the regional economy.

### **O&C Lands Background**

Nestled throughout western Oregon are 2.8 million acres of federal lands—commonly referred to as O&C lands—rich with biodiversity and fraught with management challenges. These lands are some of the most unique landscapes in the world, harboring many distinct plant communities—temperate rain

forests, ancient conifer forests, oak forests, and savannas—which include more than 300 plant species found nowhere else on Earth and which provide a home to a variety of endangered species, including wild salmon, steelhead, spotted owls, and marbled murrelets. At the same time, the ancient trees that once graced these lands were the economic backbone of many rural communities, and as such, for decades these lands have fallen into the all-too-familiar debate between species protection and timber production.

In 1866, Congress established a land-grant program to the Oregon & California (O&C) Railroad Company for the completion of the rail line between Portland and San Francisco. The grant required the company to sell the deeded land to settlers to promote economic prosperity. Forty years later, when the company failed to fully meet the terms of the agreement, the federal government reclaimed the remaining unsold lands. The lands are currently managed under the 1937 Oregon and California Revested Lands Sustained Yield Management Act (O&C Act of 1937) that reclaimed these mostly forested lands. As such, these lands are unique in the country – their management structure is based on a combination of the O&C Act of 1937 and the Northwest Forest Plan.

Prior to the development of the Northwest Forest Plan (NWFP) in 1994, timber production from O&C lands annually generated large amounts of revenues for the so-called O&C counties. Counties became dependent upon this revenue source and when it became clear that application of the NWFP would result in significantly less timber revenues for these counties, a short-term legislative “fix” was crafted as a transitional funding source to ease the financial pain to counties as they adjusted local tax policy and made other economic changes. Most counties did not make the necessary budget changes, hoping instead for further timber revenues, and Oregon’s tax structure made certain tax changes more difficult for these counties. As a result, many O&C counties have found themselves in financial trouble, with some likely to go insolvent in the next year if additional funding is not secured.

Through the late 1980s, during the height of logging in the Pacific Northwest, intensive cutting liquidated many vulnerable and ecologically valuable stands of old-growth habitat on O&C lands. Yet despite decades of timber harvest, the 2.8 million acres still harbor some of the best old-growth habitat in the western United States.

### **Moving forward on O&C**

For decades the appropriate management regime for these lands has been debated. But the continued fighting has left rural communities in disarray, timber production uncertain and protections of our clean drinking water and precious landscapes at the whim of federal courts. It is time to find a solution to this decades-long issue and move forward – to find more certainty for all sides.

Mr. Chairman, we believe that your bill, S.1784, the Oregon and California Land Grant Act of 2013, is a step in the right direction in finding a balanced solution. We appreciate the leadership you have undertaken regarding this issue. With some important adjustments – such as clarifications and modifications to sections of the bill related to the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) – this bill would protect some of the most unique landscapes and river resources in western Oregon while at the same time providing a more certain source of timber production than the status quo. In fact, it doubles the current timber production on these lands.

Engaging some of the original authors of the Northwest Forest Plan – Dr. K. Norman Johnson, of Oregon State University, College of Forestry, and Dr. Jerry F. Franklin, of the University of Washington, College of Forest Resources – to craft the timber management provisions in the bill has

helped to ensure that your bill's approach is thoughtful and scientific. The important effort made to reach out to the conservation community and other stakeholders to discuss the important ecological components of the landscape and the rivers that flow through these forests has ensured a vast array of conservation protections for some key areas in the O&C landscape.

### **Conservation Protections**

In particular, Pew would like to highlight just a few of the important conservation protections that S. 1784 provides.

1. Wild Rogue and Devil's Staircase Wilderness Areas – Title III of S. 1784 sets out the protection of two of the region's most important wild areas, the Rogue and Devil's Staircase. We appreciate the work your office has done to continue to move these protections and look forward to the full Committee's support for these provisions.
2. Rogue and Molalla National Recreation Areas – Sections 106 and 107 provide protection for two notable river systems in Oregon, the Rogue River and the Molalla River, respectively. These areas, while important ecologically, also provide important recreational and economic opportunities in the state. The protection of these places as National Recreation Areas illustrates the point that protecting the environment is also beneficial for the economic bottom line.
3. Wild and Scenic River Protections – Titles I and III designate almost 180 miles of wild and scenic river. These rivers are the bloodlines of Western Oregon, providing clean drinking water to more than 1.8 million Oregonians in rural and urban communities and the habitat necessary to protect and restore Oregon's fabled wild salmon populations.
4. Legacy Old Growth Protection Network – Section 102 legislates the protection of old growth forests on O&C lands. Preserving the remaining stands of old-growth forests on federal lands in the Northwest has long been recognized as essential to the long-term health of the forests and the plants and animals that depend on them for survival. Protecting these ancient forests on O&C lands ensures that these invaluable trees continue to play an important role in producing clean water, absorbing carbon, and providing refuge for flora and fauna alike.
5. Primitive Backcountry Areas – In Section 115, the bill identifies six Primitive Backcountry Areas – Grizzly Peak, Dakubetede, Wellington Wildlands, Mungers Butte, Brumitt Fir, and Crab-tree Valley – all of which contain large swatches of land identified by the Bureau of Land Management as lands with wilderness characteristics. These areas are respites for hunters and anglers alike, as well as important for plant and wildlife species. While we believe at least some of these areas could and should be protected as wilderness, we appreciate the current designations and look forward to working with your staff on refinements.
6. Special Environmental Zones – The O&C lands include more than 80,000 acres identified by the Bureau of Land Management and citizens as "Areas of Critical Environmental Concern"—habitats, resources, or landscapes in need of special management. These ecologically important locations, found in approximately 133 places, are scattered throughout western Oregon. They range in size from the 1,700-acre Bobby Creek Research Natural Area, with its rare plants and endangered stands of Port Orford cedar, to a 10-acre tract of land that is home to the northernmost grove of rare Baker cypress. The Valley of the Giants, a 1,300-acre tract in the central Oregon Coast Range, is valued for its scenic beauty, its fish and wildlife habitat, and as

an example of a healthy, ancient-forest ecosystem. These are truly some of the most unique acres in the O&C landscape and we support and appreciate their protection as designated under Section 116.

7. Illinois Valley Salmon and Botanical Area Special Management Unit – The Illinois River Valley in southern Oregon is renowned for its remarkable salmon runs and its spectacular and truly unique botanical resources. Visitors from around the globe come to fish these waters and to admire the beauty of this valley. Section 113 ensures the protection of these resources for future generations.
8. Drinking Water Special Management Units – Sections 108 through 111 identify four special areas – McKenzie, Hillsboro, Clackamas, and Springfield/Eugene – dedicated to the protection of clean drinking water for various communities. The rivers that run through the O&C lands produce clean drinking water for more than 1.8 million Oregonians, and the protection of these key areas from contamination is both imperative to retain the high quality of clean drinking water available in the state while at the same time reducing secondary filtration costs otherwise necessary for delivering safe and affordable potable water to citizens across the state.
9. Riparian Reserves & Watershed Protections – The Northwest Forest Plan’s (NWFP’s) Aquatic Conservation Strategy (ACS) has proven to be one of the most effective management strategies on federal lands. This provision has ensured the protection and restoration of aquatic resources throughout the Northwest. We are pleased that S.1784 legislates the ACS’s goals and objectives of the NWFP, protects Key Watersheds, and applies the NWFP’s current riparian reserves on approximately two-thirds of the O&C landscape. This approach is critical for clean drinking water resources, and protections for wild salmon.

We commend you for including these provisions and others I have not specifically listed above (including the expansion of the Cascade-Siskiyou National Monument, the protection of the Pacific Coast Trail, and the protection of critical habitat for fish and wildlife). These protections are essential to the balance we believe the bill’s framework exhibits.

We know getting this far was not easy and we appreciate the time, dedication and leadership you have shown to craft a bill around these conservation pillars.

### **Areas of improvement**

As you know, we are continuing to work with you and your staff on several areas that we believe could use clarification, refinement, and improvement. In particular, I’d like to highlight five sections where changes would make this legislation a better policy prescription for these O&C lands:

1. Endangered Species Act Protections – We understand your stated intent when advancing this bill was to refrain from undermining key provisions of the Endangered Species Act (ESA). As you well know, the ESA, while often touted as a litigation roadblock to timber production in Oregon, does not in fact hold up timber production in the courts. Litigation limiting timber sales in Oregon is found under other federal law claims, but not under ESA legal claims. Changes to the ESA are not necessary to move more timber from our public lands and to revise ESA procedures based on mistaken assumptions about the law would be unsound public policy. As currently written, we have some concerns in this regard, but appreciate the effort you and your staff are making to ensure that the bill does not undermine this important federal environmental law.

2. National Environmental Policy Act – The National Environmental Policy Act ensures that federal agencies follow appropriate procedures to ensure the protection of our natural resources while at the same time ensuring that policy makers and the public are fully aware the potential environmental impacts of agency actions. This law has been instrumental in allowing public oversight of federal actions.

We also understand the desire to apply this law in a way that ensures clarity without undermining the basic tenants of the law. There are several clarifications and changes we have suggested to achieve this balance and are working closely with your staff to work through potential changes. In particular, we believe that there is a way to ensure that there is more information analyzed and assessed upfront in the agency decision-making process so that actions can move forward with more certainty once decisions are indeed made. This would also give the public more information at the start to understand the implications of the agency decisions. We believe this type of approach will provide the certainty the timber industry is seeking while at the same time ensuring the proper level of assessment of the environmental impacts of any future timber sales.

3. Monitoring and Evaluation – As we stated, we appreciate the scientific approach you have taken in this bill by bringing together some of the leading forestry experts in the region to help guide the management strategies identified in this bill. At the same time, these are new approaches and new scientific ideas. We urge you to include a provision in the bill to provide for robust monitoring and evaluation of the proposed timber management regime, and its impact on water quality and fish and wildlife. The provision we suggest would require annual monitoring, analyses after the first five years and each five years after that, and an ability to adaptively manage and change course if the science illustrates that the path laid out in the bill is indeed having impacts – positive or negative – that were not anticipated at this stage.
4. Land Consolidation – Section 117 of the bill includes a land ownership consolidation provision. Pew supports the general concept. We believe that consolidating the checker-board of O&C lands could have positive impacts for fish and wildlife in the region. At the same time, the language in this section as introduced appears to provide an incentive to sell or trade public lands without assurance that such a sale would indeed promote important conservative objectives.
5. Additional Wilderness Opportunities – Six large blocks of contiguous O&C land – both BLM managed lands specifically addressed under S.1784 and Forest Service managed lands, not currently addressed under this bill – are excellent candidates for federal wilderness protection: Rogue River Canyon, Devil’s Staircase, Mt. Hebo, McKenzie River headwaters, Kalmiopsis backcountry, and North Umpqua River wilderness. While S.1784 sets forth wilderness protection for two of these areas, the Wild Rogue and Devil’s Staircase, these four other areas are also worthy of wilderness designation. These areas cover both O&C and adjacent inventoried roadless areas—public lands managed by the U.S. Forest Service and under a policy limiting road construction and the resulting environmental impact. Ancient forests and rare flowers, as well as bears, cougars, eagles, wild salmon, and threatened and endangered species make their homes in these places. The checkerboard land ownership patterns may complicate management, but these lands have outstanding wild character. They deserve to be safeguarded for future generations and granted special protection by the federal government. Attached to this testimony, and released today, is a list of more than 50 local businesses which also support the

protection of these areas. We urge you to consider the protection of these special places in S.1784 as well.

**Conclusion**

On behalf of The Pew Charitable Trusts, I want to thank you for the opportunity to come before you today to voice our views on S.1784. We are committed to continuing to work with you and the Committee to ensure we achieve a final bill that incorporates values we all hold dear – the protection of our natural environment and the economic vitality of rural communities in Oregon.