



# T TRANSITIONS

*Working for Sustainable Forests and Diversified Economies in America's Pacific Northwest*

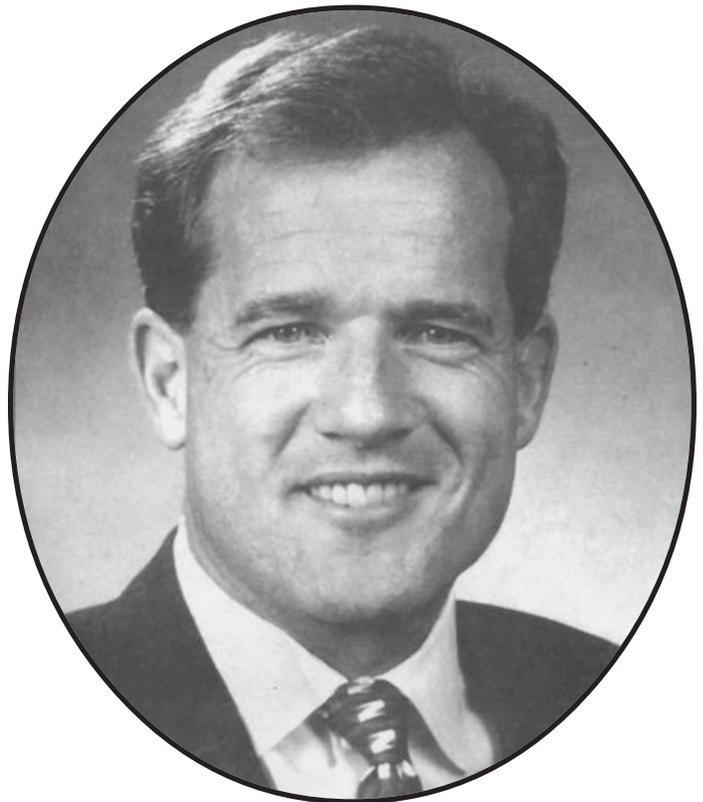
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Volume 11, Number 3, September 1998

## Land Swap Swindles – “Looters of the Public Domain”



*George Weyerhaeuser, Chairman  
Weyerhaeuser Corporation*



*Rick Holley, President & C.E.O.  
Plum Creek Timber Company*

## Railroads & Clearcuts - Part 9

# Land Swap Swindles – “Looters of the Public Domain” Railroads & Clearcuts – Part 9

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# Land Swap Swindles

## – “Looters of the Public Domain”

By John Osborn, M.D.

Coordinator, Railroads & Clearcuts Campaign

Land swaps are the latest corporate land rush in the West. Currently there are millions of acres of public land that are being “exchanged”. Swaps have become a major form of corporate welfare. Timber corporations have overcut forests. Now they have found yet another way to reach for the public forests.

Land swaps are potentially scandalous in losses to the American taxpayers. In just a single land swap in western Washington this year — the Huckleberry Exchange — taxpayers lost as much as \$76 million to Weyerhaeuser Corporation. How did this happen? Weyerhaeuser contracted and controlled the timber appraisal process, according to timber appraisers Roy Keene and Greg Harty.

“Those who cannot remember the past are condemned to repeat it,” wrote philosopher and poet Santayana. Corporations, such as Weyerhaeuser and Plum Creek, taking valuable land and wealth from the public is not new. Public-land history of the United States, and especially the West, is marked by taking lands from Indian tribes followed by corporate plunder.

*Looters Of The Public Domain: Embracing A Complete Exposure Of The Fraudulent Systems Of Acquiring Titles To The Public Lands Of The United States*, published in 1908, is a first-hand account of how forests on the West Coast were stolen from the commonwealth. The author, Stephen Puter, wrote the book in a prison cell while serving a two-year sentence for conspiracy to defraud the Government of its public lands. Puter provided critical evidence to the Department of Justice. These land fraud investigations led to the filing of hundreds of indictments and convictions, including prominent Northwest businessmen, members of Congress, state officials, and former United States Attorneys.

One of America’s more notorious land frauds was the Act of March 2, 1899, creating the Mt. Rainier National Park. “Could the human mind conjure a more cunning device for flim-flamming the public than is contained in this measure?” wrote Puter. Corporate interests used the “public interest” of the Park designation to cloak

fine print permitting Northern Pacific Railroad Co. (controlled by JP Morgan and James J. Hill) to swap NP grant land for public lands in any state penetrated by NP’s lines.

The Act allowed Northern Pacific (and thus Weyerhaeuser, Potlatch, and Boise Cascade) to exchange culled and worthless tracts for some of the richest forests in the nation: 100,000 acres in Washington, 120,000 acres in Idaho, and 320,000 in Oregon. The Mt. Rainier National Park was created “that the Hill corporation might be enabled to exchange its worthless holdings for the cream of creation.”

*Looters of the Public Domain* warns of “a new generation of plunderers, more subtle and swift in their operations, because the looting of the public domain has now become one of the gentler arts, and the ‘dummy’ timber entryman and perjured homesteader, with their ways redolent of the frontier, have given place to the polished enactments of a subservient Congress, which is interpreting the land laws to meet the requirements of greedy corporations, without any heed whatever to the people’s rights.”

Today, ninety years later, Congress is considering a massive land exchange involving NP grant

lands in western Washington to benefit Plum Creek Timber Company — corporate descendant of Northern Pacific Railroad. Meanwhile, massive land swaps are underway or completed along the Northern Pacific checkerboard. The National Forests are, once again, in peril.

President Abraham Lincoln’s great mistake of creating the 40-million-acre Northern Pacific checkerboard has yet to be undone. Titles to millions of acres of public land intended for homesteaders are still held illegally by Plum Creek, Weyerhaeuser, and other corporations enriched by our public lands. Swapping the Northern Pacific grant lands for National Forests under the cloak of “public interest” is at best a weak palliation, at worst another huge public land scandal in American history.

### Looters of the Public Domain

*warns of “a new generation of plunderers, more subtle and swift in their operations, because the looting of the public domain has now become one of the gentler arts, and the ‘dummy’ timber entryman and perjured homesteader, with their ways redolent of the frontier, have given place to the polished enactments of a subservient Congress, which is interpreting the land laws to meet the requirements of greedy corporations, without any heed whatever to the people’s rights.” — 1908*

# (1) Abe Lincoln's Railroad Legacy – Corporate Theft of Public Lands

## A big deal about some big deals

### • Critics question huge trades of land between timber companies and the U.S. Forest Service

By John Hughes of the Associated Press

WASHINGTON — They are land deals of the biggest kind. The U.S. Forest Service and lumber companies are swapping hundreds of thousands of acres in the Pacific Northwest.

Some of the big deals in the works this year include 100,000 acres in Washington state, 83,000 in Montana and 65,000 acres in Oregon. The value of property and timber in the Washington deal alone is around \$200 million.

The companies and the government say the deals are good for everybody. The government often gains more land than it gives up, and the trades end a "checkerboard" pattern of properties that make the lands difficult to manage.

So what's the problem?

Some environmental groups are fighting the transactions because they say the Forest Service is getting a raw deal. They say the government is trading away old-growth forests for land that has already been shaved of trees.

*"Many land swaps ... are proposed, designed and driven by the private interests involved."*

**— Janine Blaeloch, Western Land Exchange Project**

"Many land swaps ... in fact are proposed, designed and driven by the private interests involved," said Janine Blaeloch, director of the Western Land Exchange Project, an environmental group that tracks land trades.

Blaeloch testified on Capitol Hill this past week against one of the biggest deals pending. Seattle-based Plum Creek Timber Co. would give up about 60,000 acres in west central Washington state, on either side of Interstate 90, in return for 40,000 acres of national forest land.

Blaeloch argues that the Forest Service is giving up old-growth forests in return for land that has been mostly clear cut or converted to tree plantations.

She said more bad deals are in the works. The Land Exchange Project estimates that 15 trades involving 500,000 acres are proposed in Washington, Idaho and Montana alone.

But the Forest Service, which annually makes about 100 land deals involving 170,000 acres of land, defends the Washington trade. Officials say that besides saving money and making the lands easier to manage, the deal gives them about 22,000 acres of habitat for the northern spotted owl.

"Our intention is to ensure that taxpayer interests are protected," said Chris Wood, a Forest Service spokesman.

Some environmental groups also support a trade. "Unless steps are taken to preserve some biological links across the I-90 corridor, we run the risk of many species being permanently cut into two populations ... putting their long-term survival at risk," said Rick McGuire, president of the Seattle-based Alpine Lakes Protection Society.

The Washington state deal isn't the only one drawing scrutiny.

The Central Oregon Audubon Society and Oregon Natural Resources Council have appealed a proposed transfer in Oregon of 31,000 acres of land in the Deschutes, Fremont and Winema national forests, in return for 34,000 acres of land owned by Portland-based Crown Pacific Corp.

Regional Forest Service officials in Portland are expected to rule on the appeal this coming week. If they uphold the trade, and a final appraisal is also released this coming week as expected, the Forest Service and the lumber company could exchange deeds 15 days later.

There's still a potential for lawsuits from environmentalists that could further slow a process that has dragged on for more than three years. "Obviously, it would slow things down," said Bob Hess, a spokesman for Crown Pacific.

To speed up the process, some lumber companies have taken their case to Congress.

Sen. Slade Gorton, R-Wash., and Rep. Doc Hastings, R-Wash., have introduced bills directing the Forest Service to make the Plum Creek exchange. The bills would allow the company and Forest Service to avoid appeals and lawsuits.



*". . . Congress may, at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend, or repeal this act."*

*– Section 20, 1864 Northern Pacific Railroad Land Grant*

*Continued on page 30*

# The Checkerboard Legacy

A 130-year-old land deal is posing problems for federal land managers and private timber companies in the central Cascades today.

## Land deal of 1864 created a checkerboard

By Eric Pryne, Seattle times staff reporter

### Abraham Lincoln never heard of an ecosystem.

In 1864 the Great Emancipator signed a law that set the stage for much that has happened since in Washington's central Cascades. Environmentalists, timber companies and the Clinton administration are just starting to grapple with the consequences, 130 years later.

Some say they're trying to avert a threat to the biological richness of the entire Cascade range, a potential ecological calamity that has its roots in Lincoln's law.

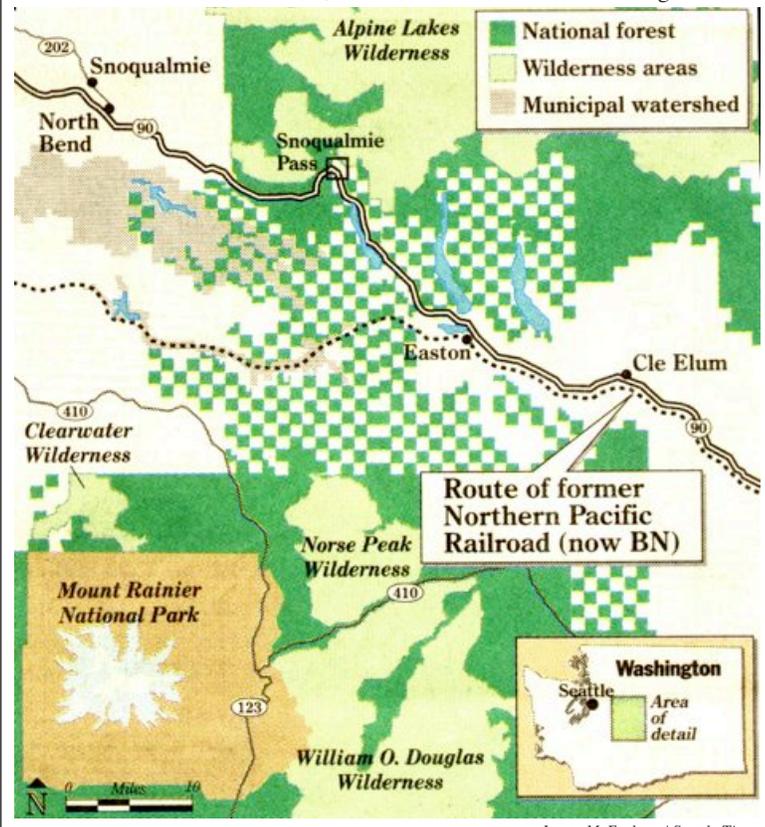
Big changes in land management, perhaps even land ownership, may be on the horizon.

The Northwest was a different place in 1864. Settlers were few, the wilderness vast. The federal government owned most of it, and was more than willing to part with enormous expanses to encourage development.

So, as Union and Confederate troops skirmished outside Atlanta, Lincoln signed legislation handing over 40 million acres of federal land to the old Northern Pacific

*Continued on page 6*

**A checkerboard remnant** This pattern of square-mile blocks of private and government land in the central Cascades is one of the few places remaining of the corridor that once stretched for 2,000 miles from the Midwest to Puget Sound.



James McFarlane / Seattle Times



**Mt. Rainier with clearcuts.** Congress and Lincoln created Northern Pacific Corporation and conditionally granted it a huge public land subsidy. The law was openly and flagrantly violated. Still today title to millions of acres of public land taken from Indians and intended for homesteaders are illegally held by corporations.



**Abraham Lincoln (1809 - 1865)** In 1864 Congress and Lincoln federally chartered Northern Pacific Railroad Company, and conditionally granted it 40 million acres of public lands taken from Indian Tribes. Lincoln was a railroad attorney before serving in public office.

© Trygve Steen

Dictionary of American Portraits, Courtesy New York Historical Society.

Railroad, enticing the company to build a rail link from Lake Superior to Puget Sound.

Northern Pacific (which has since become part of the Burlington Northern) got a whopping 40 square miles for each mile of track.

It came in alternating square-mile sections in a wide corridor along the 2,000-mile railroad right-of-way, intermingled with property the government retained. The result: a checkerboard of federal and railroad lands. The government thought the configuration would increase the value of its holdings.

"If you were going to design a system for bad land management, that would be it," says George Draffan, a Seattle environmentalist and co-author of an upcoming book on the land grant.

The railroad and the government sold or gave away most of their property. But a remnant of the checkerboard persists in the central Cascades, stretching south about 25 miles from the Alpine Lakes Wilderness Area almost to Mount Rainier.

The U.S. Forest Service manages the federal squares. Plum Creek Timber Co., Northern Pacific's corporate grandchild, owns most of the private sections.

### Where to see it

To glimpse the legacy of 1864, you need only head east on Interstate 90 across Snoqualmie Pass. You'll see the checkerboard in the straight lines and right angles of some clearcuts. Highway signs welcome you to the Mount Baker-Snoqualmie and Wenatchee national forests. They don't say that many of the clear-cuts visible from the freeway are on private, checkerboard lands inside the national-forest boundaries.

The Forest Service once logged its checkerboard lands extensively, too. But new science and new court decisions centered on the spotted owl have largely pushed the agency out of the timber business here.

Ecosystem management is the buzzword now. President Clinton's Northwest forest plan sets aside vast expanses of the checkerboard as reserves, contending they are needed to protect wildlife dependent on older forests.

But Plum Creek and other nonfederal landowners beyond Clinton's direct control own half the land inside those reserves.

They're not in the preservation business.

Plum Creek gained national notoriety in the late 1980s for its aggressive logging in checkerboard country. Former U.S. Rep. Rod Chandler called the company "the Darth Vader of the state of Washington."

Plum Creek, stung in both the stock market and the court of public opinion, is doing some things differently now. It has won plaudits from the Clinton administration; even environmentalists give the company credit for managing with a lighter hand.

But the checkerboard is the only significant break in federal ownership in the Washington Cascades. And over the past five years a series of government reports has warned that further "habitat fragmentation" — logging — in the area threatens to block wildlife movement north and south through the range.

If the spotted owl, a threatened species, for some reason died out north of Snoqualmie Pass, the checkerboard could prevent recolonization of that area by owls from the south, says Eric Forsman, the Forest Service's premier owl biologist.

"It's like somebody took a big knife and made a big slice across that range," he says.

So far, Forsman and others acknowledge, the "ecological gap" is only a theory. But it has helped spur a flurry of activity this year:

- Plum Creek, with prodding from the Clinton administration, is preparing a "habitat conservation plan" for wildlife on 170,000 acres it owns in checkerboard country.

The company hopes to find a middle ground between habitat protection and timber production. A draft is to be unveiled this week.

- The Clinton forest plan designates 212,000 acres of federal land in checkerboard country an "adaptive management area," a laboratory for experimental forestry.

The plan orders the Forest Service to find a way to provide significant old-growth habitat amid the checkerboard, calling the area a "critical connective link" for wildlife.

- Plum Creek and Weyerhaeuser, another big landowner in checkerboard country, are negotiating major land trades with the Forest Service. And the Sierra Club has embarked on a five-year lobbying campaign to return environmentally significant private squares to

Uncle Sam, through trade, purchase or donation.

There's a common thread to these efforts. Plum Creek, Weyerhaeuser, the Forest Service, the Sierra Club — all are working in their own ways to correct what, in retrospect, was Abe Lincoln's big mistake.

Call it the checkerboard legacy.

"Somebody has a very special place in Hades for having designed this," says Lorin Hicks, Plum Creek's manager of fish and wildlife resources.

### Plans have been complicated

The checkerboard has complicated federal plans to manage forests rather than trees. It also has frustrated Plum Creek's ability to make a buck.

- Example 1: Plum Creek officials say 15 percent of their land in checkerboard country still has no road access and hasn't been logged. They have pushed since 1991 for Forest Service permits to build 21 miles of new roads across federal land, so the company can harvest 1,800 acres of older forest on its own squares.

Environmentalists fear the logging will further fragment an already tattered landscape, harming the spotted owl. A federal judge has ordered the Forest Service to do more environmental analysis.

The permits remain in legal limbo.

- Example 2: More than 100 owls or owl pairs live in checkerboard country. The vast majority nest on national-forest lands. But sprawling "owl circles," established by the U.S.

Fish and Wildlife Service to retain old-growth habitat for the birds within a 1.8-mile radius of each nest, extend deep into many Plum Creek sections.

The company says the circles have effectively precluded it from logging 30,000 acres.

The Clinton administration proposed a year ago to eliminate the owl circles in most of Washington state — but not in checkerboard country. The area is too vital to the species' recovery, officials said.

Plum Creek still is working its way out from under its Darth Vader tag. Company officials say the rap no longer applies, if it ever did.

Annual harvest on company lands in checkerboard country has dropped 45 percent since 1985 — in part because Plum Creek can make the same money from fewer logs today. Clear-cutting, the favored logging method in the 1980s, is far less common now.

About 15 percent of Plum Creek's logging operations now involve "new forestry" techniques, designed to protect the environment and speed young forests' evolution toward old-growth conditions. Hicks told Clinton about some of the experiments at the president's forest conference in Portland last year.

### A changing reputation

Plum Creek took Sierra Club members on a tour of some of its Kittitas County lands earlier this fall. Company officials pointed with pride to logging roads closed to protect wildlife, wider stream buffers left to protect fish and forested corridors preserved through logging units to provide cover for migrating elk.

*As Union and Confederate troops skirmished outside Atlanta, Lincoln signed legislation handing over 40 million acres of federal land to the Northern Pacific Railroad.*

*Northern Pacific, now part of Burlington Northern, got a whopping 40 square miles for each mile of track.*

*The land came in alternating square mile sections: a checkerboard of federal and railroad lands.*

“Plum Creek does appear to be trying to change its reputation,” said Charlie Raines, director of the Sierra Club’s Cascade Checkerboard Project.

It’s not just image building, says Bob Manne, executive vice president. The public’s expectations for forest management are changing, he says, and Plum Creek also must change if it expects to remain in business.

The company’s \$1 million wildlife-habitat conservation plan may be the most ambitious response to the peculiar problems posed by the checkerboard.

Plum Creek’s motives aren’t entirely altruistic. Under the Endangered Species Act, the owl circles that spill onto company lands could be lifted if the U.S. Fish and Wildlife Service approves the habitat plan.

The Clinton administration also has told Plum Creek that, if its plan passes muster, the company will be exempted from restrictions resulting from future additions to the endangered-species list.

That insurance policy appeals to Plum Creek. Goshawks, bull trout and at-risk salmon and steelhead — all candidates for listing — inhabit checkerboard country. “We think this plan is going to give us the certainty and predictability we want,” says Manne.

**Impressive work on plan**

The company has pulled together team of 20 scientists, headed by Hicks, to write the plan. It is using sophisticated computer programs to

*Plum Creek and Weyerhaeuser, another big landowner in checkerboard country, are negotiating major land trades with the Forest Service.*

*“Somebody has a very special place in Hades for having designed [the checkerboard]”.*  
– Lorin Hicks, Plum Creek

*The checkerboard is Abe Lincoln's big mistake.*

lands with that of the intermingled federal pieces. He talks of providing

off-limits to logging forever.

That confirmed Charlie Raines’ conviction that the real solution to the checkerboard legacy lies elsewhere.

plot and display what might happen to the landscape under different management scenarios.

Work began only in July. So far the Fish and Wildlife Service is impressed.

“No way could the government gear up this fast,” says Bill Vogel, the chief government biologist assigned to the team.

Hicks talks of better integrating management of Plum Creek’s checkerboard habitat in which spotted owls might nest or disperse. Stream corridors — magnets for wildlife — probably will get special attention in the plan, he says.

But Hicks also told Sierra Club members on the tour this fall that Plum Creek won’t put any of its squares

“If it’s total preservation we want,” Raines said, “it has to be in public ownership.”

On that, if nothing else, the Sierra Club and Plum Creek agree.

Seattle Times November 13, 1994, Copyright 1994, Seattle Times Company

*Weyerhaeuser checkerboard clearcuts, Green River and Greenwater River watersheds. The checkerboard is Lincoln's big mistake.*



*Western Land Exchange Project, photo archives.*

# Forest Service Will Review Land Valuations Improprieties Charged In Swaps With Timber Firms

By Rob Taylor, P-I Reporter

Responding to charges of improprieties, the U.S. Forest Service will review appraisals made in three big land swaps with Northwest timber companies, a spokesman said yesterday.

The review comes in response to charges from an advocacy group that the appraisals may have been skewed to favor the timber companies.

The Western Land Exchange Project, a small Seattle-based environmental group, has said it believes public lands and timber are being undervalued and private lands overvalued in the appraisals.

The group's request for an investigation came early this month as a scandal surfaced over alleged conflicts of interest and imbalances in Forest Service land exchanges in Nevada. It also followed accusations from two timber appraisers in Oregon, Roy Keene and Greg Harty, who say the Huckleberry Exchange in Washington state badly shortchanged the federal government.

The Land Exchange Project letter, dated Aug. 3, urged Forest Service Chief Michael Dombeck to investigate appraisals in three land swaps:

- The already-completed 40,000-acre Huckleberry Exchange between Weyerhaeuser Co. and the Mount Baker-Snoqualmie National Forest. Most notably, the forest got almost 2,000 forested acres bordering wilderness areas and the company obtained 7,000 acres of mature forest on Huckleberry Mountain near the town of Greenwater.
- A pending, 100,000-acre exchange with Plum Creek Timber Co., mostly in the Interstate 90 corridor near Snoqualmie Pass, but also including some pieces of the Gifford Pinchot National Forest.
- A pending exchange with Crown Pacific Corp. in Oregon's Fremont, Winema and Deschutes national forests.

Janine Blaeloch, director of the Land Exchange Project, yesterday said she recently received a recorded phone message from Dombeck's assistant, Chris Wood, promising a review. But she said it was unclear whether the Huckleberry exchange would be included or how deeply the investigation would delve.

Forest Service spokesman Alan Polk confirmed yesterday that the planned review would cover all three exchanges, but said he had no details. A spokesman for the Mount Baker-Snoqualmie National Forest said he had heard nothing about a review.

Weyerhaeuser and Plum Creek, meanwhile, expressed confidence in the conduct of appraisals in their exchanges.

Federal agencies exchange land with private timber companies to consolidate holdings of each, often in checkerboard areas where 19th-century railroad land grants put every second square mile of federal

land into private hands. In the Snoqualmie Pass area, the Forest Service wants blocks of land — though many are clearcut — to grow forests that will eventually link Cascade Range habitat to the north and south. Plum Creek wants blocks of forest that it can harvest.

The exchanges are fertile ground for charges of financial misdeeds, since they swap tens of thousands of acres worth tens of millions of dollars, and because appraisals of land with different characteristics and values can be tricky.

Reviews of such Forest Service exchanges appear to be spreading like a forest fire.

The U.S. Agriculture Department's Office of Inspector General started it with a scathing review of a land exchange involving Nevada's Humboldt-Toiyabe National Forest. Peppared with charges of conflict of interest and gifts to an agency official, the draft report said Forest Service management "allowed private parties . . .

to exert undue influence over the direction and outcome of almost all large value land exchanges in the forest."

Blaeloch said investigations spread to Forest Service regions covering Arizona, New Mexico and Southern California before reaching the Northwest. Dombeck temporarily froze exchanges, and has urged his managers to give all land exchanges closer scrutiny.

The harshest criticism of Northwest land exchange appraisals to be aired so far has come from Keene and Harty. In a letter to U.S. Sen. Ron Wyden, D-Ore., that Blaeloch forwarded to Dombeck, they charged that the taxpayers were shortchanged by as much as \$76 million in the Huckleberry Exchange.

They claimed hundreds of acres of federal timber were uncounted, undercounted or undervalued in a timber appraisal process that they said was "contracted and controlled by Weyerhaeuser."

Keene and Harty could not be reached for comment yesterday.

Frank Mendizabel, a spokesman for Weyerhaeuser, said the work was done by a third-party appraiser agreed to by both parties. He said the techniques and methods used were standard in all land exchanges. Asked if the company viewed the exchanged lands as being of equal value, he said, "Yes, at that time."

Bob Jirsa, a Plum Creek spokesman, noted that the appraisal of its I-90 exchange land is expected to be completed within 90 days. "We welcome any federal review of the standard procedures and results of the appraisal when it is completed," he said.

P-I reporter Rob Taylor can be reached at 206-448-8092 or [robtaylor@seattle-pi.com](mailto:robtaylor@seattle-pi.com)

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***Exchanges are fertile ground for charges of financial misdeeds. Taxpayers were shortchanged by as much as \$76 million in the Huckleberry Exchange in a timber appraisal process that was "contracted and controlled by Weyerhaeuser," charged timber appraisers Roy Keene and Greg Harty.***

## (2) A Second RR Land Grant – Land Swaps

# Land Exchanges Threaten Public Lands

By Janine Blaeloch, Director, Western Land Exchange Project

For decades, the federal government has enacted land exchanges with private parties to consolidate ownership of public lands. These transactions have gone on largely on the periphery of public awareness. Land swaps sometimes result in benefits to the public, such as where inholdings interfere with management of surrounding federal lands. Increasingly, however, exchanges involve the trade of thousands of acres of public land containing valuable timber and habitat for private forest and range lands that are ecologically damaged. Scores of land exchanges are sweeping the western states.

The Forest Service and Bureau of Land Management (BLM) are facilitating a massive corporate land grab in the name of the “public interest”, and private timber, mining, and development interests are reaping the benefits.

A growing number of land exchanges are being proposed as a solution to the “checkerboard problem”. Wishing to consolidate its ownership of the railroad checkerboard lands the Forest Service is offering up public lands in one area for corporate lands elsewhere. On a map, this works. On the ground, the agency is trading valuable habitat and uncut forest out of the public domain — and in some cases getting corporate stumps in return.

### Checkerboard exchanges: the second land grant

In the 19th century, railroad corporations grabbed nearly ten percent of the continental U.S. by fraud and malfeasance. Since then, the railroads’ corporate heirs have been stripping the odd-numbered sections of trees and minerals. Now, they’re coming back for the even-numbered sections in what amounts to a second grant of public lands: land swaps.

The very concept of exchanging federal lands for railroad-grant-land checkerboards is highly debatable, considering the unique history and status of these lands. Congress reserved the right to “add to, alter, amend or repeal” the land grant statutes in order to protect the public interest, and thus has the authority to exercise control over management of the grant lands without the necessity of trading. Unfortunately, Congress has failed to use this authority.

*Exchanging our public lands for checkerboards of the railroad land grant is highly debatable, considering the unique history and status of these lands.*

### The Huckleberry Land Exchange

In Washington’s Mt. Baker-Snoqualmie National Forest, the Huckleberry Land Exchange between the Forest Service and Weyerhaeuser illustrates some of the problems with land exchange policy.

On the surface, the trade sounds like a good deal for the public: we trade a mere 4,500 acres of forest on Huckleberry Mountain for 30,000 acres of Weyerhaeuser land. But the public lands in the trade comprise the last intact forest on the mountain. If the Forest Service retained rather than traded these lands, it would cut only 264 acres per decade. Weyerhaeuser has stated that it intends to cut all of the timber within ten years —

accelerating the liquidation of Huckleberry Mountain by more than 15 times.

On the other side of the exchange, 90 percent of the land the public will receive has been clear-cut. As part of the trade, the public would assume the costs of restoring the lands damaged by the corporation and of obliterating most of the 236 miles of roads left by the company.

Existing laws and regulations require that land exchanges achieve equal value for both parties. But land managers hide the timber and land values behind the veil of “proprietary information”, and it is not until after an exchange is implemented that the values of the properties are disclosed to the public. Even considering the acreage being traded, the amount and quality of timber Weyerhaeuser would receive in the Huckleberry exchange is such that the company is expected to realize a huge profit from the deal. In May, 1997, federal lawsuits were filed against the swap by Huckleberry Mountain Protection Society, Pilchuck Audubon Society, and the Muckleshoot Indian Tribe, charging numerous violations of land exchange laws and regulations.

### Plum Creek Wants to Make a Deal

Plum Creek Timber, another railroad land grant checkerboard owner, is proposing the I-90 Exchange, a swap with the Forest Service that would give the public about 40,000 acres of land near the Alpine Lakes Wilderness for a like amount of public land in the Mt. Baker-Snoqualmie, Gifford Pinchot, and Wenatchee National Forests. The Forest Service and some environmental groups tout the exchange as an opportunity to provide habitat connectivity in the highly-fragmented landscape south of the Wilderness. But, as with any land exchange, the

deal entails the creation of sacrifice zones, including scarce, low-elevation old growth in the Gifford Pinchot National Forest and the 6,000 acre Kelly Butte roadless area at the head of the Green River.

### **The Land Exchange Juggernaut**

The railroad land grant checkerboard lands provide some of the most egregious examples of land swaps, but large-scale trades are taking place all over the West. These deals are usually initiated by private interests reaching for public resources, and the Clinton Administration and public lands agencies have offered nothing but encouragement. Between the Forest Service and the BLM, about 200 land swaps take place every year in the U.S. Some involve very small amounts of land, but a growing number of them involve tens of thousands of acres apiece.

Here are some examples of recently completed or currently contemplated land swaps:

### **Arkansas and Oklahoma Land Exchange**

This exchange was legislated in the Omnibus Parks Bill of 1996. Weyerhaeuser traded 181,000 acres of forested wetlands and cut-over forest lands for 48,000 acres of highly-productive pine forest in the Ouachita National Forest and other areas. Replanted Weyerhaeuser lands going to the public had been converted to non-native loblolly pine. Weyerhaeuser retained mineral, oil, and gas interests on 133,000 acres that it traded. Environmental analysis and public involvement requirements under the National Environmental Policy Act (NEPA) were waived by Congress. Attempts by citizens to monitor and intervene were ignored.

### **BLM /Clearwater Exchanges, eastern Washington and Oregon**

Land swaps in both states are being brokered by Clearwater Land Exchange (CLE), a firm in Orofino, Idaho. An exchange in northeast Washington was just completed despite legal challenges by the Kettle Range Conservation Group and Inland Empire Public Lands Council. About 25,000 acres of overgrazed shrub-steppe in private ownership were traded for 4,500 acres of public land — much of it old-growth Ponderosa pine, recognized as an endangered plant community. Continued grazing is guaranteed for the next ten years on lands the public acquired.

Opponents conducted a detailed economic analysis of the exchange and estimated a net profit of more than \$10 million to Boise Cascade, the eventual owner of the public lands included in the exchange.

CLE is also brokering a 75,000-acre swap in northeastern Oregon between the BLM and Louisiana Pacific involving overgrazed range lands and old-growth Ponderosa pine.

### **Gallatin Land Exchange, Montana**

This swap was initiated at the request of the Montana congressional delegation under the Gallatin Range Consolidation and Protection Act of 1992. The private party to this trade is Big Sky Lumber, which owns railroad land grant checkerboards purchased from Plum Creek Timber in the Gallatin National Forest. In the first phase of the Act, 45,800 acres of BSL's land were traded for or purchased by the public. The current proposal encompasses about 54,000 acres of BSL land, and 28,000 acres of public land plus 50 million board feet of public timber.

Most of BSL's lands have been subdivided into 20 acre parcels and the company is threatening commercial development if the trade isn't completed by December 31, 1997. The company's lands have been offered contingent upon the Forest Service waiving NEPA procedure. Half or more of BSL's lands have been recently cut-over — some were acquired in the 1993 exchanges, were subsequently clear-cut, and are now offered back to the public sans trees. Where trees do remain on land going to the public, the company proposes to retain timber ownership.

### **Umpqua Watershed, Oregon**

Seneca Jones Timber Co., Weyerhaeuser and International Paper are conducting a study partially funded by the public for a series of land exchanges in the Umpqua watershed to trade streamside private holdings for other forest lands in the basin. The timber companies assert that they should be given lands they can log if they are going to be restricted on their own lands by laws protecting salmon and trout.

The study, for which Congress allocated \$945,000, is looking at 98,000 acres, but proponents hope to consider the entire 3 million acre watershed for possible swaps. The USFS and BLM are supervising the study, with a 17-member policy committee consisting of 9 industry or pro-industry reps, agency staff, and some conservationists.

### **Public Lands as Trade Stock**

All across the western landscape, land exchanges projects are defying environmental laws, giving irreplaceable assets to business interests, creating illegal, money-losing deals, and treating diverse public lands as "trade stock".

*Railroads & Clearcuts News*, Public Information Network,  
June 1997

*Railroads' corporate heirs have been stripping the odd-numbered sections of trees and minerals. Now, they're coming back for the even-numbered sections in what amounts to a second grant of public lands: land swaps.*

# Swaps may lead to speculation on federal lands

## Developers rush to file mine claims in environmentally sensitive areas

By Kim Murphy, Los Angeles Times

BYNUM, Mont. — President Clinton stood on a breezy plain just outside Yellowstone National Park earlier this year, announcing an agreement to halt a massive gold mine by swapping \$65 million in federal assets.

Conservationists, battling for years to block a mine that many feared would inundate the Yellowstone River with poisonous acid flows, celebrated. The pact, Clinton declared, provides “a model for America’s challenges, not only in the environment, but in other areas as well.”

Six days later, on the other end of Montana, a Wyoming businessman filed 104 hardrock mining claims on 2,150 acres of the Rock Mountain Front in the Lewis and Clark National Forest.

In the ensuing weeks, helicopters flew 4-by-4-inch mining stakes up into the remote canyon — a key link in a spectacular range of prairie and mountains considered among the best grizzly bear and major-predator habitat in the world.

“This area has been selected for wilderness designation. You couldn’t have picked a worse place to develop, in terms of its wildlife value,” said Mark Good of the Montana Wilderness Association, one of the environmental groups already lining up to take on a new fight.

“It may just be coincidence,” Good said. “But ... I personally think it’s going to be a case of saying, ‘I won’t develop it, but you’ve got to pay me not to.’”

In recent months, the Clinton administration has turned to high-profile exchanges of federal land, cash and assets as a means of tabling some of the United States’ most troublesome environmental disputes: redwood logging in Northern California, coal mining in Utah, salvage timber harvesting in Oregon, logging on Montana’s scenic Blackfoot River.

The exchanges, lauded by major environmental and parks organizations, provide the opportunity of ending courtroom skirmishes that could have lingered for years and permanently protecting hundreds of thousands of acres of wilderness.

But questions have been raised about whether the deals may wind up swapping an environmental threat in one location for one elsewhere — and whether landowners who propose ecologically risky development ought to be compensated with federal payoffs. And some raise fears of a wave of speculation on federal lands.

Administration officials say land exchanges — a mechanism used hundreds of times through the years but gaining momentum as a tool for unlocking some of the United States’ most troubling environmental disputes — allow for the protection of threatened lands at a time when Congress is increasingly unwilling to spend money to buy federal parklands. A gold mine in Montana instead could be swapped for an office building in Washington, D.C., or a closed military base in Northern California or a good building location in downtown Las Vegas.

Nowhere is the policy shift more evident than in the West, where a government that once opened up vast tracts of land for logging and mineral development now is ready to hand over millions of dollars in assets to stop it.

“The New World mine (near Yellowstone) is a classic example. There’s a piece of property and a mine proposal where I think it’s fair to

say the overwhelming majority of Americans think it’s probably a dumb idea to put a mine there,” said John Leshy, the Interior Department’s chief solicitor.

“There’s land out there that’s not in federal ownership that ought to be. At the same time, everybody but the most committed socialist would say there’s federal property out there that doesn’t really belong in national ownership. And there are the seeds of an exchange.”

The agreement to stop the New World mine — which would have stripped \$600 million worth of gold, silver and copper from three Yellowstone River watersheds — came after a series of secret talks among representatives of Crown Butte Mines Inc., conservation groups

suing to stop the mine and administration officials.

The deal called for Crown Butte to hand over the lands it holds near Yellowstone and spend \$22.5 million cleaning up the effects of past mining, in exchange for \$65 million in federal assets to be selected by February. The pact is hardly a boon for the mining company, which will barely break even on the money it has already invested.

For groups opposing the mine, it assures that the mineral-rich region will not be the subject of further lawsuits and hearings.

“As much as we were convinced the mine was illegal, there would never be certainty in the permitting process. We could find ourselves fighting this mine time after time after time, every five years,” said Brian L. Kuehl, project attorney for the Greater Yellowstone Coalition, a conservation group. “It was a zero-sum game. There was no way you could play and win.”

A month after the Yellowstone agreement, Clinton announced that the proposed extraction of 3 million tons a year of coal from Utah’s red-rock desert would be halted by declaration of a national monument on Escalante Canyon and the Kaiparowitz Plateau. The deal will allow the state, which has opposed the pact, to swap trust lands within the monument for federal assets. The administration has offered to help the Dutch company seeking to extract coal from the plateau to locate other suitable federal coal leases or revenues.

In Northern California, the administration in late September announced a \$380 million deal with Texas financier Charles Hurwitz to preserve 7,470 acres of ancient redwood groves slated for harvesting. The pact is to be financed with a combination of state and federal assets, but falls short of conservation groups’ hopes to protect all six ancient redwood groves of the 60,000-acre Headwaters Forest.

Federal authorities are conducting talks with another private landowner in the new Mojave National Preserve aimed at protecting 285,000 acres threatened with possible mining and home-building.

Although groups such as the Sierra Club and the National Parks and Conservation Association have applauded most of the exchanges, others have warned that they carry the potential of environmental blackmail, land speculation and the shifting of problems from one area to another.

“Trading these companies for assets the U.S. owns is policy with a lot of pitfalls in it,” said Jim Jensen of the Montana Environmental Information Center.

*The Spokesman-Review*, November 18, 1996. Copyright 1996. The Spokesman-Review. Used with permission of The Spokesman-Review.

*“I won’t develop it, but you’ve got to pay me not to.”*

# U.S. Using swaps to protect land

## Exchanges Broadening Federal Efforts on Sensitive Areas

By John H. Cushman Jr.

WASHINGTON, Sept. 29 — The Clinton Administration is expanding a program that is significantly reshaping the Government's land holdings, trading surplus public acreage to take environmentally sensitive sites out of private hands.

In recent years, millions of acres worth hundreds of millions of dollars have changed hands this way, in deals that have added prime wildlife habitats and filled other gaps in Federal holdings. In return, land of equal dollar value has been released to developers.

The Administration's willingness to negotiate such deals carries a subtle double-edged political message: that President Clinton is committed to conservation but that he does not want to ride roughshod over property owners who have fought many of his programs.

Indeed, the swap approach has pleased powerful business interests and created a new field of entrepreneurial intermediaries, some in nonprofit land trusts and others who are real-estate speculators. They act as brokers or even promoters of the swaps, and they deal in cash so the Government can avoid paying cash for land, which would require the approval of Congress.

The decades-old practice has achieved new prominence in the last few months through three highly publicized efforts to arrange unusually big swaps that would save especially notable resources in the West from logging and mining. The sites involve a proposed gold mine near Yellowstone National Park, California redwood groves and Utah's redrock wilderness.

On Saturday, Federal and state negotiators announced an agreement in principle in the California case, in which they are trying to arrange property swaps and cash payments to avert logging by the Maxxam Corporation in the redwood groves it owns in the northwest corner of the state. Although the

company has agreed to transfer thousands of acres of its land for \$380 million, the payment could take the form of cash, property or both. The next step is to identify property suitable for an exchange and to determine its fair value, which always proves difficult in these arrangements.

The case has an especially high profile because of its cost and because public opposition to the logging has led to protests and hundreds of arrests at the site.

Among conservationists, some like the trend toward land swaps, but others are troubled.

"I see no other likely source of revenue on the horizon that is going to enable

us to protect these sensitive areas as quickly as we have to," said Dave Wilcove of the Environmental Defense Fund. He said half of all endangered species were found only on land not controlled by the Government, which makes protecting the animals much more difficult.

"Land swaps are in vogue right now," said Phil Hocker of the Mineral Policy Center, an environmental group here that concentrates on

mining. "And they are in vogue in ways that I think are potentially dangerous. Frankly, what this whole trend toward exchanges is doing is creating a loophole for important public lands management decisions to be made with relatively little examination."

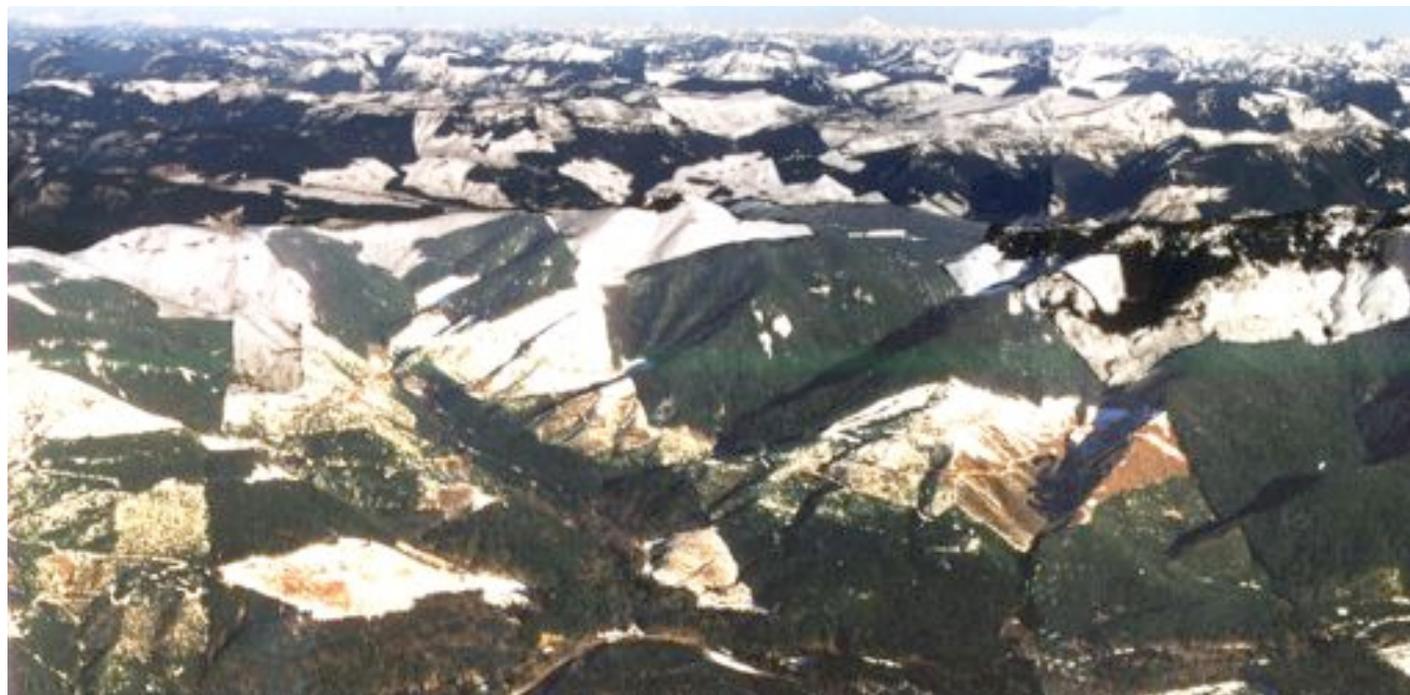
Robert H. Nelson, a public-lands expert who is a senior fellow at the pro-business Competitive Enterprise Institute, gave the exchanges grudging support. "They are a second-best solution," Mr. Nelson said. "There are public attitudes that prevent you from doing it in cash. So you have to do it in barter. A barter economy is inferior to a cash economy. But given the constraints and the alternative of doing nothing, this is better."

The Administration did not originate the program, which also thrived in the Reagan years. But it has enthusiastically embraced the approach, turning to land swaps to prevent development.

***"[This] whole trend toward exchanges is creating a loophole for important public lands management decisions to be made with relatively little examination."***

**— Phil Hocker, Mineral Policy Center**

Clearcuts on Huckleberry Mountain. Note the checkerboard pattern of the 1864 Northern Pacific railroad land grant. Weyerhaeuser clearcut the railroad



The most powerful force driving the Government toward such swaps is its own budget rules, under which Congress has to approve every expenditure, and every penny raised from property sales has to go into the Treasury Department's general funds.

But unlike straightforward Federal sales and purchases of land for cash, the carefully arranged land swaps never show up in the Federal budget. If the swaps are within a single state's borders, they often require no approval whatsoever by Congress.

That is especially important because the Congress has not been keen in recent years to acquire land for conservation and the amount appropriated for that purpose has been steadily declining. Although a fund intended for conservation purchases has a surplus of more than \$10 billion, most of it from offshore oil-drilling royalties, the money is being used to balance the Federal budget instead. Spending from the fund has dwindled to \$140 million this year, less than half the amount spent a few years ago.

Partly because of the budget pressures, Federal land managers in some states, especially in the West, have been eagerly turning to exchanges in which they acquire property that they want for conservation and turn over other land to developers.

In Arizona, the Government is negotiating with three copper companies with the idea of giving them land for expanding mines in exchange for tracts more suitable for conservation. Thousands of acres are to change hands, said William J. Ruddick of the Bureau of Land Management, the leader of the land exchange team.

Interior Secretary Bruce Babbitt, who helped pioneer exchanges when he was Governor of Arizona in the 1980's, said in an interview that their use was likely to expand.

"The word kind of gets out," Mr. Babbitt said, referring to the attention generated by deals like the Yellowstone proposal.

In that proposal, the Government has agreed to offer a gold mining company \$83 million worth of land or leases in Montana so it will abandon claims to the New World Mine, which is on public land near the national park.

But experts involved in the process said it was extraordinarily complicated, especially when assessing the value of the lands to be exchanged. They have to be equal.

Selecting the lands for the Yellowstone swap, which Mr. Clinton announced last month, might take many months, officials estimated.

Conservationists, public-land managers and developers seem to agree that by trading surplus land for tracts that are more valuable ecologically, the Government can move with greater speed and effectiveness to protect important habitats, watersheds and wilderness.

For years the Bureau of Land Management, which controls 270 million acres and manages the mineral rights for even more land, has been steadily swapping one parcel for another, usually as a way to get small holdings of private land that lie in national parks, forests, wildlife refuges and the like.

"Over the last 5 or 10 years, we have completed 60 or 70 exchanges a year," said Ray Brady, the chief of the lands division. He said the agency typically acquired 150,000 acres a year, worth \$80 million.

The creation of a vast wilderness preserve in the Mojave Desert is driving land managers in California toward more land exchanges, officials said. So is the expansion of cities like Las Vegas, Nev. that creep outward through Federal holdings that can be swapped for more environmentally important lands.

Land exchanges have many advocates in Congress, which passed a law in 1988 intended to make them easier to carry out. Their most prominent advocate may be Speaker Newt Gingrich. On Saturday, the House passed a mammoth parks and public lands bill that authorizes many such arrangements.

In some instances, lawmakers are just as interested in fostering development on one of the parcels being traded as they are in conserving the other ones. That seemed to be the case in one provision of the public lands bill that the House just approved, which would trade tracts in Utah so a ski developer could build a site for the 2002 Winter Olympics.

The transactions raise many complicated questions. How are priorities for land acquisition and disposal being set? To what extent should private speculators and nonprofit conservation groups join in the dealings? Which corporations should be compensated when their development activities are limited? And, to the extent that the program merits expansion, how should exchanges be simplified, and how much should they be controlled in Washington?

People involved in the process often say that they wish it could be made more simple but that they do not expect that to happen.

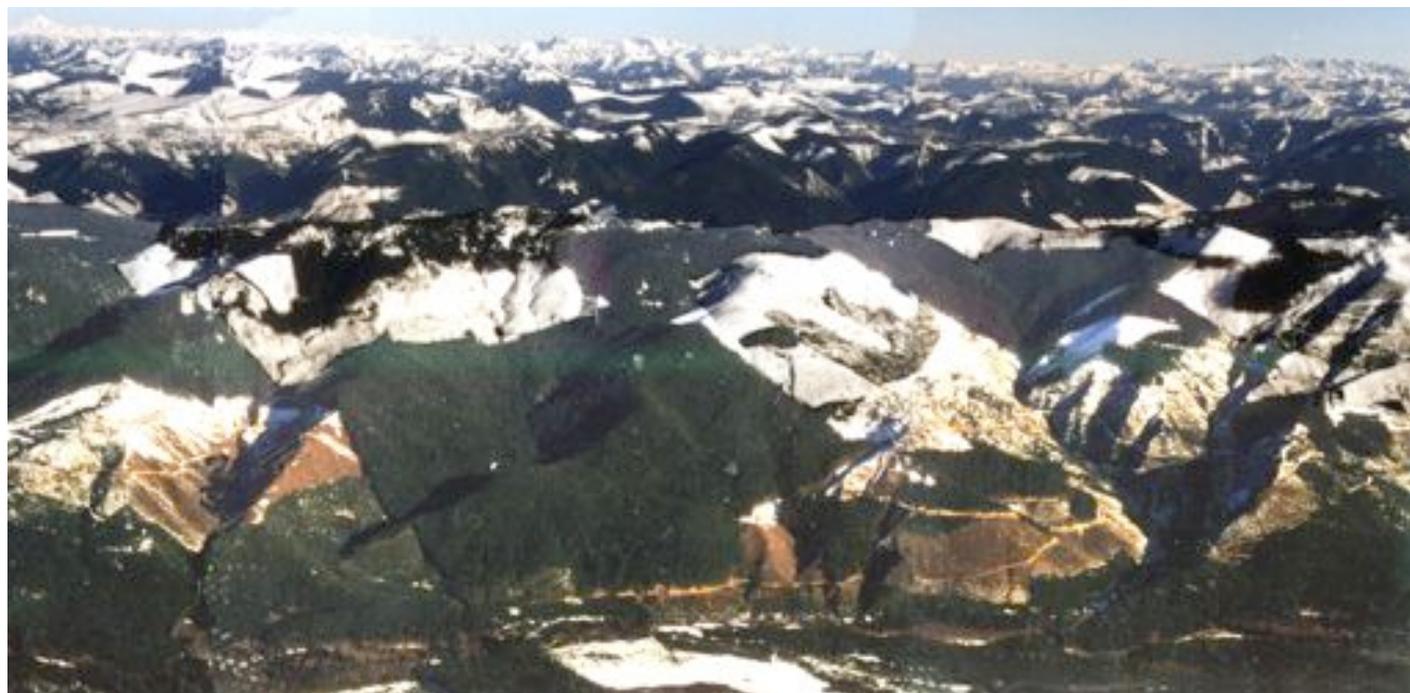
But Mr. Babbitt said, "It should be complicated. There are serious issues here."

*The New York Times*, September 30, 1996, Copyright © by The New York Times Company. Reprinted by permission

***"There are serious issues here."***

**– U.S. Interior Secretary Bruce Babbitt**

sections. The Huckleberry land exchange gave Weyerhaeuser the uncut square mile sections of National Forest. Taxpayers lost up to \$76 million on this land swap.



Western Land Exchange Project, photo archives

# Forest Service official accused of accepting gifts

## Audit links land swap supporters, gratuities

By Scott Sonner, Associated Press

RENO, Nev. — Federal agents have accused a Forest Service official of accepting free trips and other gifts from private interests who pushed through millions of dollars worth of land swaps at a national forest in Nevada.

A draft audit, excerpts of which were obtained by The Associated Press, says that government authorities have referred part of the case to the Justice Department for criminal prosecution.

In response, Forest Service Chief Mike Dombeck has suspended the local managers authority to approve land exchanges at that forest and instructed his regional officers to more closely scrutinize land exchange proposals nationwide, his spokesman Chris Wood said Friday.

The chief also plans specific corrective action in Nevada, Wood said.

“I think the report by the inspector general is indicative of larger concerns we have with the land exchange program,” Wood told the AP from agency headquarters in Washington.

The Forest Service official is not named in the draft report, according to sources who have seen the full draft. Neither are the private investors nor the third-party broker who allegedly helped provide the service official with gratuities.

Wood said he could not comment on whether the official targeted in the audit remains on the job.

Acting on a tip from a whistleblower hot line, the inspectors uncovered “a serious breakdown of controls” in the exchange program intended to benefit both private land owners and public interests through the trading of like-valued lands.

Excerpts of the draft audit obtained by the AP cite a wide range of improper dealings involving at least \$27.9 million and 7,000 acres of land swaps at the Humboldt-Toiyabe National Forest in Nevada.

“Management allowed private parties . . . to exert undue influence over the direction and outcome of almost all large-value land exchanges in the forest,” said an excerpt of the draft audit, written by the Agriculture Department’s Office of Inspector General.

“We identified the improper conduct of one management employee who received gifts, gratuities and entertainment from private parties doing business with the Forest Service,” the draft said.

The gifts ranged from free air travel and a fishing trip to Canada to a sailing trip on San Francisco Bay and a free Christmas vacation in a condo at a ritzy resort at Squaw Valley near Lake Tahoe.

While such wining and dining of prospective business partners is commonplace in the private world, the gifts appear to violate federal ethical standards intended to guard against bribery of public officials, the inspector general’s office concluded.

The AP obtained the excerpts from the Association of Forest Service Employees for Environmental Ethics, a Eugene, Ore.-based employee watchdog group.

The group has been conducting its own investigation into public land exchanges and intends to publish some of the excerpts in an upcoming, special edition of its monthly publication, Inner Voice.

Matt Rasmussen, an Inner Voice reporter, said government sources told him the Office of Inspector General plans to launch audits of the Forest Service land exchange programs in California and the southwestern United States as well.

Such land exchanges typically involve private property owners trading a chunk of their land for federal land of similar value in a deal that — in theory — benefits both parties.

For example, a private land owner with property surrounded by national forest or national park land might trade that land for a

section of the forest along its border.

Often the exchanges involve huge timber companies, like Weyerhaeuser Co. and Boise Cascade, who want to relinquish property subject to wildlife protection controls and secure other lands they are free to log.

The deals have come under increasing attack in recent years by environmentalists who say the deals are structured to benefit private corporations.

“These land exchanges often are not in the public’s best interest,” said Andy Stahl, chief lawyer for the Association of Forest Service Employees for Environmental Ethics.

“The gifts create at least an appearance of a conflict of interest,” he said.

Dombeck first was made aware of the problems in Nevada sometime in 1997, Wood said. The chief immediately withdrew three land exchanges that were in the works at that time and none has been approved since at the Humboldt-Toiyabe National Forest, he said.

The land swaps involved various parts of the Humboldt-Toiyabe National Forest, which runs in bits and pieces across northern Nevada to near Reno, Lake Tahoe and south near Las Vegas, including the Snow Mountain and Mount Charleston areas.

The draft audit says the government may have been shorted in one particular deal because it relied on a single, uncorroborated land valuation that appears to have undervalued the Forest Service lands by nearly \$6 million.

Another series of appraisals overvalued non-federal land by \$8.9 million.

And in another case, the Forest Service traded for 1,065 acres valued at \$10.5 million that “was of little or no discernible use to the Forest Service,” the audit said.

“The Forest Service bargaining team allowed the private parties to control the bargaining process,” the draft audit said.

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***“The Forest Service bargaining team allowed the private parties to control the bargaining process.”***

**– excerpt of a draft audit, written by the Agriculture Department’s Office of Inspector General**

# Deadline is set for timberlands swap – otherwise, Plum Creek might begin logging

By Jim Simon, Seattle Times staff reporter

A proposed 100,000-acre swap of Cascades forest land between Plum Creek Timber and the U.S. Forest Service may hinge on two acts of persuasion by the timber company: selling environmental groups on the benefits of the proposal and getting Congress to restrict the ability of those groups to challenge the deal.

As outlined yesterday in an environmental-impact statement, the company would receive about 40,000 acres of federal timberland in exchange for 60,000 acres of Plum Creek's high-country real estate in Western Washington.

The public would get land that wilderness enthusiasts have pined over for years: thousands of acres of old-growth trees, 14 miles along the Pacific Crest Trail and some of the last forests unmarred by logging roads on the boundary of the popular Alpine Lakes Wilderness.

But Plum Creek officials delivered the proposal with a warning: If a deal isn't struck by the end of this year, the company will begin building roads and revving up chain saws in many sensitive areas.

"If people want to see less cutting and less logging there, then we need to get this deal done," said William Brown, a Plum Creek vice president. "We can't have a never-ending process."

As part of that process, the company is laying groundwork to seek congressional approval for the exchange. Plum Creek hopes that would force a final decision by the fall and, perhaps more importantly, insulate the lawsuits.

To win approval in Congress, it is essential to win support of prominent groups like the Sierra Club or the Wilderness Society, said Andy Wiessner, a Plum Creek consultant. The company says it won't decide whether to seek congressional approval for another month, but it began sounding out local groups on the idea last week.

So far, that audience remains skeptical.

Local leaders of the Sierra Club and the Wilderness Society say they oppose a legislated land exchange because restricting challenges removes a layer of public review.

"If going to Congress is (Plum Creek's) plan, we're going to fight it — hard," said Bob Freimark of the Wilderness Society's regional office in Seattle.

Charlie Raines, a Sierra Club leader, complained that the company is using heavy-handed tactics. Critics cite Plum Creek's insistence on logging some parcels before the company trades them to the public and its plans to log some popular wilderness spots, such as Scatter Creek, if the deal collapses.

"Plum Creek's whole approach is to hold these lands hostage. We want to acquire these lands in a natural state, not after they are cut over," Raines said. "Now they're trying to get the same people who feel threatened by their approach to sign on to legislation."

Nonetheless, critics of Plum Creek's tactics say they support an exchange for the company's land.

Many hope the deal would help to eliminate headaches created by the checkerboard land-ownership pattern of private timberland and public forest intermingled for square mile upon square mile in the central Cascades.

That ownership pattern is a legacy of the 1864 federal land grant to Northern Pacific Railroad of 40 million acres between Lake Superior and Puget Sound. Plum Creek is a corporate descendant of Northern

*The ownership pattern is a legacy of the 1864 federal land grant to Northern Pacific Railroad of 40 million acres between Lake Superior and Puget Sound. Plum Creek is a corporate descendant of Northern Pacific.*

Pacific.

The Forest Service and others believe removing the checkerboard pattern will ease management and preserve continuous swaths of habitat for grizzly bears, spotted owls, elk, salmon and other struggling species.

With the checkerboard pattern, for example, timber companies can build roads across Forest Service land to access their own properties. Plum Creek has applications to build new logging roads into 53 different areas in the Mount Baker-Snoqualmie and Wenatchee national forests. If the swap goes through, Plum Creek's Brown said that number will shrink to eight areas.

Brown says corporate economics requires completing the proposed land exchange this year. The lands to be exchanged contain 20 percent of the company's timber base in Washington state, he said, and Plum Creek will do only about a half its normal logging while the swap is pending.

"There is a huge public appetite for Plum Creek lands," Brown said. But he added, "neither the Forest Service or Plum Creek has the infinite capacity, money or resources to devote to this exchange."

Native Americans, cross-country motorcycle riders and environmental groups have raised concerns about some parcels of land that would be traded to Plum Creek, most of them in the southern part of the Mount Baker-Snoqualmie forest and in the Gifford Pinchot National Forest in Southwest Washington.

The Mountain-to-Sound Greenway committee, which is trying to protect forests along the route of Interstate 90, wants Plum Creek to give up more land that is visible from the freeway. Raines of the Sierra Club wants to block the Forest Service from giving up Kelly Butte, a 1,000-acre roadless forest near the Green River in South King County.

*Seattle Times*, April 15, 1998, Copyright 1998 Seattle Times Company

# Plan to swap Cascades land draws warning

## White House says it 'can't abide' bid to sidestep environmental laws

By Joel Connelly, P-I National Correspondent

As Congress hears testimony this week on a pending federal-private land swap in the Washington Cascades, the Clinton administration warns that it "cannot abide" any attempt to sidestep federal environmental laws.

Bills introduced in the Senate and House would set aside any environmental appeals and let the U.S. Forest Service and Plum Creek Timber Co. trade nearly 100,000 acres of land currently intermingled in a checkerboard ownership pattern.

"We are extraordinarily concerned that the proposed legislation would override environmental laws. That is something we cannot abide," said Katie McGinty, director of the White House Council on Environmental Quality.

McGinty said she has warned the chief executive officer at Plum Creek that the administration would "oppose the override of parts of very important environmental laws."

In what would be the state's largest land exchange in 50 years, the federal government would get uncut lands on the edge of the popular Alpine Lakes Wilderness in the Cle Elum and Teanaway River valleys. The Forest Service would trade away land it owns in largely cutover areas south of Snoqualmie Pass.

Plum Creek has set a Dec. 31 deadline to complete the exchange. The company says it has reduced logging while negotiations are under way, and must resolve the status of its timber holdings.

"It is critical that the exchange not be delayed, because our commitment to defer harvests expires at the end of this year," Bill Brown, vice president of Plum Creek said in testimony prepared for a Senate hearing tomorrow.

If the swap falls through, recreation groups worry that Plum Creek will log areas such as Scatter Creek, a pristine mountain valley and land near the Cooper River, a popular easy trail beside a river containing bull trout.

Under the proposed accord, Plum Creek would transfer about 60,000 acres to the Forest Service, and in return get 40,000 acres of federal land.

A bill introduced by Sen. Slade Gorton, R-Wash., would let the land exchange proceed without being subject to administration appeals and litigation under the National Environmental Policy Act.

Gorton's bill is "a starting point" and can be changed as negotiators work out details of the trade, Gorton aide Cynthia Bergman said yesterday.

The land exchange has been the subject of intense backstage discussions involving the timber company, Forest Service officials, environmental groups and aides to Gorton and Sen. Patty Murray, D-Wash.

Any legislation clearing the way for the land exchange would need bipartisan and White House support. The Senate and House have

about six working weeks left before adjournment at the end of September.

The Clinton administration backed a major land exchange in the Gallatin Range of Montana and two swaps in Colorado. It opposed a swap in Utah, which Congress enacted in 1996 to speed construction of facilities for the 2002 Winter Olympics.

The sensitivity of the Cascade exchange is suggested by testimony prepared for a House hearing today, and a second hearing tomorrow before the Senate subcommittee on forests and public land management.

The proposed swap has split the environmental movement. Traditional conservation groups back the exchange, but suggest changes in a preferred alternative worked out by the Forest Service and Plum Creek.

The Mountaineers, the Northwest's oldest and largest conservation and recreation organization, strongly backs the exchange.

"As a result of the exchange, the Forest Service will get 17,345 acres of old-growth forests, mostly in large contiguous blocks in the Cle Elum area on the east side of the Cascades, which is one of the most popular recreation areas in the entire state," it said in a statement prepared for today's hearing.

The Alpine Lakes Protection Society, in its testimony, argues that the Forest Service "has by and large done a good job" identifying lands for the exchange.

"This checkerboard ownership pattern presents serious problems to both the Forest Service in managing public lands for recreation and ecological health, and to Plum Creek in managing its private lands for timber production," said Rick McGuire, president of the society.

But the society argues that a national forest roadless area around Kelly Butte, in the Green River valley and Tacoma's watershed, should not be traded to Plum Creek.

The Sierra Club also opposes any land trade at Kelly Butte. In its testimony, the group says it could support a revised package if national forest lands traded to Plum Creek were reduced. It wants to use money from the federal Land and Water Conservation Fund to buy some of the company's holdings.

A two-year-old conservation group called the Western Land Exchange Project wants no exchange at all. It claims that Plum Creek would inordinately benefit and — by trading some cutover lands to the Forest Service — would "walk away" from environmental damage it has done.

Norm Winn, a Seattle attorney and longtime leader of The Mountaineers, takes a different tack. "There will never be as good an opportunity as there is today to reach a satisfactory exchange. The ecosystem will never be as pristine in the future as it is today," he said.

P-I reporter Joel Connelly can be reached at 206-448-8160 or joelconnelly@seattle-pi.com

*Seattle Post-Intelligencer*, July 21, 1998  
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***"We are extraordinarily concerned that the proposed legislation would override environmental laws. That is something we cannot abide."***

**—Katie McGinty, director of the White House Council on Environmental Quality**

# I-90 Proposal Exemplifies Flawed Land Exchange Policies

Statement of Janine Blaeloch, Director  
Western Land Exchange Project,

before the Subcommittee on Forests  
and Public Land Management,  
Committee

on Energy and Natural Resources  
United States Senate,  
July 22, 1998

We thank the committee for inviting us to speak on the I-90 Land Exchange. My name is Janine Blaeloch. I am Director of the Western Land Exchange Project, a non-profit organization advocating reform in federal land exchange policy. In addition to our own organization, this testimony represents the views of Tahoma, Pilchuck, and Black Hills Audubon Societies, and the Pacific Crest Biodiversity Project.

The I-90 project is part of a larger phenomenon occurring throughout the West. Each year, more than 300 land exchanges take place between the federal government and private parties.

*I-90 Land Swap. Plum Creek Timber Company "exchange parcel" looking across Cle Elum river to another Plum Creek "exchange parcel". June 12, 1998.*



Pacific Crest Biodiversity Project



Janine Blaeloch, Director, Western Land Exchange Project

The law requires that land exchanges serve the public interest, but many are of questionable benefit to us and in fact are proposed, designed, and driven by the private parties involved. The I-90 Land Exchange is no exception.

Citizens have spent a great deal of time and effort participating in the administrative process for the I-90 Land Exchange, in good faith that our rights to participate would be respected by Plum Creek and the government.

Yet only two days after the release of the draft EIS, Plum Creek announced its intention to pursue legislation in order to avoid possible appeals or litigation.

This bill would truncate the NEPA process by cutting off public review, prohibiting appeal, and turning the proposal into a *fait accompli*. We strongly oppose this action, as do 24 other organizations listed in an attachment to this testimony. Barring the citizen right to appeal is counter to democratic decision making. The only interest served by this legislation is that of Plum Creek Timber Company.

A full NEPA process is particularly important in land exchange proposals, because they involve the relinquishment of land held in common ownership by all citizens of the United States. Indeed, citizen involvement may be the only thing that protects us from self-serving private land traders and faulty agency decision making.

The scale and number of land exchange proposals have grown significantly in recent years, and controversy has risen proportionally. The Inspectors General of both Interior and Agriculture have conducted numerous investigations into malfeasance in land swaps. USDA currently has audits pending in three Forest Service regions. Facilitating land swaps through congressional action only sweeps these problems under the carpet.

We are particularly concerned about the bad precedent of fast-tracking the I-90 Land Exchange. There are now more than 15 land swaps proposed on the railroad checkerboard lands in Washington, Idaho, and Montana, encompassing about 500,000 acres of land. Passage of this bill would send a message all across the checkerboards and indeed, to would-be land traders across the West that if

*I-90 Land Swap. Plum Creek exchange parcel (T22, R14, S7), June 12, 1998. The corporation wants Congress to legislate this massive land swap.*



Pacific Crest Biodiversity Project

*Barring the citizen right to appeal is counter to democratic decision-making. The only interest served by this legislation is that of Plum Creek Timber Company.*

*There are now more than 15 land swaps proposed on the railroad checkerboard lands in Washington, Idaho, and Montana, encompassing about 500,000 acres of land. Passage of this bill sends a message: go directly to Congress.*

*Land exchanges do not resolve problems with land management they merely move them.*

the normal exchange process is too burdensome, private parties can go directly to Congress and leave citizens in the dust.

### **I-90 Proposal Exemplifies Flawed Land Exchange Policies**

Land exchanges do not resolve problems with land management they merely move them. When federal land ownership is consolidated in one area, private ownership is consolidated elsewhere. These are the “sacrifice areas”: the Green River, where some 15,000 acres would move into private ownership; and the Gifford Pinchot National Forest, where thousands of acres of rare, low-elevation old growth would be given to Plum Creek.

This project exemplifies what is wrong with many land trades proposed in the Northwest. It trades native and old-growth forest for cut-over corporate land. It allows Plum Creek to walk away from the damage done through their destructive logging practices. It consigns a legacy of thousands of years to certain liquidation within less than a decade.

The west-side forest ecosystem is barely sustaining its native species. Trading existing intact forest for theoretical future forest is at best imprudent and at worst disastrous. These last pieces of our native ecosystem must not be treated as a commodity.

For these reasons, we oppose the I-90 Land Exchange. In light of Plum Creek’s threat to begin clearcutting its trade lands, we urge Congress to prioritize acquisition of the lands under imminent threat and purchase the remaining clearcuts, “rock and ice”, and non-timbered areas over time.

We ask the committee to reject the legislation before it. With information attached to this testimony, we ask you to consider alternative methods to resolve the problems that have led to this ill-conceived proposal.

Thank you again for allowing us to testify.

# The Huckleberry swap: culture versus clear-cuts

By John Daniels and Pete Jerry, Special to The Times

Huckleberry Mountain is an integral part of the Muckleshoot Tribe's living culture. As leaders of the Muckleshoot Tribe, we believe it's time to explain the tribe's stake in a land exchange that could destroy our cultural ties to Huckleberry Mountain.

For thousands of years, the Muckleshoot Indians and their ancestors have used Huckleberry Mountain for spiritual and cultural purposes, camping, resources gathering, trading with other Indian tribes and subsistence hunting. Huckleberry Mountain is a place where Muckleshoot tribal members continue to hunt, conduct seasonal ceremonies, rites of passage and weddings. It is also a place we gather cedar, berries, roots and medicinal plants.

Huckleberry Mountain is part of our past, our present and our future. And our access to it is protected by law through federally recognized treaties.

But for the last 15 years, the U.S. Forest Service and Weyerhaeuser have been negotiating an exchange of lands that include Huckleberry Mountain. Unfortunately, the negotiation has not included the Muckleshoot people. For the sake of future generations, we are concerned for our people and our neighbors who value Huckleberry Mountain and who stand to lose a cultural legacy in the exchange.

In response to two federal lawsuits filed against the Forest Service regarding land exchange, a spokesperson from Weyerhaeuser recently stated that, in the future "I guess we need to be a little more inclusive." But we worry for our people and wonder how we can continue sustaining losses to our living culture. Should our people have to pay for these mistakes that will impact generations to come?

What the Muckleshoot people stand to lose from this exchange is far greater than what we have to gain.

One of the areas that could be lost in the exchange is a portion of the Huckleberry Divide Trail. This trail is identified by the Forest Service as a historic property eligible for listing in the National Register of Historic Places. The trail was used by Indians visiting the Muckleshoot area from both west and east of the Cascade Mountains to trade and have cultural exchanges. The trail's destruction will be a loss to our tribe as well as other Native peoples in the region.

As long-time stewards of these threatened, pristine forests, the tribe believes the exchange will also result in significant environmental damage that has scarcely been recognized. Here are the facts.

**Quantity, not quality.** The Huckleberry Exchange trades away 4,362 acres of pristine, mature forests — with many of the tribe's sacred and cultural sites — for 30,253 acres of clear-cut land already harvested by Weyerhaeuser.

**Value of cultural sites not included.** The valuation used to negotiate the terms of this exchange includes neither the value of these cultural sites nor the costs the public will have to pay to restore the 30,253 acres of clear-cut lands.

**Irreparable damage to a rich ecosystem.** There is no certain scientific evidence that the clear-cut lands will ever be able to return to their natural state because of the devastation caused by logging roads and ecosystem damage. Fragile habitat for the tribe's medicinal plants will be lost.

**Clear-cuts destroy environment and Tribal history.** Weyerhaeuser will walk away from the exchange with 200 million board feet of harvestable timber, the Forest Service with only half as much. And Weyerhaeuser will harvest the trees of its newly acquired

land 15 times as fast as the Forest Service would have. At this rate, the 4,362 acres traded to the timber company will be clear-cut within 5-10 years, destroying all that's left of the tribe's history and heritage on Huckleberry Mountain.

Taken together, these cultural and environmental losses will cause irreparable

harm to the tribe and the surrounding community. The tribe asks that all future land exchanges offer impacted tribes a seat at the table. Never again should a "three way deal" — in this case, between the U.S. Forest Service, Weyerhaeuser and the Sierra Club — be allowed to determine the fate of the Northwest region's invaluable cultural and natural resources. Future exchanges should also include the following principles:

**Involvement of the tribes as an equal partner.** Future land exchange involving state or federal lands must, by law, involve the affected tribes as a primary, equal party — on a government-to-government basis — early in the negotiation process.

**Consideration of impacts on tribal culture.** Tribal interests and cultural property must not be sacrificed for the monetary gain of a corporate entity. They must be fully analyzed and valued in all environmental and planning reviews.

**Preservation of irreplaceable tribal culture and history.** All lands considered for trade must be surveyed with Tribal members for sacred burial and cultural sites and religious value before any discussions about exchanges can take place. Once identified, no irreplaceable cultural lands shall be transferred out of the public domain. Simply preserving and archiving cultural findings on these lands is unacceptable as the sole means of mitigation.

Our people have been at the losing end of land negotiations for thousands of years. This legacy must stop. The lands we steward, and on which we practice our spiritual and cultural ways, are integral parts of our identity. Their significance, including Huckleberry Mountain, cannot be dismissed.

John Daniels Jr. is tribal chairman of the Muckleshoot Indian Tribe. He lives on his reservation located along the White River. Pete Jerry is tribal Hunting Committee chairman.

*Seattle Times, May 23, 1997*

*Weyerhaeuser will clearcut the traded 4,362 acres within 5-10 years, destroying all that's left of the Muckleshoot Tribe's history and heritage on Huckleberry Mountain.*

# Court refuses to reverse land swap in Washington

Associated Press

SAN FRANCISCO—More than 4,000 acres of formerly public forest land in northeast Washington can remain in the hands of timber companies and other private owners despite a flawed government environmental study, says a federal appeals court.

The woodlands, scattered in 44 parcels, were traded by the U.S. Bureau of Land Management for 25,000 acres of private grassland and shrubland, considered good habitat for grouse, ducks and other wildlife.

Before approving the trade, the BLM failed to conduct a thorough study of its effect on wildlife in the forest lands or consider alternatives, a federal judge ruled earlier this year. But the judge said it was too late to undo the transfers, and his ruling was upheld Monday by the 9th U.S. Circuit Court of Appeals.

Some of the forest apparently has been clear-cut by the new owners, the court said. If so, "at this point it might be impractical to unscramble the eggs," by returning the land to the government in exchange for natural land it has accepted, the court said.

In addition, the court said, the new private owners were not parties to a suit by environmentalists against the government, and their rights would be affected if the swap was overturned.

The BLM proposed the transfer in 1996 as part of a program of exchanging isolated government lands for contiguous private lands.

The agency's assessment in September 1996 found no significant environmental impact, but did not mention objections by the Washington

Department of Fish and Wildlife. The BLM also did not indicate that a wildlife survey of the woodlands had been conducted the court said.

The Kettle Range Conservation Group and the Inland Empire Public Lands Council protested, but were turned down by the Interior Department and a federal judge. The BLM began the transfer hours after the judge's ruling in June 1997 and continued it this May, leaving only 365 of the 4,500 acres in government possession.

Later in May, U.S. District Judge Robert Whaley of Spokane ruled that the BLM had failed to analyze the environmental consequences of the exchange thoroughly enough. Whaley blocked the rest of the transfer but refused to overturn the exchanges that had already taken place.

The appeals court's 3-0 ruling upholding his decision was issued by Judges David Thompson,

Edward Leavy and Stephen Reinhardt. In a separate opinion, Reinhardt said the transfer of public land, without proper environmental analysis, for private clearcutting "is not how our legal system is supposed to work."

Assistant U.S. Attorney James R. Shively of Spokane, who represented the BLM, said it was conducting the environmental study ordered by Whaley and could seek return of some of the transferred land, depending on the results.

Multiple layers of agency and court review can usually detect flaws in environmental analyses Shively said. Though the detection failed in this case, he said, "you don't change the law to achieve perfect justice in one case."

Lawyers for the environmental groups could not be reached for comment. The case is Kettle Range Conservation Group vs. BLM, 98-35516.

*Lewiston Tribune, July 22, 1998*

*The transfer of public land, without proper environmental analysis, for private clearcutting "is not how our legal system is supposed to work."*

**— Judge Stephen Reinhardt**

## New Corporate Land Rush – Land Swaps

By Mike Peterson, Forest Watch Coordinator, The Lands Council

Want to trade some old-growth forest for overgrazed cliff faces? Our government does, and the many land swap proposals throughout the West seem to signal the beginning of a new corporate land rush. Last summer, a phone call from a concerned Bureau of Land Management (BLM) employee alerted several conservation groups to the cushy relationship between timber corporations and the agencies charged with stewardship of our public lands.

Unable to continue the clearcut-and-run style of logging on public lands, timber corporations have found a new scam to continue liquidating ancient forests — land exchanges. With the help of intermediaries, such as Clearwater Land Exchange, based in Orofino, Idaho, familiar corporations such as Boise Cascade, Plum Creek and Weyerhaeuser are gaining title to valuable old growth and critical habitat and trading them for thousands of acres of clearcut or overgrazed lands. One recent exchange saw Trillium Corporation obtain and log old-growth Alaskan yellow cedar, some trees as large as six feet across.

In northeastern Washington, the BLM plans to trade away 4,500 acres of mostly unlogged parcels, all with valuable timber. In exchange, the BLM would receive 25,000 acres, including part of an old ranch that has been grazed for decades, logged-over Boise Cascade land, and sagebrush steppe

with little commercial value — all in need of extensive restoration. An economic analysis of this trade shows that the BLM would be giving up over \$20 million in valuable timber in exchange for overgrazed scrub lands and deforested acreage worth less than \$3 million.

Supposedly, a fair appraisal system is used by the agencies, but often the timber companies and land exchange companies write the appraisals. The appraisals are only occasionally checked by the government. Valuations based on stumpage prices, rather than market prices, make the trades appear equal. The values of wildlife, clean water and recreation are not considered.

The Northeastern Assembled Land Exchange involves the exchange of 75,000 acres in Oregon. While information has been difficult to obtain from the BLM, it is known that numerous parcels containing stands of old growth are proposed for disposal. The area to be acquired is overgrazed, high-graded land along the North Fork John Day River. With the intent of restoring damaged bull trout habitat, the BLM will let the cows remain, supposedly better managed.

The Huckleberry Land Exchange in Western Washington would trade 32,000 acres of cut-over Weyerhaeuser land for 6,000 acres of valuable National Forest. The carrot is a small chunk of land near the Alpine Lakes Wilderness Area. Residents of Greenwater, living downstream from the lands Weyerhaeuser would obtain and log, are very concerned about

*The rights of Indian tribes are also at stake.*

*Often the timber companies and land-exchange companies write the appraisals.*

flooding and degraded water quality. An appeal of the Huckleberry Land Exchange has been filed by Pilchuck Audubon, Huckleberry Mountain Protection Society and the Muckleshoot Indian Tribe.

Wildlife surveys and timber stand exams on private lands are often performed by the land exchange companies. In many cases, the federal agencies do not even have legal access to the lands they hope to acquire until after the trade is completed. Impacts on many species, such as neo-tropical migrant birds that may find refuge in old-growth stands on federal land, are not even considered.

In nearly every trade, property owners with land adjacent to BLM timber parcels will not be able to participate in a competitive bidding process, as these lands will be exchanged to timber companies in a package deal. A letter obtained in a BLM Freedom of Information Act request derided the efforts of adjoining owners to keep Boise Cascade from obtaining public lands and revealed a cozy relationship between Clearwater Land Exchange and the BLM staff. Outraged residents in Washington complain that trading public land to Boise Cascade will degrade nearby water quality, lower property values and destroy remnant pockets of low elevation ponderosa pine habitat.

The rights of Indian tribes are also at stake, and public law includes language giving tribes first-buy rights on traditional territories adjacent to their lands. RS 2455 authorizes the Secretary of the Interior "... to order into market and sell at public auction ... any isolated or disconnected tract ... which, in his judgment, it would be proper to expose for sale... Provided, that for a period of not less than 30 days after the highest bid has been received, any owner or owners of contiguous land shall have preference right to buy the offered lands at such highest bid price...." In response, the BLM believes that the preferential right was taken away with the Federal Land Policy and Management Act in 1976 and that these are exchanges and not sales.

In some cases the agencies see an opportunity to obtain rare or threatened habitat. For example, the BLM believes that obtaining sage-steppe habitat in Eastern Washington is desirable for ecological concerns. However, restoration is expensive and uncertain in this era of government downsizing. Some rangelands are so damaged that they will never recover their original plant communities. Some restoration dollars have already washed downstream as willow plantings were swept away during annual high water events. The costs of rehabilitating the overgrazed and cutover lands that will be received by the BLM will be an ongoing tax burden to the American people.

Consolidation of land is another reason the BLM/Forest Service gives for land exchanges. A map of most states shows a bewildering mix of private and public lands. The northern tier states (Washington, Idaho, Montana and North Dakota) have a swath of alternating square-mile sections slicing through them. The 1864 Northern Pacific Railroad Grant gave the railroad ownership of millions of acres of forest land. Despite disputes over returning those lands, Northern Pacific Railroad, later Burlington Northern, then Plum Creek Timber Co. have sawed their way through this checkerboard, clearcutting nearly every section they controlled.

The wildlife and fisheries caught in this deadly chess game have been decimated, and the agencies are attempting to consolidate ownership. In



Frank Osslander

*Logging debris near the Columbia River, NE Washington. The federal court ruled this land swap was illegal, but the BLM and timber companies swapped titles anyway. This forest was then quickly and heavily logged.*

***Despite unresolved disputes over returning the grant lands, Northern Pacific Railroad — later Burlington Northern, then Plum Creek Timber Co. — sawed through this checkerboard, clearcutting nearly every section they controlled.***

***Returning Northern Pacific grant lands to tribal or public ownership by amending the 1864 law is a better way.***

the Huckleberry Land Exchange, Northern Pacific grant lands were sold to Weyerhaeuser, who now wants to trade some of that cut-over land back to the Forest Service. While consolidation might allow better management by

the Forest Service, Weyerhaeuser won't be logging the area for decades in any case. Returning land to tribal or public ownership through revision of the 1864 Land Grant is a better option, but one that will be complicated by the proposed trade.

The problem with this consolidation is one of perspective. The BLM is mandated by Congress to consolidate its isolated parcels to more effectively manage its lands. But, the abused land may take decades, even centuries, to heal. Restoration money is often not available, depends on tax money, or on cutting more trees to finance projects. Corporations don't acquire these lands to set aside for future generations.

This February, Plum Creek Timber Co. attempted to broker a deal to buy public land in Montana. The money would pay off part of the cash settlement for stopping the New World Mine near Yellowstone National Park. They backed off only after stiff opposition from hunters, Forest Service retirees and other conservationists. This scheme would have allowed Plum Creek to log and then give Crown Butte Mining Company the mineral rights!

The Kettle Range Conservation Group, Blue Mountain Native Forest Alliance, Oregon Natural Resources Council, Oregon Natural Desert Association and Portland Audubon Society have taken the BLM to court to stop the eastern Oregon and eastern Washington land trades. In addition, these groups, along with Pilchuck Audubon, Northwest Ecosystem Alliance and the Huckleberry Mountain Protection Society, have asked Washington Senator Patty Murray and Oregon Senator Ron Wyden to request a General Accounting Office investigation of the method in which the BLM handles its land exchanges throughout the West.

March 3, 1997

## (3) Plum Creek – Debt, No Taxes, & Wealthy Directors

# Corporate shift will open Plum Creek to all investors

By Jim Ludwick of the *Missoulian*

Plum Creek Timber Co. announced Monday that it plans to change into a real-estate investment trust, a move that would provide advantages as Plum Creek considers acquisitions.

Currently, Plum Creek is a master limited partnership. If the change in structure is approved by shareholders, Plum Creek's 2.4 million acres of timberlands and its manufacturing operations would be handled through the trust.

The conversion would not change the day-to-day operations of the business, but is designed to help Plum Creek raise money and simplify tax filings for investors, according to the company.

Shares in the trust would be publicly traded. Current shareholders of Plum Creek would get one share of the real-estate investment trust for each share of Plum Creek they already own.

The conversion would provide financial flexibility, said Jim Bellessa, senior research analyst for the investment firm D.A. Davidson & Co.

Institutional investors, such as mutual funds, typically aren't allowed to invest in limited partnerships. If Plum Creek becomes a real-estate investment trust, "it broadens the share-ownership possibilities," making the shares more liquid and helping their price, Bellessa said.

It would be easier for Plum Creek to use the shares to raise capital or pay for acquisitions.

Rick Holley, president and chief executive of Plum Creek, said in the announcement Monday that the change will help Plum Creek grow.

"As we look ahead, one of our key strategic objectives is to continue to grow the company through value-creating acquisitions," Holley said.

"We believe that the REIT structure will enhance our ability to compete for strategic acquisition opportunities by giving us greater access to both equity and debt capital. This will lower our overall cost of capital, which we believe will enhance our future cash flows and provide for increased value growth," he said.

*Missoulian* June 9, 1998

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**Railroads & Clearcuts News, No. 4**

**Public Information Network**

# Plum Creek Timber: an Empire Carved from the Public Domain

By George Draffin, Public Information Network

In 1864, the U.S. Congress created the Northern Pacific Railroad and directed it to sell public lands along its route in order to finance construction of the transcontinental railroad and telegraph system. The Northern Pacific eventually received almost forty million acres — two percent of the continental United States — running in a 100-mile wide band from the Great Lakes to Puget Sound.

Through economic and political manipulation and fraud, and with the occasional collusion of Congress and the courts, millions of acres were sold not to settlers, but to Weyerhaeuser, Anaconda Copper, and other large corporations. Millions of acres more were improperly mortgaged for the Northern Pacific's profits and operations.

One might think that would be subsidy and riches enough. Not so. A century later the mortgages were paid off, and in 1988, Burlington Northern Railroad, the Northern Pacific's corporate descendant, spun off millions of acres of gold (Meridian Minerals), coal (Great Northern Properties), oil and gas (Burlington Resources), real estate (Glacier Park), and timber (Plum Creek).

Since receiving a million and a half acres and ten billion board feet of timber, Plum Creek Timber has profited mightily while depleting the railroad grant lands in the Northwest of their ancient forests.

In the following pages we will introduce a few of the problems which communities across the Northwest are confronting:

- Plum Creek is a limited partnership corporation which pays no corporate income tax on profits exceeding \$150 million a year.
- Plum Creek has been stripping the forests on its land, and then selling off choice parcels for real estate development: a double liquidation.
- The checkerboard pattern of the land grant across the National Forests means that the U.S. is building roads for Plum Creek to cross public lands.
- Plum Creek now owns 1.6 million acres in Montana. This monopoly control of more than 90 percent of the timber industry land in the state is a further hardship on independent mills.
- Plum Creek executives have created for themselves a perverse incentive system which speeds the depletion of the timber while milking the profits to benefit a few individuals.
- Plum Creek's Habitat Conservation Plan in Snoqualmie Pass in the Washington Cascades exempts the corporation from the Endangered Species Act for the next fifty years.
- Plum Creek's public relations department, aided by academics such as Jerry Franklin and George Dennison, touts its "New Forestry" even as it liquidates its forests.

- Having cut the odd-numbered land grant sections, Plum Creek is now pressuring the public to give it a second land grant by trading away the alternating even-numbered checkerboards.
- By exporting raw logs and chips, Plum Creek exports American forests and jobs.

It is time for the public to take back Congress's Northern Pacific Railroad land grant. The forests being razed by Plum Creek lands are a good place to start.

# Plum Creek in the News

## The First Land Grant Wasn't Enough — Plum Creek Wants Another One

By Janine Blaeloch, Director, Western Land Exchange Project

Right now there are more than a dozen federal land exchanges involving a half-million acres taking place between land grant-based corporations and the federal government. This is a misguided process driven by corporate agendas, overseen by the U.S. Forest Service, and aided and abetted by environmental groups willing to negotiate with ancient forest as trading stock. It is receiving little public attention and less critical oversight. It amounts to a second land grant.

Numerous land exchanges in Washington, Idaho, and Montana involve Plum Creek Timber. Plum Creek's Senator Slade Gorton has just introduced legislation which would mandate the so-called I-90 land exchange between Plum Creek and the U.S. Forest Service. The I-90 exchange would give Plum Creek mature and old growth forest in the Green River watershed and Gifford Pinchot National Forest, and cost the public millions of dollars. Gorton's proposed legislative route would

avoid the citizen input and oversight begun in an expensive and lengthy environmental impact process.

### What you can do

- (1) Write to your Representatives and Senators and tell them to oppose Slade Gorton's bill S. 2136 and Doc Hastings' bill H.R. 4021. The only purpose of legislated land exchanges is to bypass public interest laws and regulations.
- (2) Write to the traders and tell them that the public owes Plum Creek nothing. The public should take back the railroad grant lands, and Plum Creek's assets should be used to restore what has already been damaged.

**William Brown**, Vice President, Plum Creek Timber, 999 Third Ave, # 2300, Seattle WA 98104

**Bob Williams**, Regional Forester, U.S. Forest Service, PO Box 3623, Portland OR 97208

## Plum Creek To Restructure

By George Draffin, Public Information Network

Plum Creek has announced that it is seeking its shareholders' approval to restructure from a publicly traded master limited partnership to a publicly traded real estate investment trust (REIT). The REIT structure may make the company more attractive to a broader base of investors, including institutional investors and mutual funds. This will give Plum Creek access to more equity and debt capital, so that it can continue to fund more acquisitions (such as the 1996 purchase of a half million acres in Arkansas and Louisiana).

Currently, Plum Creek's structure gives a few executives (SPO Partners, the "General Partner") two percent of all cash distributions, plus incentive distributions as high as 35 percent when certain profit

targets are achieved (see article below for the perverse incentives and big profits this sets up). Under the new REIT structure, the General Partner would get a flat 27 percent interest in Plum Creek. In the long run, this will perhaps be more attractive to the executives as depletion makes high cutting rates more difficult to achieve.

While news reports termed the restructuring as a "buyout" of the General Partner, Plum Creek's SEC filing shows that under the REIT, in addition to increasing its share of the stock, the General Partner would have the right to nominate a majority of the directors. The General Partner now controls three of eight board seats.

Plum Creek's conversion to an REIT is expected to be completed by year's end. Additional documents will be filed with the U.S. SEC ([www.sec.gov/edharhp.htm](http://www.sec.gov/edharhp.htm)).

## Double Liquidation Threatens Montana Environment, Communities

Plum Creek Timber Company profits have flowed most generously from its 1.5 million acres of railroad grant land in western Montana, the result of a resource liquidation policy that has just entered its second, and perhaps most destructive stage.

In the early 1980s, Plum Creek aggressively began to clearcut vast tracks of virgin timber across western Montana. After more than a decade of unsustainable logging, the company is close to running out of big trees (although the company's self-ballyhooed "environmental forestry" continues to target the biggest, most valuable trees through highgrade logging that other foresters derisively refer to as "take the best and leave the junk").

There is little doubt within Montana forestry circles that Plum Creek will eventually have to begin closing some of its eight timber mills in the

state. To maintain high profits, the company has begun selling its mostly cutover lands, beginning with the 164,000-acre Gallatin land sale in 1992.

The biggest environmental and social threat posed by Plum Creek, however, is probably not the sale of timberlands to other companies. More worrisome is the 150,000 acres of valley-bottom lands in northwestern Montana that Plum Creek has pegged for real estate development as rural subdivisions and ranchettes.

Fearful of the adverse impacts on fish and wildlife if Plum Creek chops up these lands, the state of Montana has begun negotiations to pay Plum Creek millions of taxpayer dollars to continue logging these old railroad grant lands in perpetuity. And the gravy train rolls on ... kaching, kaching.

# Plum Creek Timber Company, L.P.: Leader in Environmental Forestry or Public Relations? Profit Structure Rewards Management for Poor Stewardship

By Bob Kummer, Seattle-based financial analyst

The impact of Plum Creek's timber management is visible in square-mile clearcuts across the Cascade and Rocky Mountains. Although many timber corporations have poor environmental track records, Plum Creek has earned a place among the very worst at land stewardship. To offset the public criticism that has dogged it (and its earlier incarnations) for decades, Plum Creek has engaged in a slick public relations campaign. While they have styled themselves as "leaders in environmental forestry," others continue to call them the "Darth Vader" of the timber industry.

Why does Plum Creek have such a bad record? One contributing factor may be the perverse incentives built into the way Plum Creek is organized as a corporation. Plum Creek's unusual financial structure and management incentives drive its unwise and unsustainable forest practices — to the long-term detriment of its shareholders and the public.

Most large businesses are established as public corporations which are owned by the people (or other corporations) who hold their "common stock." A corporation's stockholders elect a board of directors who are responsible for hiring and overseeing the management that runs the business. Both the board and the management are accountable to the shareholders; their primary responsibility is to maximize the profitability of the business while conforming to legal, ethical and public policy standards. Incorporation offers several benefits to shareholders. Most importantly, it protects the shareholder from the debts and other obligations of the corporation. In other words, a shareholder can never lose more than the cost of his stock. In exchange for these benefits, corporations have many responsibilities under the law, including (for most) payment of income taxes.

Nearly ten years ago, Plum Creek's owners chose to reorganize as a "master limited partnership" in order to take advantage of a perverse IRS rule which exempts from corporate income taxes any limited partnership deriving 90% of its revenues from natural resource extraction. According to its annual reports, Plum Creek's effective tax rate is less than 1% (compared to the corporate average of 34%). Plum Creek sells limited partnership units (rather than shares) to investors. Limited partners are entitled to limited liability much like common stockholders, but the similarity ends there. Limited partners have no voice in the management of the corporation. Plum Creek is controlled entirely by its General Partner, Plum Creek Management Company, L.P. — which nominally owns only 2% of the value of Plum Creek.(1)

(1) Plum Creek's General Partner is actually a privately-held investment firm called SPO Partners, which is a handful of corporations and investors, including Texas billionaire Robert Bass. SPO is represented by three Plum Creek directors: William Oberndorf, William Patterson, and John H. Scully, who hold more than \$40 million in Plum Creek stock. SPO has been Plum Creek's largest shareholder since 1990, and its General Partner since 1993 (Sources: Plum Creek's 1992 Annual Report, p. 3, and its 1997 Form 10-K/A).

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Plum Creek's executives are rewarded for managing its timber holdings like a business in liquidation. Plum Creek pays increasing bonuses to its management for higher short term profits, and, not surprisingly, that's exactly how Plum Creek's management is behaving. Plum Creek is liquidating its timber: the old growth timber is logged faster than the younger forest grows. Despite the projected faster growth rate of younger trees, this is against the long-term best interests of its limited partners. It also affects the public, through Plum Creek's extensive

road construction and clearcutting, much of it intermingled with National Forest lands. In addition to dramatic impacts on fish and wildlife, Plum Creek's overcutting has curtailed planned logging on intermingled National Forest lands because of unacceptable damage to public forest watersheds and wildlife habitat. This reduces timber supplies to small mills dependent on public timber supplies.

Plum Creek Management Co., the "General Partner," owns 2% of the Plum Creek Manufacturing and Marketing corporations. The public "limited partners" own the other 98%. The money earned by Plum Creek is distributed each quarter in proportion to ownership — up to a limit. Any profit over the limit is distributed

disproportionately with a progressively larger fraction going to the General Partner. Past the final stage, 37% of all cash is distributed to the General Partner and only 63% to the limited partners, even though they own 98% of Plum Creek. Under this arrangement, the faster management can liquidate the assets (the trees), the more of it they can keep for themselves. Plum Creek's management has made it into the 37% range every year since 1992.

If you managed Plum Creek, how would you decide whether to cut one more tree this year or wait to cut it next year? If you cut it this year, you keep 37% of the net proceeds. If you cut it next year, you don't collect the 37% and, if profits are down, you may receive as little as 2% of the profit from that tree. So what would you do?

## Very Limited Partners

Most large business enterprises are publicly held corporations. These corporations are owned by the holders of their common stock, whether individual investors, other corporations, mutual funds, or pension plans. Publicly-held corporations are required to hold an annual meeting where common stockholders have the opportunity to ask questions of management and to vote on the election of directors to the corporation's board.

**"Harvest levels in the Cascades Region have averaged 150 million board feet over the past three years. The Partnership expects that harvest levels in this region will decline gradually for the foreseeable future as the conversion process in the region approaches completion."**

**— Plum Creek's 1997 Form 10-K**

The public owners of Plum Creek are limited partners with no voice in the direction or operation of the corporation. Plum Creek has no annual meeting. Decisions at the discretion of its General Partner, a closely held private corporation named SPO Partners, about which the public knows little.

So even though Plum Creek is “publicly owned,” it behaves much more like a highly leveraged (indebted) private corporation. As of December 31, 1997, Plum Creek carried about \$584 million of debt out of \$1,054 million total capital. The debt costs Plum Creek about \$60 million in interest per year. Since financier Charles Hurwitz’s MAXXAM took over Pacific Lumber in a leveraged buyout, Pacific Lumber is being forced to liquidate its forest holdings to pay off the interest and principal on the junk bonds Hurwitz used to buy it. Similarly, Plum Creek’s first \$60 million in profit pays its interest expenses, then about \$55 million is needed to distribute to the limited partners, before management receives 37% of everything thereafter.

**Profit and Debt Push Logging of Roadless Areas**

In 1996, Plum Creek bought more than half a million acres of pine in Louisiana and Arkansas. The cost of the acquisition is being paid off through additional debt, and with limited partnership units that act like debt, adding even more pressure to liquidate the timber already held.(2) While diversifying Plum Creek’s holdings, the Southern purchase will result in further impacts to forests and roadless areas in the Northwest as well, as the demand for short term cash drives Plum Creek to log these areas, even as they offer to trade them back to the public.

**Incentives For Management**

Despite their public relations statements, many corporations do whatever will make the most money for their management, not their shareholders. One of the basic rules of human nature is that people generally do whatever they perceive is in their own best interest. This simple rule applies to the people who manage corporations. That’s why most large corporations offer stock options to their management: to align the interests of the people who run the corporation with the interests of the people who own it, the common stockholders.

No doubt, Plum Creek shareholders have done well: “Since going public nine years ago, [Plum Creek has] increased dividends nine times and split three-for-one. A thousand units purchased in 1989 for \$20,000 would now be 3,000 units valued at more than \$95,000, and would generate \$6,600 a year in dividends. (This doesn’t include hefty dividends for each of the previous eight years.) The company’s five-year average return has been 28 percent.”(3)

But Plum Creek’s executives have done even better. Plum Creek’s management has an incentive plan tied to appreciation in value of the limited partnership units in which it earned \$1.5 million in bonuses in 1995. In the same year, management earned \$20.7 million in “incentive compensation” for short-term, unsustainable liquidation of the Plum Creek’s “natural resource assets.” Which incentive do you think mattered more to Plum Creek’s management? Whose best interests is Plum Creek’s management working for?

(2) Limited partnership interests act like participating preferred stock which is similar to debt. This limited partnership structure further leverages the return to the general partner (management) as the residual owner of the company, without showing additional debt on the company’s balance sheet.

(3) Kalispell Daily InterLake, Feb. 2, 1998.

**“Harvest levels in the Rocky Mountain Region have averaged approximately 360 million board feet (excluding the harvest from the timberlands sold in the Newport Asset Sale) over the last three years. These harvest levels are expected, on average, to remain relatively stable over the next two years. By the year 2000, the Partnership anticipates that it will have nearly completed the conversion of slower growing forests to younger, more productive stands in the Rocky Mountain Region, at which time it anticipates a moderate reduction in the region’s harvest levels.”**

*– Plum Creek’s 1997 Form 10-K*

**Salaries, bonuses, stock awards, and other compensation for the five highest-paid executives of Plum Creek Timber**

	1995	1996	1997	3 year total
Rick Holley	\$827,535	\$874,640	\$919,240	\$2,621,415
Charles Grenier	\$652,701	\$691,360	\$726,640	\$2,070,701
James Kraft	\$416,402	\$454,616	\$473,688	\$1,344,706
Diane Irvine	\$354,680	\$381,690	\$417,490	\$1,153,860
William Brown	\$296,866	\$312,900	\$344,400	\$954,166

**Plum Creek stock held by top executives**

	units held as of 2/28/98	approximate value on 6/19/98
Ian Davidson	23,620	\$661,360
George Dennison	1,636	\$45,808
Charles Grenier	209,802	\$5,874,456
Rick Holley	275,921	\$7,725,788
David Leland	102,625	\$2,873,500
William Oberndorf	784,555	\$21,967,540
William Patterson	732	\$20,496
John H. Scully	789,476	\$22,105,328
William Brown	44,142	\$1,235,976
Diane Irvine	63,465	\$1,777,020
James Kraft	112,410	\$3,147,480

George Dennison is president of the University of Montana. Oberndorf, Patterson, and Scully represent SPO Partners. Source: Plum Creek, 1997 Form 10-K/A.

**Look at the Numbers**

What can we learn about Plum Creek from looking at the numbers?

Plum Creek has been unsustainably cutting its Cascade timberlands and continues to do so. While mile-square clearcuts may no longer be the norm, Plum Creek continues to cut its forests in hundred acre units with roads punched across steep mountainsides.

On Plum Creek’s 1.6 million acres in Montana (more than 90% of the timber industry land in the state), its so-called “environmental forestry” has led to a reduction in clearcuts in favor of a more insidious and equally

## Railroads & Clearcuts News, No. 4

damaging practice: highgrade logging. In Montana's fire-adapted forests, Plum Creek's contract loggers are required to take the larger, fire-resistant larch, ponderosa pine and old-growth Douglas fir, typically leaving stunted and unmerchantable white fir. Ironically, this is the same type of highgrade logging in the past that has created the so-called forest health problems trumpeted by industry leaders in the Intermountain West. Loggers and foresters critical of Plum Creek estimate that less than 20% of their logging in Montana meets Plum Creek's own environmental showcase standards, typically lands in highly visible and easily accessible areas. Within a few years, Plum Creek has acknowledged, most of the merchantable sawtimber will have been liquidated, and logging will by necessity ease on the company's vast Montana holdings. Meanwhile, Plum Creek acquires land elsewhere, following the timber industry's historical pattern of "cut and run" — in 1996, Plum Creek used the proceeds from the sale of land in northeast Washington to purchase land in Louisiana and Arkansas.

When Plum Creek was spun off from Burlington [Northern Railroad] Resources in 1989, it reported 2.9 billion board feet of timber in its Cascades region. By the end of 1995, Plum Creek reported 2.3 billion board feet of timber, and by the end of 1997, was down to 2.0 billion board feet. At its average cut rate of 150 million board feet, Plum Creek will cut its remaining trees in 13 years. Plum Creek reports it "expects its harvest levels in the Cascade Region to decline gradually for the foreseeable future as the

## Public Information Network

conversion process in the region approaches completion." (4) That generally happens when the big trees are converted to stumps faster than new trees can grow. Similar statements are made regarding the "conversion" of its Rocky Mountain and Southern forests. Plum Creek is liquidating the big trees.

### Most Cash from Logging

Most of Plum Creek's cash flow comes from cutting trees and relatively little comes from production of value-added manufactured products. In 1997, Plum Creek's "Resources" business segment generated \$215 million of free cash, compared to only \$63 million from its "Manufacturing" segment. Over the past five years, "Resources" has generated five times more cash than "Manufacturing." Public relations to the contrary, Plum Creek is still first and foremost a tree cutting company.

(4) Plum Creek Preliminary Prospectus, Oct. 3, 1996, p.40.

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Public Information Network  
PO Box 95316 Seattle, WA 98145-2316**

## Plum Creek Summary Historical Financial and Operating Data

(dollars in millions, except for the per unit data)

Summary	1993	1994	1995	1996	1997		1993	1994	1995	1996	1997
Revenues	\$501	\$579	\$585	\$634	\$726	Margin (%)	4%	9%	10%	6%	8%
Operating Income	127	164	159	165	173	Cash Flow	4	31	32	43	63
Net Income	91	112	111	224	111	Margin(%)	1%	8%	9%	11%	13%
Interest Expense	37	47	47	50	60						
Cash from Operations	115	165	165	172	190	<b>Production</b>					
Cash Distributions	61	82	100	110	133	Lumber produced (mbf)	352	388	433	461	582
Effective tax rate (%)			0.5	0.6	0.1	Plywood produced (mbf3/8")	289	290	294	334	512
						MDF produced (mbf3/4")	106	123	102	113	127
<b>Cash Paid to</b>						<b>Northwest Timber Cut (mbf)</b>	458	559	562	577	512
General Partner	\$10	\$17	\$23	\$26	\$33						
% of Total Paid	15.5%	20.2%	23.2%	23.6%	24.8%	<b>Cascade Timberland</b>					
Units (MM)	43.1	40.6	40.6	46.3	46.3	(1000 acres)	338	335	330	330	309
Net Income/LP Unit	\$1.92	\$2.36	\$2.17	\$4.71	\$1.72	Est. Standing Volume					
Cash Distribution / Unit	\$1.38	\$1.67	\$1.96	\$2.02	\$2.20	(mbf)	2,900		2,400	2,300	2,000
						Average Cut Rate (mbf)	154	154	154	150	150
<b>Capital</b>						Average Liquidation Rate (years)					13.3
Long-term Debt	\$531	\$517	\$500	\$602	\$584	<b>Rocky Mountain Timberland</b>					
Partners' Capital	?	223	234	492	470	(1000 acres)	1,100	1,100	1,709	1,709	1,591
Total Capital	754	740	734	1,094	1,054	Est. Standing Volume (mbf)	6,700		8,100	7,000	6,600
						Average Cut Rate (mbf)					360
<b>Financial data by segment</b>						Average Liquidation Rate (years)					18.3
<b>Resources (timber)</b>						<b>Southern Timberland (1,000 acres)</b>					538
Revenues	\$226	\$324	\$327	\$369	\$411	Current Standing Volume (million cunits)					5.2
Operating Income	135	151	139	163	167	Current Cut Rate (thousand cunits/year)					799
Margin (%)	60%	47%	43%	44%	41%						
Cash Flow	158	180	166	199	215	<b>Total Timberland (1,000 acres)</b>	1,438	1,435	2,039	2,039	1,900
Margin (%)	70%	56%	51%	54%	52%	Total timber inventory (mbf)	9,600		10,500	9,300	8,600
<b>Manufacturing</b>											
Revenues	\$325	\$372	\$376	\$388	\$494						
Operating Income	12	32	36	22	40						

Sources: Compiled from Plum Creek's Annual Reports and June 1989 and October 1996 Prospectuses.

## (4) Public Policy Trainwreck – Northern Pacific Railroad Land Grant

# Public can get bad end of deal in land swaps

By Janine Blaeloch

For almost a century, federal land agencies have been empowered by the General Exchange Act and the Weeks Law to make exchanges with private landowners when such transactions would “benefit the public interest.” The government’s traditional use of the land swap has been to acquire small inholdings inside public land boundaries in order to consolidate the public’s ownership. Increasingly, though, these trades involve the exchange of thousands of acres of public land containing valuable timber and habitat, for private forest and range lands that are ecologically damaged.

With no congressional oversight and little public awareness, land swaps are happening throughout the West — on the Gallatin National Forest of Montana, the Kootenai in Idaho, on Bureau of Land Management lands in Eastern Washington and Oregon and in three national forests in our state.

In transactions where valuable public lands are exchanged for depleted private lands, the public is getting a very bad deal.

Many land swaps, like the proposed I-90 exchange with Plum Creek and the Huckleberry exchange between the Forest Service and Weyerhaeuser, are directed toward public acquisition of the private “checkerboard” lands - the alternating public/private ownership pattern that derives from the 19th-century railroad land grants.

In the latter half of that century, Congress granted the railroad corporations every other square mile of land extending from the railroad right-of-way as far as 120 miles on each side, with the intent of allowing the railroads to raise construction capital by selling this land to settlers. But the railroads illegally retained much of the land, and the result was that millions of acres remained in corporate hands. Many of the checkerboard lands were later sold to other corporations, such as Weyerhaeuser and Boise Cascade. Others were “inherited” by Plum Creek Timber, a spin-off of the Northern Pacific Railroad.

These corporate lands alternate with sections of National Forest. State laws that govern private lands permit widespread ecological damage, which affects adjacent public lands. Rampant clearcutting and roadbuilding increase erosion and landslides, deposit sediment into fish-bearing streams, increase flooding and make it difficult for the Forest Service to manage its lands on an ecosystem basis.

The government’s solution to the “checkerboard problem” is to initiate land exchanges like the I-90 exchange to consolidate its ownership of the checkerboards and to acquire important areas such as those near the Alpine Lakes Wilderness. But in doing so, the agency is also creating sacrifice areas in the lands it proposes to trade to private interests: In the I-90 exchange, it’s Kelly Butte and the north side of the Green River watershed, which is already heavily clearcut and roaded on the private checkerboards. In the Huckleberry exchange,

the remaining mature and old-growth forests of Huckleberry Mountain would be given over to Weyerhaeuser.

Consolidation of lands and the creation of habitat connectivity for wildlife are vitally needed. But does it serve the public interest to trade federal lands for private pieces of the “checkerboard,” to consign old-growth and mature forests to a future of industrial forestry? Is it right to tell companies that have systematically liquidated their forests that not only will we take on the responsibility for restoring their cutover lands — about 25,000 acres of clearcut in the Huckleberry Exchange and an as yet undisclosed amount in the I-90 deal — but that we will give them more public timber to cut?

There are alternatives to trading away parcels of an already-diminished public asset.

(1) Congress reserved the right to “add to, alter, amend or repeal” the land-grant statutes in order to protect the public interest, and still has the authority to exercise control over their management without the necessity of trading for them. By applying Forest Plan standards over public and private checkerboard lands, the forests could be managed as ecosystems and no exchanges would be necessary. While this solution would address the long-standing inequities of the land grants, Congress is unlikely to take this option before the deadline established for the I-90 exchange.

(2) A more immediately practical solution is to acquire critical lands such as those adjacent to the Alpine Lakes with money from the Land and Water Conservation Fund, created in 1964 for the specific purpose of acquiring public land. This \$900 million fund, generated through taxes on offshore oil and gas leases, has never been fully appropriated for its intended use. For fiscal 1998, the Clinton administration has asked for only \$166 million from the fund. Public pressure on Congress and the agencies could restore this fund to its proper use and reverse the current policy of putting public lands on the block.

The Forest Service will conduct public hearings on the I-90 exchange to gather input on alternatives and analyses to be included in the environmental impact statement. Early involvement in this process is essential; we must express our support of an alternative that does not surrender public land to private corporations.

We must indeed keep the remaining uncut lands in the I-90 corridor safe from clearcutting and roads, and take every opportunity to preserve habitat.

To resign ourselves to the Hobson’s choice of selecting sacrifice areas in other parts of the forest is unacceptable. We need to tell public officials that we want a non-exchange solution that enhances our lands and truly serves the public interest.

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*Seattle Post-Intelligencer* April 19, 1997

# Forestland Exchanges No Solution

By Roy Keene

A recent article in the Register Guard reported that a "land exchange appears promising". Seneca and other corporate sawmills have proposed to exchange some of their lands for some of ours. Trading logged over industry bottom lands for well-stocked federal uplands does, indeed, appear promising if you're the one anticipating getting high quality stumpage for your stumps.

The timber industry would like to be relieved of their responsibility to care for the public resources, water and wildlife (particularly salmon), that are entwined with their vast forest holdings. Their concern over the conflict between our resources and theirs is legitimate. Two thirds of the salmon and steelhead habitat are in the private forest where three quarters of the logging now occurs. Scientists tell us that if streams continue to be logged, our fish runs will be lost.

Considering that most of the streams that flow through the private forests have already been logged, the obvious solution would seem to be quit logging in and around streams in the future. Corporate industry's attitude, however, is that they have the right to continue logging streams that flow through their forest, even if it fouls our water and kills our salmon. Although this archaic concept went out of style when common law replaced feudalism, lawmakers are, unfortunately, still quicker to defend corporate property rights than they are the public's.

Giving a billion dollars worth of tax relief to private forest owners isn't enough to buy us some stream protection in Oregon. The timber industry has consequently convinced Congress to spend millions of our tax dollars on a gaggle of scientists to study their proposed trade, the Umpqua Land Exchange. The results from this kind of "science" can be predicted long before they are announced. Rest assured that the ecological values of industry's heavily logged lands will be found, by well paid researchers, to marvelously equal or exceed the value of our relatively uncut lands!

The Feds never seem to come out well on land trades with industry, partially because they undervalue our timber and overvalue the logged over lands they trade for. A recent trade included in [former Oregon Senator Mark] Hatfield's Opal Creek Bill between Rosboro Lumber Company and the Willamette National Forest to "consolidate lands" provides a classic example. We inherited a heavily cutover section of land and Rosboro got a half section of mostly stocked public forest, a far better deal for Rosboro than for us. Cutover forest acreage can be purchased cheaply in "real world" markets, since it often represents a financial liability, requiring restocking and erosion control, rather than providing the financial potential of standing timber.

The Weeks Law was created specifically to empower the Feds to outright purchase or even condemn logged over private lands to protect future watershed values. Under the Weeks Law, millions of acres of industrially ravished forestlands in the Southern and Eastern United States were redeemed back into public

ownership. These lands, purchased cheaply, are now well stocked forests, protecting streams and water quality for wildlife and human populations that have burgeoned over the decades. Why not purchase logged over private forestlands rather than trade for "less sensitive" well-timbered public land?

As the Umpqua Land Exchange project director noted, exchanges take "a willing seller and a willing buyer". Would industry be willing to sell their logged over lands at fair market value when they can make more money with a Congressionally funded, "scientifically" justified trade for public timber?

An initiative to reform logging practices that includes reducing streamside logging is now gathering signatures and could produce additional incentive. If this worthy initiative passes, corporate forest owners will be forced to pay more respect to public resources. They might find it cheaper to sell their bottom lands rather than have to leave some trees in the future.

The Umpqua Land Exchange is on a well-greased fast track. For this exchange to hold any promise for the public, it needs to be slowed down and weighed against other alternatives such as federal purchase of private bottom lands at market value.

The fairest and cheapest way, however, for the public to protect their property rights will be at the ballot box. To secure the promise of clean drinking water and healthy salmon runs for your children, resist dubious land exchanges and vote for logging practice reforms.

Roy Keene is a consulting forester who works on public forestry issues. His e-mail address is rkeene@teleport.com

*Eugene Register-Guard Oct. 30, 1997*

***I-90 Land Swap.*** Clearcut in central Cascades. Plum Creek Timber Company (T22,R14, S17, July 1998). This is the company's "trading stock" for National Forest lands. Plum Creek wants Congress to legislate the land swap.



Pacific Crest Biodiversity Project

# The answers to today's problems might lie in the past — if only we would take a look

By Mark Trahant, *Times* staff columnist

Some say history doesn't matter. They look at the problems of today and ask why can't we turn the page, look forward — and read on. Intense focus on the future is, of course, an American notion. Our national pride calls to the future. As a people, we have license to dismiss blunders and charge on into the 21st century.

Then again, here in the West, it is dangerous to ignore history. We are history, governed by 19th century laws and traditions.

Mining on public lands is just one example. Sen. Dale Bumpers, D-Ark., a longtime advocate of reforming the 1872 Hardrock Mining Law called it “the most unjustified taxpayer giveaway in the history of the republic.” He said too many mining companies lease public land and pay nothing for gold, silver, copper, platinum and palladium. Bumpers proposes a radical royalty of 5 percent. That money would go to a fund to reclaim land already damaged by mining.

But changes in mining law have less chance in Congress than campaign-finance reform. Too many key members of Congress, including Alaska's Sen. Frank Murkowski the Republican chairman of the Natural Resource Committee, are not inclined to upset history. They see the mining law as rewarding free enterprise and risk-taking — even if the activity occurs on public land.

The most interesting thing to me about mining on public land is this is only enterprise where the federal government actually makes money. “From 1994 to 1996, mineral production earned more than \$6 for every \$1 spent on mineral management,” writes Holly Lippke Fretwell in her report, “Public Lands — The Price We Pay.” The study was published by the Bozeman-based Political Economy Research Center, a think tank advocating private property rights as the solution to improving the environment.

It might sound like good news — the feds making money and all. Until you read the next sentence in Fretwell's report: “While these appear to be substantial earnings compared to timber and grazing, they are a fraction of what the states earn

from minerals . . . the average return from mineral production in nine states was \$35 per dollar of expenditure.”

There is no question our system is expensive. But even worse, the way we manage public lands undermines the belief in We the People. The federal government is viewed with suspicion because there is no one to blame for this mess. We cannot change the 1872 mining law without some sort of political consensus, but that's pretty hard when too many of us won't peer into that rearview mirror.

The West has more bureaucracy than the Kremlin ever did. The Bureau of Land Management and Forest Service have essentially the same mission in different places. Hundreds of federal, state, tribal, water-basin and county agencies constantly negotiate authority, responsibility and user fees or taxes. While most of the West's bureaucrats are our neighbors trying to do their jobs, they work with rules wallpapered over by history. An 1872 law is layered by a hundred-plus years of departmental regulations.

Demographers tell us that people move west because of the quality of life. The open spaces, the geography, are reasons to come. But what can be done to create a cogent vision to keep — and enhance — this natural beauty?

“We need to develop an ethic of place,” writes Colorado law professor Charles Wilkinson in his book, “The Eagle Bird: Mapping a New West.”

“It is premised on a sense of place, the recognition that our species thrives

on the subtle, intangible, but soul-deep mix of landscape, smells, sounds, history, neighbors and friends that constitute a place, a homeland. An ethic of place respects equally the people of a region and the land, animals, vegetation, water, and air.”

The future begins in our past. We see the landscape Wilkinson sees, smell the smells, appreciate or resent the neighbors — and too often don't pause to change the history.

Mark N. Trahant's phone message number is 206-464-8517. His e-mail address is mtrahant@seattletimes.com

*Here in the West, it is dangerous to ignore history. We are history, governed by 19th century laws and traditions.*

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*The future begins in our past. We see the landscape Wilkinson sees, smell the smells, appreciate or resent the neighbors — and too often don't pause to change the history.*

*Seattle Times* August 16, 1998

# Land Grants And Land Exchanges: When Will The Subsidies End?

By Rachael Paschal, President, Western Land Exchange Project

The devastation of our public lands through grazing, mining and logging is a continuing saga of public subsidies for private gain. The West's resource-extraction industries have filled themselves at the public trough, consuming the profit and leaving us a mess. The plight of forests in Montana, Idaho and Washington is a case in point. In 1864 and 1870, Congress granted 40 million acres to the Northern Pacific Railroad Corporation in exchange for construction and operation of a 2,000-mile rail line between Lake Superior and Puget Sound. The lands were granted in a "checkerboard" pattern of alternating square mile sections. Congress intended that Northern Pacific sell these lands for agricultural settlement in parcels no larger than 160 acres.

It soon became apparent that the forested mountains of the Northwest were not suitable for farming but were incredibly rich in timber, and the Northern Pacific began what historians call the Great Barbecue — the wheeling, dealing, and exploitation of the checkerboard forests. Congress and federal agencies failed in repeated attempts to undo the land grants before the land grants undid the land. Instead, timber corporations fattened on railroad largesse, and the size and wealth of Weyerhaeuser, Potlatch, Boise Cascade, and Plum Creek and other corporations is a direct result of the illegal transfer of Northern Pacific lands and timber. These forests still await rescue.

Congress can still reclaim these lands, but instead allows the Forest Service and Bureau of Land Management to reward timber corporations by bartering federal forests for cut-over land-grant lands. The result of many land swaps is that in return for some of America's last few acres of old growth and native forest, the public receives square mile clear-cuts, substandard roads, and choked streams. Land exchanges are the newest tool by which resource-hungry

corporations can manipulate federal land law and convert the last scraps of public assets into private profit.

Perhaps the greatest insult in all of this is the continuation of the public subsidy even after the exchange is done. When the timber companies exchange their clearcuts back to the Feds, they walk away from any obligation to clean up the lands and waters they have ravaged. In August, Seattle newspapers touted the work of teenagers who volunteered their summer to help obliterate the "Zorro cut" — a highly visible, slide-prone logging road left behind by Weyerhaeuser and Champion International on land acquired by the public via a state agency land exchange. How has it come to be that teenagers are cleaning up the damage done by multinational corporations? These youths are absolutely to be commended for their dedication and work, but that Weyerhaeuser's irresponsible behavior would be turned into a "win-win" story has implications that reach far beyond that damaged hillside.

It is time to question some assumptions. Why are federal and state agencies, charged with protection of the public interest, even contemplating the exchange of native forest to companies which openly admit their intent to engage in the same cut-and-run strategy they've employed all along? Why do we assume that timber companies are not responsible for decommissioning the thousands of miles of now-defunct logging roads they've left behind? Why are logging roads, which cost \$12,000 per mile to obliterate, in fact valued as assets in an exchange?

It is the goal of the Western Land Exchange Project to place these questions on the public agenda. Land exchanges have been around for a century, but the wholesale horsetrading of tens of thousands of acres of public lands is a new twist, and one that calls for rational policies and administrative reform. We invite you to use the resources we are developing to educate yourself and become involved in this critical issue.

***Timber corporations fattened on railroad largesse — the size and wealth of Weyerhaeuser, Potlatch, Boise Cascade, Plum Creek and other corporations is a direct result of the illegal transfer of Northern Pacific lands and timber.***

***Land exchanges are the newest tool by which resource-hungry corporations can manipulate federal land law and convert the last scraps of public assets into private profit. We invite you to become involved in this critical issue.***

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*continued from page 4*

Plum Creek officials say they have held off logging more than 80 percent of the land they want to trade away since 1996, but that they can't wait much longer. If a deal isn't complete by year's end, the company says it will log the land.

"It's an unacceptable burden for the company to continue to defer, forever, (the) harvest," William Brown, a Plum Creek vice president, said at a Capitol Hill hearing in the Resource Committee's forests and forest health subcommittee.

The Senate Energy and Natural Resources Committee's forests and public land management committee also held a hearing on the swap this week.

The Montana delegation has introduced a bill that would end four years of false starts on a land exchange in that state.

The bill would give the public 55,000 acres of Big Sky Lumber Co. land, while the Bozeman-based company would get 31,000 acres of federal land, 20 million board feet of Gallatin National Forest timber and up to \$6.5 million.

But the Clinton administration opposes legislation that would supersede the Forest Service's normal process for negotiating land deals. Environmentalists also object, saying it would cut off their ability to help shape the trades.

"This is a citizen democracy," said Charles Raines, director of the Cascade Checkerboard Project for the Sierra Club.

"The citizens have a right to challenge their government."

*Lewiston Tribune* July 27, 1998

# Principles For Land Exchanges

**These principles are intended to provide a framework for citizens to evaluate whether land exchange proposals serve the public interest as required by law and regulation.**

1. Land exchanges shall not violate the public interest. The public interest includes, but is not limited to, preservation of water quality and water supply; the health and abundance of fish and wildlife; biological integrity of ecosystems; preservation of late-successional and old-growth forests; preservation of roadless areas and critical habitat, and public safety.
2. No late-successional or old-growth forest shall be transferred from the public domain.
3. No land comprising critical habitat shall be transferred from the public domain.
4. No roadless areas shall be transferred from the public domain.
5. Land exchanges shall not create or perpetuate a split estate; acquisitions by public agencies shall include all surface and sub-surface rights.
6. Land exchanges shall not promote the conversion of natural forest.
7. Land exchanges shall recognize the special public interest that inheres in lands derived from the railroad land grants. Where this special interest has not been extinguished, it shall operate to limit private activity on these lands. In addition, it shall limit the value of the land for land exchange purposes.
8. Land exchanges shall respect the rights and interests of Indian tribes:
  - (a) Exchanges shall never violate treaty rights.
  - (b) Tribal interests shall be fully analyzed in environmental analyses and planning documents.
  - (c) Where land exchanges affect tribal property or rights, the affected tribe must be treated as an equal party to the exchange.
  - (d) No irreplaceable cultural resources shall be transferred out of the public domain.
9. Land exchanges shall involve equal value. This requires that:
  - (a) Valuation methodology shall be fully disclosed in planning documents.
  - (b) Public costs of restoration from past damage on corporate lands exchanged to the public shall be included in the valuation.
  - (c) Public costs associated with future damage on lands exchanged to corporations shall be included in the valuation.
  - (d) Corporate subsidies in the form of tax breaks shall be included in the valuation.
10. Federal agencies shall impose federal management standards on public lands exchanged to any entity.
11. Non-exchange alternatives such as purchase or regulation shall be considered and included in the planning documents.
12. Programmatic analysis shall be conducted of the cumulative effects of multiple land exchanges on all impacted ecosystems.

**Endorsed by:** Western Land Exchange Project, Center for Environmental Law & Policy, The Lands Council, Railroads & Clearcuts Campaign, Native Forest Network-Yellowstone, Pacific Crest Biodiversity Project, Kettle Range Conservation Group, Public Information Network, Huckleberry Mountain Protection Society, Pilchuck Audubon Society, Yosemite Area Audubon Society, Mendocino Environmental Center, Ouachita Watch League, Native Forest Council, Ancient Forest Defense Fund, Wild Wilderness

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# Public Policy Trainwreck

## —Northern Pacific Railroad Land Grant



The map of the United States compares the limits in which railroads received their land grants. The 1864 Northern Pacific land grant (highlighted in black) was the largest in American history. Timber companies based on the NP land grant are now reaching for National Forests: the second Land Grant.

[map adapted from Gates, 1968]



## Join, Endorse and Support

— *The Railroad & Clearcuts Campaign*

*To right the wrongs  
from the Northern Pacific  
Railroad Land Grant.*

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