INFORMAL SESSION MINUTES
February 2, 2015 2:00 p.m. Commissioners' Office Conference Room

PRESENT: Commissioners Allen Springer, Mary Starrett and Stan Primozich.

Staff: Laura Tschabold, Chuck Vesper, Christian Boenisch, Becky Weaver and Sue Lamb.

Guests: Tony Hyde, Doug Robertson, Craig Pope and Nicole Montesano, News-Register

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* indicates item forwarded to formal agenda

Allen called the meeting to order at 2:00 p.m.

* Contracts/Grants- see agenda for details.

* Homeland Security Grant applications for 2015- Sue Lamb explained the timing process of the applications and added that every county, including all of the jurisdictions within the county, can submit up to seven projects to the state, by February 13th. She said once the applications are submitted, they are collated and given to the Grant Review Committee which consists of a diverse group from all response agencies including fire, police, emergency management, education, volunteer organizations, utilities, etc. and will then go through the applications, rate them and meet again a few weeks later. She said they get compiled into an overall list of ranking and decide to award all or partial funding. Sue said that it's different this year in that Homeland Security won't know exactly how much money there is to award so it'll be a recommendation versus an absolute award.

Mary asked if the county is competing in any way with other counties in the proposal. Sue clarified that every application is competing equally with every other application statewide. She said every project is weighed on it's own against every other application and 73 full or partial awards are awarded across the state.

Laura stated that when the Homeland Security Grant process first started, the county was the entity that selected and prioritized the county's projects and there was a specific allocation awarded to each county area, and that has changed in the last three years. Sue added that the county still facilitates the process from all of the agencies but no longer sets the priorities. She said at the end of August or the first part of September is when they give allocations to the state but the distribution time is October of 2015 through September of 2016.

* Capital Improvement- Authorize Facilities Maintenance to accept a proposal from RSS Architecture, P.C. for replacement of the courthouse and Moore Building elevators.

* Committees- see agenda for details.

* Authorize a free transit day in May for the Community Connect Event.

O&C Counties Presentation- Columbia County Commissioner and, President for the Association of Oregon Counties (AOC), Tony Hyde, gave a briefing on where the association of Oregon and California Lands (O&C) stands in regards to payments and to brought them up to speed on the issue. Doug Robertson who is the former chair of O&C and now member of AOC and Craig Pope, Polk County Commissioner, stated that the purpose for today's visit is for continued association with Yamhill County to see this through and reinstate payments. Tony added that so far, 17 counties have continued in their membership and said there is no other association like O&C and hopes that the National Association of Counties (NACo) will give them a strong voice. Craig said he will work closely with the commissioners to reach out and provide more information as requested. *[See attachment for details.]*

Following commissioner updates, the meeting adjourned at 3:07 p.m.

Lucy Flores Mendez

Secretary

Monday Feb. 2, 2015
Informal 2:00 PM

FY2015 State Homeland Security Grant Program Application Summary

Agency Name	Funding Request	Brief Project Summary
1) Yamhill County, Information Technology	$165,410.00	Requesting funds to complete phase III of a four phase replacement and enhancement plan to update the emergency communications system for Yamhill County, which also serves our regional partner, Polk County. See complete application attached.
2) City of McMinnville, CERT	$14,876.00	Requesting phase one of a two phase project to purchase one utility trailer and the equipment to stock it, which would assist in facilitating the training of 50 new members. There are currently 100 trainined volunteers in the McMinnville Area, and as revealed during a 2014 exercise, only 15 were available. They are seeking to increase the pool of responders and better serve the area in the case of an emergency.
3) City of McMinnville, on behalf of the firs districts of: Amity Carlton, Lafayette, Newberg, Sheridan, West Valley, McMinnville and Yamhill.	$9,700.00	A one phase project requesting the purchase of 8 Ham Radio and power units for Fire Departments throughout Yamhill County and 30 training manuals to be used in a training class. The class will be provided by the ARES (Amature Radio Emergency Service) volunteer group and increase the number of Ham Raido Operators. Ham Radios are the main source of communication during a loss of traditional communication systems.
4) City of Newberg	$167,550.00	Requesting to purchase 55 dual band radios for police, fire and EMS responders. Will create full interoperability between primary City of Newberg jurisdictions, allow for full realistic trainings, exercises and drill opportunities. This will limit the need to patch radio systems together by the two PSAP's within Yamhill County.
5) City of Yamhill	$54,400.00	Requesting funding for Phase II of a four phase project. Phase II includes four components: 1. hiring an outside consultant to identify the EOC/AOC's vulnerabilities and capabilities. 2. Develop "Just in time" job aids. 3. A workshop for 20 EOC staff to review aids, position specific books, information management systems flows and general training. 4. Hire a consultant to run a EOC table top for 20 people to analyze and implement the first three componenets of Phase II.
Total Funds Requested	$411,936.00	

Oregon's O&C Lands

The "O & C" lands refer to the revested Oregon and California Railroad grant lands, and the reconveyed Coos Bay Wagon Road grant lands are managed predominantly by the Bureau of Land Management, having been returned to federal ownership in 1916 and 1919. Oregon's O & C forest lands are only located in western Oregon counties that stretch from the Columbia River to northern California. Since these lands are not owned by a state, a county, or a private landowner, they cannot contribute to a state's revenue base or to any county's tax base in the usual manner. Totaling some 2.6 million acres in Oregon, these O & C lands are vital to the economic well-being of these counties.

Westward expansion of the 1800's involved major railroad construction, connecting the eastern states with the western territories. Congress subsidized this construction by issuing land grants in exchange for the building of these rail routes. Once the eastwest routes were finished, Congress asked the railroads to connect to, and build, a north-south route through Oregon.

In the 1860s, Congress granted rights to about 4 million acres of timbered land in western Oregon to the Oregon and California Railroad Company, also known as the O & C Railroad, in exchange for the construction of a railroad from Portland to the California border. As construction progressed, the O & C Railroad was granted alternating sections of land 20 miles wide on each side of the rail line.

The grant required the railroad, upon completion, to offer the grant lands for sale, to ordinary settlers, in parcels no larger than 160 acres, at a cost of no more than $2.50/acre. Congress hoped this would further facilitate settlement and development of the west, while providing a way for the railroad to get paid.

By the time construction was complete, the financially strapped O & C Railroad had been absorbed by the Southern Pacific Railroad. Different land fraud scams sprang up, including large tracts of land being sold to corporate interests, and sale prices most people could not afford. By 1902 the value of the unsold lands had increased to the point that the railroad decided they would keep the remaining lands. The Oregonian reported that more than three-quarters of O & C land sales had violated federal law. Following a two-year investigation, President Teddy Roosevelt's administration took action to recover the grant lands that remained in the hands of the Southern Pacific Railroad - well over 2 million acres. A court battle ensued, resulting in a 1915 Supreme Court ruling that the grant terms had been violated, but the railroad had been built as promised, so the railroad company should not be forced to completely forfeit the lands. Congress responded in 1916 with a solution that took back the lands, but gave the railroad the equivalent of what it would have received had it sold the original grant lands for $2.50 per acre. That meant that over 2 million acres went out of private ownership and back into federal ownership. These lands – in a mostly checkerboard pattern – are known as the O & C lands today.

Lands owned by the federal government pay no property taxes, so when the federal government took back the O & C lands, 18 affected Oregon counties lost their right to tax over 2 million acres in the state. Interim attempts to provide a long-term solution failed, until in 1937, Congress passed the O&C Act of 1937 (Title 43 § 1181a), still in use today. The Act mandated that O & C lands be dedicated to "permanent timber production" under principles of sustained yield forestry, "for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities..." The goal was to produce timber in perpetuity, with half the revenues from timber sales shared with the counties. This created what Congress intended – a steady revenue stream that helped pay for essential county services - and employed tens of thousands with family wage jobs.

The Act further stated the annual cut "shall not exceed one-half billion feet board measure" until BLM "determined and declared" its first "annual productive capacity", after which "not less than one-half billion feet board measure...shall be sold annually..." But the BLM does not declare an "annual productive capacity." Instead, the agency created a "possible productive capacity", and then has not even declared that.

The O & C lands are not National Forests; they are not managed by the U.S. Forest Service for multiple use. The Bureau of Land Management manages O & C lands, and is restricted by Congress from valuing these lands for anything other than timber production.

While the 25 percent of National Forest timber revenue sent to counties can only pay for roads and schools, O & C revenues go into a county's General Fund, and can be spent on whatever the county needs.

In some of the O & C counties more than 50 percent of the general fund budget is supplied by O & C revenue. The O & C revenues are truly an essential component of community stability in western Oregon.

During the past 20+ years timber production has been severely curtailed due to government trade and environmental programs, and environmentalists' lawsuits filed with an overriding activist judiciary. Timber revenues shared with counties dried up.

The O & C Act was never repealed, or modified to permit the BLM to value these lands for the environment or wildlife. On June 26, 2007 the U.S. Supreme Court ruled, in *National Association of Homebuilders v. Defenders of Wildlife (No. 06-340)*, "...that ESA Section 7(a)(2)'s consultation requirements apply only to discretionary federal actions. They do not apply to non-discretionary federal agency actions undertaken pursuant to specific statutory mandates." Since Congress, through the O & C Act, gave the BLM no discretion in how it can value the O & C lands it manages, the BLM has no lawful authority, according to the Supreme Court of the United States, to value those lands for any ESA-related criteria (such as spotted owl habitat).

Federal legislators, county leaders and concerned citizens are all still grappling with the challenge of what to do with the O&C lands. The ideal solution would fund essential county government, provide "permanent (sustained yield) forest production," while protecting wildlife and the environment, contribute to the economic stability of local communities and industries, and provide recreational opportunities for all. We can achieve this through local government asserting its Congressionally-mandated coordinated planning authority with the Bureau of Land Management and other federal agencies. Public awareness of the economic contribution these lands have made to our counties and communities, and adherence to Congress' intent and mandates for management of these lands, are both critical to making wise choices for the future.

(43 U.S.C. § 1181f),

FIVE FEDERAL OR STATE LANDOWNERSHIP PAYMENT PROGRAMS IMPORTANT TO OREGON

Secure Rural Schools & Community Self-Determination Act of 2000 [SRS] (PL 106-393) [federal FY 2001-2006; *extended* (reauthorized) 2007]; as *reauthorized* (extended) by PL 110-343 (2008); as extended by PL 112-141.

- Enhanced payments made to counties under the National Forest and O&C/Coos Bay Wagon Road programs (see below).
- SRS payments started with the high three-year average payments from 1986 to 1999 under the NF/O&C/CBWR programs, then were adjusted annually after FY 2000 by 50% of CPI.
- 80-85% of payments were for traditional purposes (Title I); 15-20% was allocated to projects on federal lands (Title II) or county projects under specified categories (Title III).
- Based on historic forest revenues to the national treasury, Oregon received over 50% of the payments: $254 million out of $500 million annually.
- PL 110-343 (2008) continued the program at declining levels and reduced the kinds of county projects that qualified for Title III. For federal FY 2008/CFY 08-09, payments were 90% of payments in FFY 06. For FFY 09/CFY 09-10, payments were 81% of FFY 06; and FFY 10/CFY10-11, 73%. In FFY 11/CFY 11-12, Oregon was dropped into a formula that resulted in payments at 40-50% of FFY 06.
- Historic National Forest shared receipts distribution formula to counties (1908 25% Fund) was changed to a 7 Year Rolling Average.
- Title II and Title III adjustment: A county was required to put not less than 8% in Title II projects and not more than 7% in Title III projects.
- As part of the Surface Transportation Act (PL 112-141), SRS was extended for one more year into FFY 12/CFY 12-13, with payments reduced to 95% of the previous year. Final payments are $70 million for National Forests and $40 million for O&C/CBWR.
- An extension of SRS payments to states and counties was included in the Helium Conservation Act of 2013, PL 113-40. States and counties to receive 95% of the Federal FY 2012 appropriated amount.

National Forest Payments (16 USC 500).

- Oregon has 13 National Forests covering over 14 million acres, or nearly one-quarter of the State's land mass. They are managed by the U.S. Forest Service.
- Gross revenues from forest products of a National Forest are shared with counties within that forest based on the proportionate acreages of the counties.
- By federal law, 25% of the gross revenues are paid to counties as dedicated revenues for county roads and schools (Twenty-Five Percent Fund of 1908).
- By state law, the county splits the federal payment 75% to the county road fund and 25% to the county school fund.
- Without SRS, national forest payments to Oregon county road funds based on actual harvest would have been about 10% of SRS first-year payments.

O&C Payments (43 USC 1181f).

- O&C lands are federally revested O&C Railroad grant lands, covering 2.4 million acres across 18 Oregon counties, generally in a checkerboard array with private lands. The lands are managed by the Bureau of Land Management under the O&C Act of 1937, which contains more emphasis on timber production than the laws for national forests.
- Gross revenues are shared system-wide, with 50% paid to counties under a federal formula based on the proportion of the assessed value of the lands and timber in each county in 1915. For example, when revenue is produced from O&C land in Lincoln County, the formula operates to pay 0.36% of the total county share of that revenue to Lincoln County, and 25.05% to Douglas County, 15.27% to Lane County, and 1.09% to Multnomah County.
- O&C revenues are discretionary, non-dedicated general funds to the counties.
- Coos Bay Wagon Road lands, also administered by BLM, make in-lieu tax payments to Douglas and Coos Counties (43 USC 1181f-1).
- Without SRS, O&C and CBWR payments based on actual harvest would have been about 15% of SRS first-year payments.

Federal Payments-in-Lieu-of-Taxes/PILT (31 USC 1601).

- Adopted in 1976, the PILT program is to offset costs incurred by counties for services provided to users and managers of federal lands.
- Payments are authorized nationwide and adjusted by CPI, so that in CFY 07-08 the authorized level was about $358 million. Until PL 110-343 (2008), however, payments depended on annual congressional appropriations, which were about two-thirds of the authorized level. PL 110-343 provided five years of full funding, from CFY 07-08 to 11-12 (FFY 08-12). In FFY 2012, payments nationwide were $393 million. PL 112-141 extended full funding for one year, into CFY 12-13 (FFY 2013).
- PILT revenues are shared nationwide based on a complex formula, which includes federal acreage within the county, reduces a county share by certain federal payments received by the county in the preceding fiscal year, and includes a population ceiling.
- PILT payments are discretionary, non-dedicated general funds to counties.
- In FY 2011-12, Oregon counties received $14 million, the largest shares going to large-acreage eastern Oregon counties (Malheur - $2.4 M; Harney, Lake, and Union - $1 M each; Umatilla - $935,000; Baker - $900,000; Klamath - $752,000; Deschutes - $731,000).

County Forest Trust Lands/Board of Forestry Lands/State Forests (ORS Chapter 530).

- State-owned forestlands acquired from 15 counties since 1936, but largely under the 1939 Acquisition Act and amendments. The state bargained with counties for the lands and actively promoted the program with assurances that the lands would be rehabilitated, reforested, and protected to produce harvestable forestlands. Primarily during the decades of acquisition, the state, through various Governors and the Board and Department of Forestry, characterized the state forest arrangement with counties as a trust, contract, or partnership. In reliance on the state's promises, counties consented to changes in the shared-revenue formula for fire protection and suppression and intensive management, paid back the state's costs for the rehabilitation program, and continue to make substantial investments in forest roads, bridges, and habitat improvements.

- There are 701,000 acres of this forestland with management and revenue sharing under ORS Chapter 530 and rulemaking by the Board and Department of Forestry. Nearly 75% of the acreage is in the Tillamook and Clatsop State Forests. Other large tracks are the Sun Pass and Gilchrist State Forests in Klamath County.
- Generally stated, 36.25% of gross revenues are retained by the state for administration and forest management investments. The remaining 63.75% goes to the county of origin for its discretionary use and further distribution to taxing districts of origin. In FY 2011-12, this meant a county share of $37.4 million on a harvest of some 230 million board feet. Although it varies by county, system-wide about 64% of the county share is further distributed to schools, 28% is retained by the county, and 8% is distributed to other local taxing districts.

OTHER FEDERAL PAYMENTS DIRECTLY TO COUNTIES

Wildlife Refuge payments (16 USC 715s).

- Amount and distribution: If a fee area, whichever is greater: 25% of net receipts from fees of refuge lands; 75 cents per acre; or 0.75% of fair market value excluding improvements added after federal acquisition. If a reserve area, 25% of net receipts collected in connection with and operation of the area. Counties must pass through payments "on a proportional basis" to local taxing districts of the county.
- Uses of revenue: May be used by local taxing districts for any governmental purpose.

Bankhead-Jones Farm Tenant Act revenues (7 USC 1012).

- Amount and distribution: 25% of net revenues from Bankhead-Jones submarginal lands acquired during the Depression, as compensation for loss of taxable lands.
- Uses of revenue: The county allocates these revenues for "school or road purposes, or both", in whatever manner it chooses.

OTHER FEDERAL REVENUES TO THE STATE ALLOCATED TO COUNTIES

Mineral Leasing Act revenues (30 USC 191).

- Amount and distribution: 50% of net mineral leasing revenues to the state to be used "as the legislature may direct" for planning, construction and maintenance of public facilities, and/or provision of public services. Requires that priority be given to governmental units socially or economically impacted by mineral development.

- Uses of revenues: ORS 294.055 limits use to roads or schools. The county determines the allocation.

Five Percent United States Land Sales Fund (30 USC 603).

- Amount and distribution: Applies to sales of raw materials (including timber) from public domain and certain other federal lands. Requires that 5% of "net proceeds" of the sales be distributed to the state on the same basis as its admission act provides for sales of public lands. The Oregon Admission Act (11 Stat. 383, 1859) requires that such net proceeds be spent for "public roads and internal improvements, as the legislature shall direct". BLM has determined by rule that "net proceeds" as used in this federal law permits it to deduct 20% of the gross receipts from the sales. The "five percent" formula, therefore, equals 4% of gross receipts. ORS 272.085 requires that these payments be distributed to all Oregon counties on the basis of each county's proportionate square mile area.
- Uses of revenues: ORS 272.085 dedicates these revenues to county roads and bridges.

Taylor Grazing Act revenues from BLM grazing districts (43 USC 315i).

- Amount and distribution: 12.5% of revenues from land inside BLM grazing districts to the state for benefit of counties as the legislature prescribes.
- Uses of revenues: ORS 294.070 requires that these revenues be spent for range improvements, as directed by the BLM Grazing Advisory Board for each district.

Taylor Grazing Act revenues outside of BLM grazing districts (43 USC 315i).

- Amount and distribution: 50% of grazing lease fees outside of BLM grazing districts to the state for benefit of the county of origin as the legislature prescribes.
- Uses of revenues: ORS 294.070 provides that these revenues are paid to the county general fund for discretionary purposes.

Taylor Grazing Act revenues from Ceded Indian Lands (43 USC 315j).

- Amount and distribution: One-third of grazing revenues from certain ceded Indian lands to the state to be allocated as the legislature prescribes for county roads and schools. In Oregon, the lands subject to this provision are located within three Indian Treaty areas in northeastern Oregon.
- Uses of revenues: ORS 294.070 leaves it to the county to determine the allocation for roads and schools.

Flood Control Act leasing revenues (33 USC 710C-3).

- Amount and distribution: 75% of leasing revenues for flood control, navigation, "and allied purposes" paid to the state to be used as the legislature prescribes for roads and schools "or for defraying any of the expense of county government".
- Uses of revenues: ORS 294.065 requires that these payments be used for roads and schools.

O&C Litigation Report

December 10, 2014

Counties are faced in 2015 with action on O&C lands issues by all three branches of the federal government. The convergence in timing might well prove to be serendipitous. Decisions are expected during 2015 by the court in an appeal in a case filed in 2010, and by the lower court in case filed early in 2014. Those decisions could have profound effects on the BLM planning process now underway. The planning process is scheduled to conclude late in 2015 or early in 2016, but judicial decisions might cause the agency to reconsider and delay issuance of new management plans to make changes to conform to court rulings. Decisions by the courts in 2015 are also likely to have major impacts on negotiations in Congress regarding proposed legislation that would alter the current direction of management on the O&C lands.

1. **Swanson Group et al. v. Salazar, Civil No. 10-1843-RJL (DCDC)**

In this case the timber industry plaintiffs sought to have the USF&W "owl estimation methodology" (which counts and protects virtual owls) invalidated by the District Court in the District of Columbia, and to require the BLM to offer for sale the full annual sale quantity (ASQ) that had been declared under the currently applicable BLM plans for Roseburg and Medford Districts (as is required by the O&C Act). Environmental organizations intervened on the side of the government defendants in the case in 2010.

The owl estimation methodology was intended by USF&WS to protect owls and virtual owls by controlling harvest planning by the BLM (and Forest Service). The methodology was adopted without following a rulemaking process, so plaintiffs asked that it be set aside. Plaintiffs also asked that the BLM be ordered to increase O&C timber sales in the Medford and Roseburg Districts, based on a failure to comply with the following passage in the O&C Act: *"The annual productive capacity for such lands shall be determined and declared . . . [and] timber from said lands in an amount not less that one-half billion board feet measure, or not less than the annual sustained yield capacity when the same has been determined and declared, shall be sold annually, or so much thereof as can be sold at reasonable prices on a normal market."* The BLM had failed for many years to offer for sale the volume of timber its plans said it would.

Plaintiffs filed a motion for summary judgment on both key issues. The motion was granted on June 26, 2013. The owl estimation methodology was invalidated, and the BLM was ordered to offer the declared ASQ for the Medford and Roseburg districts in future years.

On August 26th, 2013, plaintiffs filed a motion to obtain additional relief under the O&C Act claim, asking the court to require the BLM to make up the shortfall in its sales on the Medford and Roseburg Districts, retroactive to 2004. The motion for expanded relief was denied, and on December 20, 2013 plaintiff's requested reconsideration. The request for reconsideration was denied on April 25, 2014.

The government defendants and the timber industry plaintiffs have both appealed to the Court of Appeals for the District of Columbia (U.S.C.A. D.C. Cir. No. 14-5114). The government wants the lower court ruling on both key issues reversed. The timber industry plaintiffs want the relief afforded them with regard to the ASQ expanded and made retroactive to 2004. Both sides have filed their appellate briefs in support of their appeals, and in opposition to the appeals filed by their opponents. Oral argument has not been scheduled in the appeals.

2. **<u>AFRC et al. v. Jewell</u>, Civil No. 11-1174-RJL (DCDC)**

The Northwest Forest Plan (NWFP) was completed in 1994 and became applicable on the O&C Lands through its adoption as part of BLM management plans. Timber industry interests including AFRC challenged the NWFP as applied to BLM managed lands, and that litigation in the District of Columbia was terminated with a settlement in 2003 that required the BLM to revise its management plans. The BLM did revise its management plans in a multi-year process that was completed in 2008. The 2008 BLM plan (the Western Oregon Plan Revision, aka the WOPR) called for sustained-yield timber harvests of 502 mmbf, as compared to the harvests of 203 mmbf per year called for by the NWFP. The sustained yield capacity of the O&C lands is about 1.2 bbf.

Soon after the WOPR went into effect as the operative BLM management plan, the new Obama administration withdrew it on the grounds that it had not been the subject of formal consultation with USF&WS. In subsequent litigation filed by AFRC, withdrawal of the WOPR was declared illegal, and WOPR was reinstated in 2011. During this period in 2011, AFRC and other industry parties commenced litigation challenging the WOPR, claiming that it violated the O&C Act. In the original complaint in this case (11-1174), AFRC et al. contended that the O&C Act does not permit the creation of reserves that exclude sustained yield timber production and instead requires harvest of the full sustained yield capacity of 1.2 bbf per year, rather than the 502 mmbf authorized by WOPR.

While litigation in this case (11-1174) was pending in the District of Columbia, environmental organizations filed a lawsuit challenging the WOPR in Oregon, arguing that the that the BLM's failure to formally consult violated the ESA. The District Court in Oregon agreed and in 2012, WOPR was vacated by court order. This effectively reinstated the NWFP for the O&C Lands.

In March, 2013, the court in this case (11-1174) entered a stay pending final disposition of the <u>Swanson</u> case (10-1843). The current status of the <u>Swanson</u> case is discussed above.

On July 30, 2013, AFRC et al. filed a request in this case (11-1174) asking that the stay be lifted, and for permission to amend its complaint. In the papers filed, AFRC acknowledged that the WOPR is no longer in effect, is not going to be revived, and therefore the WOPR claims in the complaint originally filed are moot. In the proposed amended complaint that plaintiffs ask the court for permission to file, AFRC asserts its O&C Act claims against the NWFP. AFRC anticipated a defense based on the 6-year statute of limitations, which if applicable would prevent pursuit of claims against the NWFP (which was adopted in the mid-1990s). AFRC argued that the WOPR process "reopened" the NWFP issues so that the 6-year statute of limitations began to run again on the NWFP when the WOPR was completed in late 2008.

AFRC's request to amend its complaint in this case is pending. The defendants filed their opposition, raising the statute of limitations defense, and also arguing that AFRC and some other defendants are barred from raising the O&C Act claims by the doctrine of *res judicata,* due to the decisions of Judge Dwyer in the Western District of Washington in 1996. Defendants also argue that the plaintiffs released all claims against the NWFP in their 2003 settlement. Plaintiffs have filed their reply, so the issues are fully briefed. No date has been set for oral argument. The case remains stayed and nothing has happened in this case since September 16, 2013.

3. AFRC et. al v. Jewell, Civil No. 14-00368 RJL (DCDC)

With the earlier filed case (No. 11-1174) frozen and no action being taken by the court in it for many months, AFRC and other timber industry plaintiffs decided to initiate a new case that essentially restates the same basic O&C Act claim against the NWFP that they are attempting to put before the court in the stayed case (11-1174). On March 7, 2014, plaintiffs filed their complaint challenging the NWFP in this new case on the grounds that the NWFP violates the O&C Act mandates to manage for sustained yield timber production and to sell the sustained yield capacity of timber from the O&C lands each year. It is a simple and straightforward complaint, with a single claim for relief. Nevertheless, the case is likely to be complicated by statute of limitations and *res judicata* defenses expected from the defendant.

The federal defendant filed its answer and then filed a motion requesting that the case be stayed pending the outcome in the appeals in the Swanson case, apparently hoping to put this case in the same frozen state as is No. 11-1174. On September 15, 2014, the court denied the defendant's request for a stay.

Plaintiffs' motion for summary judgment is due to be filed by January 14, 2015. Defendant's cross motion for summary judgment is due by March 18, 2015. All responsive briefing on motions and cross motions is due by May 13, 2015.

Secure Rural Schools and Community Self-Determination Act
Payments for FFY 2013 and Lack of Payments for Federal FY 2014

1. SRS Process and Payments for Federal FY 2013.

The Secure Rural Schools (SRS) program has always made payments retroactively, for the previous Federal Fiscal Year (FFY). This pattern of retroactive SRS payments follows the historic timber harvest revenue sharing model, under which payments were always made for a particular fiscal year after the close of that fiscal year.

SRS payments for FFY 2013 followed the normal practice---the payments for FFY 2013 were made during FFY 2014. The SRS program had expired with the payments for FFY 2012, but was reauthorized for one additional year (FFY 2013) in section 10 of the Helium Stewardship Act of 2013 (PL 113-40) pursuant to which SRS 2013 payments were made to schools and counties during FFY 2014.

The process of implementing the one-year SRS extension for FFY 2013 was delayed and complicated by the timing of the legislation and the various procedural steps required by the SRS program. The Helium Stewardship Act that included SRS was delayed in its enactment and not signed by the President until October 2, 2013, two days after FFY 2013 ended. This timing was in conflict with the terms of the legislation itself, since the procedural steps required in the legislation were all supposed to be completed before the end of the FFY 2013.

The legislation required eligible counties to make certain choices (elections) not later than August 1, 2013. Annual elections have been part of the SRS program since it was first enacted 15 years ago: All eligible counties were required to (1) decide whether to receive SRS payments or instead receive traditional shared harvest receipts, and (2) if choosing to receive SRS payments, decide how much of the payments to allocate to projects under Titles II and III. The legislation required an eligible county to elect to put not less than 15% nor more than 20% of the payment into Titles II and III, with a minimum of 8% in Title II and a maximum of 7% in Title III projects. Eligible counties with more than one RAC (Resource Advisory Committee) managing Title II projects within the counties' geographic boundaries had to make additional elections, dividing their Title II election amounts between multiple RACs. Each eligible county was then required to submit the elections to the Governor of the state to verify that the county elections met the requirements of the legislation. The Governors were the only authorities authorized to communicate the results of all the county elections to the Federal agencies charged with implementation of SRS. Quite obviously, none of this occurred before August 1, 2013, as required, since the legislation did not become law until October 2.

The legislation also required that all proposed Title II projects be reviewed and approved by the RACs that would implement the projects, and submitted with RAC recommendations to the Secretaries of Interior or Agriculture (or their designees) by September 30, 2013. This deadline was also not met since it was two days before the legislation was signed into law. To make matters worse, most RAC charters and RAC member appointments expired at the end of the FFY 2013.

In spite of it being impossible to comply with the statutory deadlines, the Federal agencies and the counties proceeded to implement SRS for FFY 2013 as best they could. On November 25, 2013, (54 days after the legislation was enacted) the Secretaries announced the Governors would have until midnight (Mountain Time) December 31, 2013, to submit the completed elections to the USFS-ASC, Budget & Finance, All Services Receipts (ASR) Special Acts Payments, at the Albuquerque Service Center, in New Mexico. This extended deadline was 85 days after the legislation was enacted.

All the various elections were completed and communicated to the Albuquerque Service Center by the December 31, 2013 deadline. The Service Center's review, certification, calculation of payment amounts, preparation of a warrant, review by the Budget Office for posting to the U.S. Treasury, processing of funds for transfer to receiving states and actual funds transfers took more than four additional months. The payments were scheduled by the Secretaries concerned for April 4, 2014, 186 days after the bill was signed, but they were not actually made until later. Oregon's Department of Administrative Services (DAS) received the FFY 2013 SRS funds transfer on April 10, 2014. Oregon State DAS transferred the SRS 2013 payments to National Forest receiving counties on April 15, 2014, 192 days after the SRS extension was signed into law. For O&C and CBWR receiving counties, SRS funds were transferred from the U.S. Treasury to BLM's National Operations Center, Collections & Billings, OC-621 in Denver, Colorado on April 10, 2014, and the funds were then transferred directly to the counties on April 16, 2014.

2. Proposed SRS Payments and Process for Federal FY 2014.

As of this date (January 5, 2015), there has been no SRS payment for FFY 2014. The payments that were made during FFY 2014 were for FFY 2013. Legislation should reauthorize SRS with a retroactive payment for FFY 2014 to be made as soon as possible.

Any reauthorization and payment for FFY 2014 should take into account the experiences under the SRS extension for FFY 2013 that was included in the Helium Stewardship Act: The procedural deadlines for county elections and RAC project processing must take into account that enactment will occur many months after the elections dates that have appeared in previous years' versions of SRS legislation. And, the lengthy time required for implementation and making of payments (six months or more) must be considered----even if SRS could be reauthorized by the end of January, 2015, schools and counties would not likely receive their SRS payments for FFY 2014 until July or August, 2015. Considering the financial distress of many of the receiving counties, the delay in payments for nearly two full fiscal years is a very serious problem.

SRS payments for FFY 2014 could easily be hastened in the reauthorizing legislation in either of two ways: (1) All of the time consuming steps associated with county elections and RAC actions could be eliminated by eliminating Titles II and III for FFY 2014 and putting the entire appropriation into payments made to schools and counties under Title I, or (2) county elections could be fixed in the legislation at the levels approved for FFY 2013. (In order to correct an error by a handful of counties that allocated SRS 2013 funds to Title II in areas where no RAC existed to administer them, elections could be corrected in the reauthorizing legislation by reallocating the Title II elections to Title III for those counties.)