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DAVID BROOK SMITH

EMAIL TO SAM ROBLAN

~~DRAFT~~

Rosie-

This will hopefully clarify our recent phone conversation relating to the revenues derived from Coos Bay Wagon Road (CBWR) Lands for support of local governments and the impact State of Oregon timber taxation policy plays in determining the amount of such revenues. There appears to be an opportunity to significantly increase these revenues by tightening up language to Oregon Department of Revenue's (ODR) definition of what constitutes "forestland" for purposes of property tax assessment. It will likely take legislation to do this.

in lieu of tax payments

To explain this, let's first discuss the federal government's CBWR Act of 1939. It provides that in lieu of tax payments be made to local governments as follows: "... the land and timber thereon (i.e. CBWR land and timber) shall be assessed as are other similar properties within the respective counties (i.e. Coos and Douglas) and payments hereunder in lieu of taxes shall be computed by applying the same rates of taxation as are applied to privately owned property of similar character in such counties".

In 1939, property taxes on Oregon forestland were assessed on the market value of both the land and the timber. Over the years, this has changed. Today, property taxes on qualified Oregon forestlands in holdings of over 5,000 acres are assessed on the value of only the land, based on a "specially assessed" value set by ODR. There are no taxes, either ad valorem or severance, assessed against the value of the timber.

This results in a staggering decrease in the in lieu of tax payments to local governments derived from the CBWR as illustrated below. The numbers used in the comparison below are approximated and need to be refined.

I. Calculation of Current In Lieu of Tax Payments

Specially assessed value of CBWR lands

75,000 acres @ $400/acre= $30,000,000

In Lieu of Tax Payments Based on $30,000,000 at a Tax Rate of $10/ $1,000 of land value= $300,000

II. Calculation of In Lieu of Tax Payments Assessed on Market Value of CBWR Land & Timber

Market Value of CBWR Lands

75,000 acres@ $800/acre= $60,000,000

Market Value of CBWR Timber

75,000 acres 50MBF/acre @ $400/MBF= $1,500,000,000

Total Market Value of CBWR Land and Timber

$1,560,000,000

In Lieu of Tax Payments Based on $1,560,000,000 at a Tax Rate of $10/$1,000 market value= $15,600,000

Based on the estimated numbers above, if the CBWR land and timber did not qualify for Oregon forestland tax treatment, the gain in revenue to the counties would total $15,300,000. Typically about 45% of property taxes go to support K-12 schools, so, if I understand Oregon's school equalization correctly, the State would benefit to the tune of almost $7,000,000, again based on the estimated numbers used above.

So, how can we make this happen? One way would be to change the CBWR Act. However, according to our federal legislators, this would be a heavy lift. As a result, Rep. Peter DeFazio has asked Sen. Roblan and Rep. McKeown to look for a State of Oregon fix.

One suggestion follows: in the ORS's pertaining to Oregon forestland taxation, "forestland" is defined as ".... Land in Western Oregon that is being held or used for the predominant purpose of growing and harvesting trees...." (ORS 321.257). It does not appear that the CBWR Lands meet the criteria relating to harvest, and

therefore should not be considered "similar" (see second paragraph on first page) to private lands which qualify for "forestland" tax treatment. Losing the "forestland" designation would make them subject to assessment at the market value of the land and timber.

However, there is a problem in doing this. The harvest requirements for determining whether land will or will not be taxed as "forestland" have been liberally applied to the point that, "Well, we might harvest it sometime", has come to satisfy the harvest requirement.

This abuse of the intent of timber taxation laws is most prevalent in large urban and suburban estates and hobby farms. To avoid pushback from this population, I recommend that legislation tightening harvest requirements for taxation purposes apply only to holdings of over 5,000 acres. Further, such legislation should require a sustained yield management plan and harvest on an ongoing annual minimum harvest of all the trees from some percentage, say 1-2% of the non-riparian and non-road land base. (1% equates to 100 year rotation, 2% to a 50 year rotation).

Ray Bucheger, Coos County's Washington DC lobbyist, and AOC have offered to help with legislation language, so they are copied on this email.

CBWR ACT (1939)

CBWR ACT

[CHAPTER 142]

AN ACT

To authorize a sale of the old Carson City (Nevada) Mint site and building notwithstanding the provisions of Joint Resolution Numbered 18 of February 23, 1865.

May 22, 1939
[S. 2050]
[Public, No. 83]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the old Carson City (Nevada) Mint site and building may be sold under the provisions of the Act of August 26, 1935 (49 Stat. 800; U. S. C., title 40, sec. 345b), or the Act of August 27, 1935 (49 Stat. 885; U. S. C., title 40, sec. 304a), notwithstanding Joint Resolution Numbered 18 of February 23, 1865 (13 Stat. 569), providing that said site shall be reserved from public sale and shall remain the property of the United States.

Carson City, Nev.
Sale of old Mint site and building authorized.
49 Stat. 800, 885.
40 U. S. C., Supp. IV, §§ 345b, 304a.
13 Stat. 569.

Approved, May 22, 1939.

[CHAPTER 143]

AN ACT

To authorize the Secretary of the Treasury to accept real estate devised to the United States by the late Lizzie Beck, of Mena, Arkansas, and for other purposes.

May 22, 1939
[S. 2244]
[Public, No. 84]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to accept on behalf of the United States the real estate devised to the United States by the late Lizzie Beck, of Mena, Arkansas, and to deal with the same in the manner provided by the Act of August 27, 1935 (49 Stat. 885; U. S. C., title 40, sec. 304a), or the Act of August 26, 1935 (49 Stat. 800; U. S. C., title 40, sec. 345b).

Lizzie Beck.
Acceptance of real estate devised by.
49 Stat. 885, 800.
40 U. S. C., Supp. IV, §§ 304a, 345b.

Approved, May 22, 1939.

[CHAPTER 144]

AN ACT

Relating to the disposition of funds derived from the Coos Bay Wagon Road grant lands.

May 24, 1939
[S. 242]
[Public, No. 85]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That beginning with the fiscal year next following the date of the passage of this Act, not to exceed 75 per centum of the receipts derived in any one year from the Coos Bay Wagon Road grant lands in Oregon and deposited in the special fund in the Treasury created by the Act of February 26, 1919 (40 Stat. 1179), and designated "The Coos Bay Wagon Road grant fund" shall be paid annually, in lieu of taxes, by the Secretary of the Treasury, upon certification by the Secretary of the Interior, to the treasurers of Coos and Douglas Counties according to the ratio that the total assessed valuation of the reconveyed Coos Bay Wagon Road grant lands, belonging to the United States, in each of said counties bears to the total assessed valuation of all said lands in those counties, to be used for the purposes mentioned in said Act: *Provided*, That until such time as the general fund of the Treasury of the United States shall have been fully reimbursed by Douglas County for expenditures which were made charges against the Coos Bay Wagon Road grant fund by section 5 of the Act of February 26, 1919, said Douglas County shall be entitled to receive only 50 per centum of the amount to which it would otherwise be

Coos Bay Wagon Road grant lands, Oreg.
Annual payments to Coos and Douglas Counties from special fund.
40 Stat. 1179.
In lieu of taxes.
Ratio.
Proviso.
Reduction in amount to Douglas County.
40 Stat. 1180.

Appraisal of land and timber by committee prior to payment.

entitled under this Act: *Provided further*, That prior to making any payment under this authorization an appraisal of the land and timber thereon shall be made, within six months after the passage of this Act, by a committee to consist of a representative of the Secretary of the Interior, one representative for the two counties interested, and a third person satisfactory to the Secretary of the Interior and the county officials, but who shall not be an employee of the United States nor a resident of, nor a property owner in, either Coos or Douglas County. Upon appraisal thereof, the land and timber thereon shall be assessed as are other similar properties within the respective counties, and payments hereunder in lieu of taxes shall be computed by applying the same rates of taxation as are applied to privately owned property of similar character in such counties.

Assessment and payments.

Manner and frequency of appraisals; computation of amounts due.

SEC. 2. Appraisals of the land and timber thereon shall be made, in the manner prescribed in section 1 hereof, not less frequently than once in each ten-year period, and the amounts due hereunder in any year shall be computed as specified in section 1 of this Act upon the basis of the last appraisement. The expenses of making the appraisements provided for in this Act shall be paid by the Secretary of the Treasury upon certification by the Secretary of the Interior, from that portion of the receipts derived from such lands and timber payable to the counties and shall be deducted from any amount due said counties.

Payment of expenses.

Receipts insufficient to meet payments due; additional sum from surplus.

SEC. 3. If, during any one year, 75 per centum of the receipts are insufficient fully to meet the payments due the counties hereunder, the Secretary of the Treasury, upon certification by the Secretary of the Interior, may pay an additional sum from any surplus of 75 per centum of prior year receipts: *Provided, however*, That in no event shall the aggregate of payments during any ten-year period commencing with the period beginning July 1, 1940, exceed 75 per centum of the receipts deposited in the Treasury to the credit of the Coos Bay Wagon Road grant fund for such period: *Provided further*, That at the end of each ten-year period, any balance of the 75 per centum not required for payments to the counties shall be covered into the general fund of the Treasury of the United States.

Provisos.
Maximum aggregate of payments.

Excess covered in.

Amount available for administration of designated legislation.
50 Stat. 874.

SEC. 4. Not to exceed 25 per centum of the annual receipts shall be available, in such amounts as the Congress shall from time to time appropriate for the administration of the Act of August 28, 1937 (50 Stat. 874), insofar as it applies to the Coos Bay Wagon Road grant lands. Any balance not used for administrative purposes shall be covered into the general fund of the Treasury of the United States.

Balance covered in.

Inconsistent Acts, etc., repealed.

SEC. 5. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Approved, May 24, 1939.

[CHAPTER 145]

May 24, 1939
[S. 542]
[Public, No. 86]

AN ACT

To further extend the times for commencing and completing the construction of a bridge across the Missouri River at or near Garrison, North Dakota.

Missouri River.
Time extended for bridging, at Garrison, N. Dak.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the times for commencing and completing the construction of a bridge across the Missouri River, at or near Garrison, North Dakota, authorized to be built by the State of North Dakota, by the Act of Congress approved February 10, 1932, and heretofore extended by Acts of Congress approved February 14, 1933, June 12, 1934, May 24, 1935, June 5,

47 Stat. 43, 804; 48 Stat. 946; 49 Stat. 288, 1476; 52 Stat. 764.

ORS PERTAINING TO FORESTLAND TAXATION

2013 ORS § 321.257[1]
Definitions for ORS 321.257 to 321.390

As used in ORS 321.257 (Definitions for ORS 321.257 to 321.390) to 321.390 (Land used to grow certain hardwood to be assessed as farm use land), unless the context requires otherwise:

(1) Department means the Department of Revenue.

(2) Forestland means land in western Oregon that is being held or used for the predominant purpose of growing and harvesting trees of a marketable species and has been designated as forestland or land in western Oregon, the highest and best use of which is the growing and harvesting of such trees. Trees of a marketable species may vary in different areas in western Oregon and may change as the utilization of forest trees changes. The size, age, location, quality and condition of trees do not necessarily determine marketable species. Forestland often contains isolated openings which because of rock outcrops, river wash, swamps, chemical conditions of the soil, brush and other like conditions prevent adequate stocking of such openings for the production of trees of a marketable species. If the openings in their natural state are necessary to hold the surrounding forestland in forest use through sound management practices, the openings are deemed forestland. Forestland does not include buildings, structures, machinery, equipment or fixtures erected upon, under or above the soil. Forestland includes roads described in ORS 308.236 (Land values to reflect presence of roads).

(3) Land class or land classes means one of the eight classifications of forestland, used for assessment purposes by the department, based upon State Tax Commission Valuation Division Supplements published in 1967, and identified in ORS 321.210 (Proposed specially assessed values).

(4) State Forester means the State Forester or the authorized representative of the State Forester.

(5) Sustained yield management means the growing and harvesting of timber crops on a continuous basis on land that is primarily dedicated to timber production.

(6) Taxing district or district means each county, city, school district and other corporation vested with the power to levy property taxes in western Oregon.

(7) Timber means all logs which can be measured in board feet and other forest products as determined by department rule.

(8) Western Oregon means that portion of the state lying west of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, thence southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon. [1977 c.892 §1; 1983 c.539 §2; 1985 c.759 §18; 1989 c.1083 §1; 1993 c.653 §6; 1993 c.801 §1; 1999 c.1078 §12; 2003 c.621 §1]

• • •

Notes of Decisions

Land for which highest and best use is growing of trees does not qualify as forestland absent application for designation as forestland. Marchel v. Dept. of Revenue, 9 OTR 317 (1983)

In determining whether isolated opening is forestland, consideration is given to effect of opening on forestland, but not effect of forestland on opening. Dept. of Revenue v. Rankin, 17 OTR 124 (2003)

Chapter 321

Notes of Decisions

Programs administered by Department of Revenue that allow preferential assessment for farm and forestland are not programs affecting land use and are not subject to requirement of statewide goal and local comprehensive plan compliance under ORS 197.180 (State agency planning responsibilities). Springer v. LCDC, 111 Or App 262, 826 P2d 54 (1992), Sup Ct review denied

Atty. Gen. Opinions

Validity of ad valorem and severance taxation of logs destined for export, (1975) Vol 37, p 427

Law Review Citations

NEWSPAPER ARTICLE PERTAINING TO ABUSE OF FORESTLAND TAXATION

You Call This a Farm?

Urban farmers and foresters are benefiting from a gaping property tax loophole.

By NIGEL JAQUISS

Updated March 10, 2015

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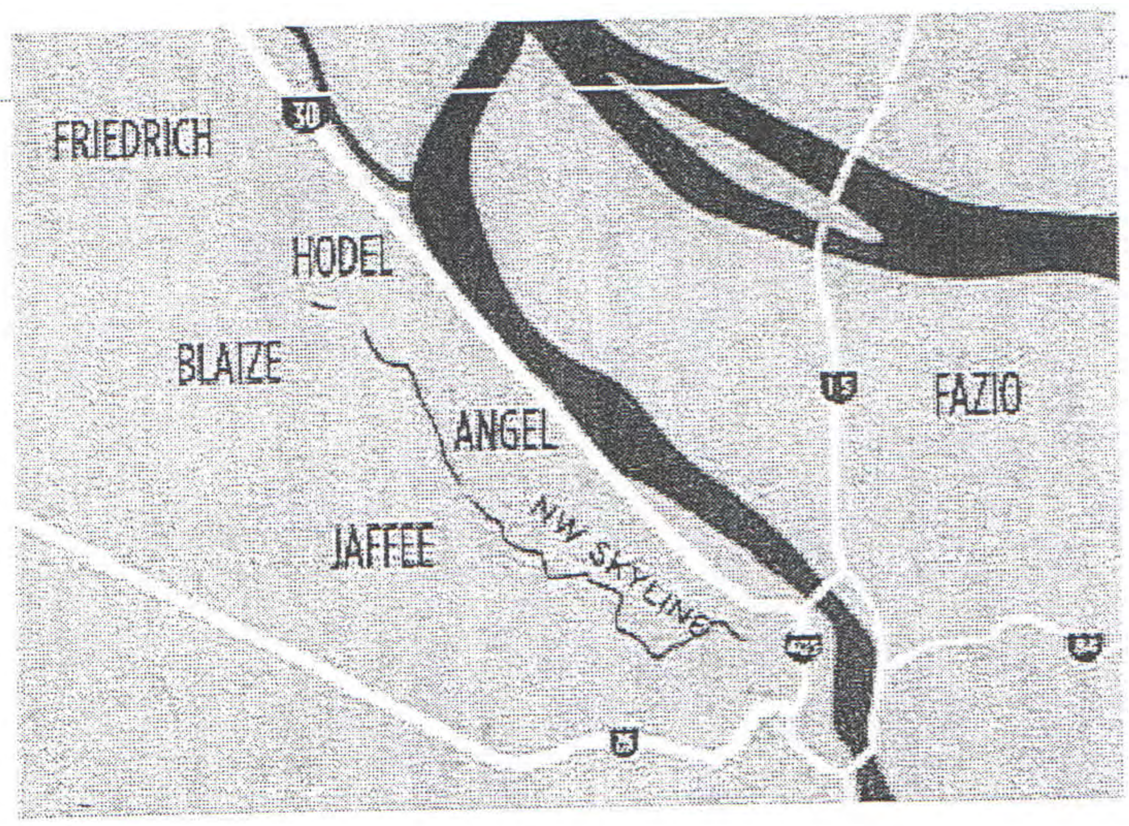
Today, he splits his time between his West Hills home, an Arch Cape beach house and Sisters, while managing his investments. He's a civic-minded Portlander who served on the Planning and Sustainability Commission and recently decorated a building he owns at the corner of Northeast Grand Avenue and Lloyd Boulevard with a wall-sized mural of the late street musician "Working" Kirk Reeves.

Angel, 71, also owns one of the largest private properties in Portland city limits, a stunning 46-acre, hilltop spread at the pinnacle of the West Hills on Northwest Skyline Boulevard. It's one-and-a-half times the size of Laurelhurst Park, and a lot less crowded. He bought the property in 1977 but has not lived there since 1980.

You might think Angel's estate incurs hefty property tax bills. In fact, he pays about $9,000 a year for the 2,600-square-foot house on the property and the parklike grounds surrounding it.



The tax break was intended for timber companies, farmers and ranchers.

But Angel, merely by claiming that someday he will cut his trees, gets an enormous discount on his property tax bill.

In a 2014 court case, Angel said that in nearly 40 years of owning the property, he'd "engaged in little active management of the timbered area of the subject property." Critics such as Jody Wiser of Tax Fairness Oregon say the standards for the tax deferrals for forests and small farms are too lax and that urbanites are gaming the system. "It's beyond a tax break," says Wiser, who has testified in Salem against expanding such deferrals. "Homeowners are getting subsidized so they can enjoy their own land."

Les Blaize, a Northwest Portland resident who grows tomatoes and sword ferns to qualify for a farm deferral on his 12 acres, disagrees. Blaize says forest and farm deferrals preserve green spaces that protect Forest Park and benefit the community.

"I'm sitting on six buildable lots here," Blaize says. "I could cut all my trees and sell my land for $1 million. That's not good for anyone."

Last year, more than 2,700 property owners in Multnomah County took advantage of those deferrals, pocketing nearly $5 million in deferred property taxes.

Multnomah County tax assessor Randy Walruff says he does not think the way property owners are benefiting from tax deferrals on high-value properties in the metro area meets the original legislative intent.

"We're talking about a law that was created to help Oregon's forest industry," Walruff says. "Now, the same exemption is being used for estate sites. I just don't see how the public benefits from that."

Walruff says forest and farm deferrals make even less fair a property tax system that already disproportionately rewards high-value property owners.

"They are taking breakfast out of low-income children's mouths," Walruff says.

Property tax breaks reduce funding for schools and the police and fire bureaus.

Yet it seems nobody in Salem wants to examine these loopholes. Even the tax-friendly Democrats who control the Legislature have shown no appetite for examining the farm and forest tax breaks.

"In my four sessions on the House Agriculture Committee, I don't recall there ever being a review of these programs," says state Rep. Brian Clem (D-Salem). "I think they are serving their purpose."

In fact, powerful lawmakers have pushed to make a generous program even more lucrative. In 2011, state Rep. Peter Buckley (D-Ashland), co-chairman of the budget-writing Joint Ways and Means Committee, pushed unsuccessfully to lower the already minuscule minimum income requirement for a small farm tax deferral.

And House Speaker Tina Kotek (D-Northeast Portland) was the chief sponsor of a 2009 bill that provided a multimillion-dollar property tax bailout to just one constituent—a farmer who'd seen his tax deferral canceled (see sidebar, below).

Currently, lawmakers led by state Sen. Betsy Johnson (D-Scappoose) are seeking an expansion of such loopholes, pushing legislation that would generate retroactive new tax deferrals for wildlife habitat.

"If we are not going to make sure that people with existing tax deferrals are actually doing something that benefits the public," Wiser says, "we shouldn't be passing new laws that help more people avoid paying taxes."

Anyone who has driven through the Cascades knows what a forest looks like. But forests look different to legislators, who allow property owners with only 2 acres of trees to qualify for a tax deferral.

Originally, lawmakers created forest and farm deferrals to promote the timber industry and food production. As a result, farmers and foresters pay greatly reduced property taxes—in the range of 10 or 20 percent of what they'd otherwise pay. That costs local tax authorities across Oregon nearly $250 million a year, according to state figures.

The tax deferrals may make sense for large farm and timber operations. It's less clear what they do for the hobby farms and small forests that dot the metro area.

A good example is the home owned by Loran and Erena Friedrich, who live on 4 acres in Northwest Portland. The Friedrichs have a forest deferral for 3 of their 4 acres. The Friedrichs are not timber people. Erena Friedrich says she and her husband moved from Hillsboro to rural Portland in 2005 seeking more green space. She says the forest deferral on the Portland property they purchased was not a big consideration.

"Our taxes would be higher," she says. "It's handy to have the deferral."

One indication that property owners are serious about forestry is having a forest-management plan with a schedule for harvest, removal of invasive species, etc.

Erena Friedrich says she and her husband have no forest-management plan, nor have they given any thought to harvesting trees.

"It's just woods," she says. "There is a game trail through it. We've seen coyotes come through. One morning I woke up and the entire yard was covered with elk."

Calculations done by the county assessor's office show the Friedrichs have saved over $7,000 on their property taxes in the past five years.

Critics of the farm and forest deferrals say the tax breaks often provide a cushion for wealthy Oregonians who like to surround themselves with big pieces of property.

"There's absolutely no doubt there are people who are doing minimal farming or planting the minimum amount of trees to lower their tax bill," says Tom Linhares, former supervisor of the Multnomah County Tax Supervising and Conservation Commission and the current Wasco County assessor.

There are few better examples than the nearly 40-acre property on Northwest Saltzman Road that belongs to Dick and Mary Jaffe.

Their farmhouse, an 11,000-square-foot Victorian built in 1996, sits next to a 4,000-square-foot barn and a 1,200-square-foot garage. The Jaffes paid $3.5 million for their property in 2008. They have no recorded mortgage.

Of their property, 31 acres get a farmland tax deferral, some for trees and some for rangeland for alpacas that Mary Jaffe raises. Her company, Skyline Alpacas, breeds and sells the woolly animals. A website offers financing for buyers and volume discounts on pregnant females. "Brighten up your January with some NEW alpacas," Mary Jaffe's website says. "Due to our commitment to quality care, and the fact that we have run out of room, we have reduced our prices on most animals."

Part of the reason she can afford to be generous may be the property tax savings she and her husband enjoy—more than $30,000 over the past five years.

A tax deferral is remarkably easy to obtain for small farmers.

State law requires that for farmers to qualify, they have to gross $100 an acre. If they farm less than 6.5 acres, they must earn $650 in gross—not net—income in three out of every five years.

That threshold has not changed in decades and would be more than $3,500 today if adjusted for inflation.

The $650 threshold doesn't require that small farmers actually sell that much product. Under state law, they can consume 49 percent of the food or other products they grow or raise to meet the requirement. That means people who grow tomatoes, herbs or flowers in effect get a tax break to have a garden.

Tax Fairness Oregon's Wiser pointed out to lawmakers at a 2011 hearing on farm deferrals that she could obtain a farm deferral by harvesting the trillium that grows wild on her land and selling it at farmers markets.

Wiser also says the farm deferral's cost is even greater because it also allows hobby farmers to write off their vehicles and other equipment.

"We're subsidizing people having trucks who don't need trucks," she says.

Walruff, the Multnomah County tax assessor, is an intense fellow who speaks in staccato bursts. After more than 30 years working for the county, he looks like he could still compete with the Clackamas High School cross-country runners he coaches in his spare time.

In 2011, Walruff got an increase in staff and a better computer system. One of the first things he did was start cracking down on deferrals he considered questionable.

Walruff noticed there was a conflict between city conservation zoning overlays and forest deferrals. In June 2011, he canceled the deferrals on more than 50 properties in environmental zones, reasoning that the zoning made it virtually impossible to cut trees and therefore illogical to grant forest deferrals.

"When we look at exemptions or deferrals, we ask, 'Do they meet the intent of the law?'" Walruff says. "If you're in doubt, you cancel. That's the advice we've gotten from our lawyers."

Most of the 2011 cancellation notices went to property owners in Northwest Portland adjacent to or near Forest Park.

Robert Hodel, who lives on a heavily wooded 10.15-acre parcel next to Forest Park, received one of those cancellation notices. You'd need a helicopter to find Hodel's 2,885-square-foot home.

When the county canceled Hodel's forest deferral, he immediately applied for a farm deferral.

A representative of the county assessor's office visited Hodel's property and "found no evidence of commercial farming activity." The county rejected Hodel's application and asked him for five years of back taxes.

Hodel took the county to Oregon Tax Court in 2012, however, and won—because the judge ruled that under Oregon law, he has five years to establish himself as a farmer. (Hodel declined to comment.)

The tax court ruling saved Hodel nearly $18,000 over five years.

Walruff says the courtâs decision was hard to accept. âI wasnât very happy,â he says. âI just donât believe those types of uses meet the intent of the law.â

Joe Angel fared even better than Hodel.

Walruff also canceled Angel's forest tax deferral in June 2011, and Angel also went to tax court. In Angel's initial case, the magistrate judge upheld the county's cancellation, noting that Angel had twice filed documents indicating interest in developing his land. The judge also bought the county's argument that Angel was unable to harvest his timber because of the city's conservation overlay.

"Plaintiff's overt actions reveal an intention to hold and use the property in the manner that generates the greatest financial gain," Magistrate Dan Robinson ruled Aug. 20, 2012. "Coupled with the conservation overlay, plaintiff's actions suggest that the subject property was not being held or used for the predominant purpose of growing and harvesting trees."

But in 2014, Angel appealed his initial loss to the higher level of the Oregon Tax

Court—and won.

Angel acknowledged he had done little in the way of planting or harvesting trees or eliminating invasive species. Nor had he filed a forest-management plan. Instead, he told the court, he'd "informally sought management advice from social acquaintances involved in the timber industry."

And the judge rejected the county's claim that the conservation easement blocked Angel from someday cutting trees.

"Taxpayer's 'predominant purpose' for holding the subject property is a question of the taxpayer's state of mind," wrote Tax Court Judge Henry Breithaupt on July 24, 2014.

In other words, if Angel thought he deserved a tax deferral, he deserved a tax deferral.

Angel declined to answer questions about the specifics of his case. He does acknowledge it might be time for the Legislature to review the deferral program.

"The question on the forest and farm tax deferral programs is, 'Have the public policies worked?'" Angel says. "If they've gotten out of whack, let's have a debate about that.â

Tina's Favorite Farm

Tucked between the Columbia Slough and a new FedEx terminal in Northeast Portland's industrial heartland lies a valuable piece of real estate owned by the Fazio family, Portland farmers for nearly a century.

For years, the Fazios grew cucumbers on the land, but today there is a mat of green fuzz, the leavings of transient geese—and a rock-crushing operation that produces gravel piled to the sky.

How valuable is the Fazio land? An adjacent property, now a 47-acre FedEx shipping facility, provides a useful comparison. The FedEx land—not the improvements on it—has an assessed value of $12.6 million.

The Fazio property, which at 36 acres is a little smaller, is assessed at tiny fraction of that amount—$67,000.

What accounts for the extraordinary difference in valuation? Two things: a tax deferral for farm use on the Fazio land and, more important, a friendly and powerful lawmaker.

Six years ago, state Rep. Tina Kotek (D-Northeast Portland) was in her second term as a legislator but already destined for big things.

On March 26, 2009, Kotek testified in front of the House Committee on Agriculture, Natural Resources and Rural Communities. "It's not often that an urban legislator like myself comes and talks to you about farming," she said.

Kotek was the chief sponsor of the bill she came to present—a bill she introduced at the request of Anthony Fazio of Fazio Farms.

Fazio had a problem, Kotek told the committee: His land near the slough was riddled with fungus. That made the ground unusable. The Fazios had stopped farming the land in 1999 and began filling it with clean dirt.

In 2007, the Multnomah County tax assessor's office canceled the Fazio's farm tax deferral after learning the property was operating as an industrial landfill and rock-crushing operation. In fact, records show Anthony Fazio established Fazio Landfill & Recycling on the property in October 2002, so the cancelation of the farmland tax deferral could have come much earlier.

For Fazio, though, the cancellation was a triple whammy: It meant an immediate property tax increase of about $80,000 per year and it gave the county authority to collect five years of deferred taxes, totaling about $400,000. The county also levied personal property tax on the rock crushers, elevators and other equipment used in the landfill operation, which would cost Fazio another $17,000 a year.

Media reports were sympathetic. *WW* joined the chorus of Fazio advocates in 2008, naming the Multnomah County assessor's office "Rogue of the Week" for squeezing one of Portland's last farms.

Kotek sponsored a 2009 bill that would allow properties in "remediation" to hold onto their tax deferral until the land was again ready to support crops.

The bill zipped through both chambers unanimously. House Agriculture Committee Chairman Brian Clem (D-Salem) called its passage "a real David and Goliath story."

Randy Walruff, the Multnomah County tax assessor, opposed Kotek's bill, and he doesn't like it any better today. He says he is not aware of any other landowners who benefited from Kotek's bill, and notes the legislation placed no time limit on how long farmland in "remediation" could lie fallow.

"Anyone else running a landfill on their property has to pay taxes on land in industrial use and pay personal property tax on the equipment," Walruff says. "Anyone except the Fazios."

Today, the Fazio property still gets a farm deferral, but it doesn't look much like a farm. Mounds of crushed rock 30 feet high tower over the fallow soil, and well-used rock-crushing machinery and earthmovers sit amid hulking piles of scrapped pavement and concrete waiting to be processed.

Walruff's staff calculates Kotek's bill has saved the Fazios $722,000 in taxes deferred since 2007, and another $100,000 on the otherwise taxable machinery used for "remediation."

Kotek says she usually opposes bills of narrow benefit, but she found the Fazios persuasive. "They were salt-of-the-earth guys," she says.

Kotek never received a campaign contribution from Fazio. She says restoring Fazio's farm deferral was legitimate but adds that all tax breaks should be reviewed regularly.

Anthony Fazio says he got into the landfill business to acquire cheap dirt to raise the level of his land and cover up fungus-ridden soil. He'd like to close his landfill.

"It's a horrible business," Fazio says. "I hate it. I don't want to be in it."

He says the county initially approved his plan to remediate his soil, then canceled his deferral. He says that was unfair.

"They let me go down a path and then fattened me up like a turkey until they needed me for Thanksgiving," he says.

Fazio admits that fixing the soil has taken far longer than he ever imagined.

"At first I thought it was going to be a year," he says. "That's what I told them."

It's been 16 years, and trucks full of rubble are still arriving at a property that enjoys a vast tax break.

"That's very valuable industrial land being kept in farm use," Walruff says. "For them, that's a very good deal." –NIGEL JAQUISS.

SURVEY

DISQUS

We Changed Our Commenting System—Now Tell Us What You Think.

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COMMENTS

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mwpdx • 1 year ago

Our property tax system is so broken in so many ways. Certain property owners subsidize others. Assessed value is artificially low for many property owners, effectively lowering their tax rate. It's high for others (including me), meaning we pay a higher tax rate than many others. I see in Portland homeowners who are receiving historic house abatements, so that they pay much less in taxes than their neighbors. Now, this broken scheme that benefits some over others. And our legislature has no interest in fixing anything.

Duke • 1 year ago

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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Comptroller General's Opinion re CBWR In-Lieu-of-Taxes

FILE: B-191123

DATE: June 13, 1978

MATTER OF: Payments in Lieu of Taxes on Coos Bay Wagon Road Lands in Oregon

DIGEST: Bureau of Land Management, Department of Interior, is authorized to certify payments in lieu of taxes to Douglas and Coos Counties, Oregon, pursuant to the Act of May 24, 1939, notwithstanding a recent change in State law which taxes timber lands on a severance, instead of ad valorem, tax basis. Change in method of computing tax does not relieve United States of tax equivalent payment obligations as long as purpose and payment principles of 1939 Act are not changed by new State law.

The Deputy Solicitor, Department of the Interior, has asked for our decision on the availability of funds for payments in lieu of taxes on the so-called Coos Bay Wagon Road lands in Oregon in view of a new Oregon law which changes the method of taxing timber.

The Act of May 24, 1939, 53 Stat. 753, 43 U.S.C. §§ 1181f-1 through f-4 (Supp. V 1975), requires the Secretary of the Treasury, upon certification by the Secretary of the Interior, to make annual payments in lieu of taxes to Douglas and Coos Counties, Oregon. Payments are to be made from a fund made up of a specified percentage of revenues from the Coos Bay Wagon Road lands in these counties. The payments are to be computed "by applying the same rates of taxation as are applied to privately owned property of similar character" in Douglas and Coos counties. 43 U.S.C. § 1181 f-1.

Until this year, timber lands in western Oregon, such as the Wagon Road lands, were subject to an ad valorem tax on the value of the land and the timber. On July 28, 1977, Oregon enacted a statute, effective January 1, 1978, which continued the ad valorem taxation of western timber lands, but substituted a severance or "stumpage" tax on the timber. The severance tax is based, not on the value of the stands of timber, but on the value of the timber harvested. The issue is whether the 1939 Act authorizes the Bureau of Land Management (BLM), which carries out the responsibilities of the Secretary of the Interior under the Act, to certify payments to Douglas and Coos Counties on the basis of the severance tax.

Public lands were granted by the United States to the Oregon and California Railroad Co. and the Coos Bay Wagon Road Co. in the years

1866 and 1869, respectively, in aid of the construction of those roads. Title to the lands was revested in the United States in 1916 and 1919 (by the Act of June 9, 1916, 39 Stat. 218 and the Act of February 26, 1919, 40 Stat. 1179) because the grantees violated covenants contained in the granting acts. H.R. Rep. No. 1119, 75th Cong., 1st Sess. 1 (1937). Section 10 of the 1916 Act established the "Oregon and California land-grant fund" (Fund), to consist of all moneys received from or on account of the revested land, including timber sale receipts.

The Act of July 13, 1926, 44 Stat. 915, allowed the counties in which the revested lands were located to submit claims for the equivalent of the taxes which would have accrued from the lands had they remained in private ownership. Claims by the counties for these payments were to be charged against the Fund.

The counties' claims exceeded the amount in the Fund. The Fund was supplemented, pursuant to the 1916 and 1926 Acts, with appropriated funds that were required to be repaid. H.R. Rep. No. 1119, supra, 3. The Act of August 28, 1937, 50 Stat. 874, was passed to insure that beginning in 1938, the counties would receive, instead of tax-equivalent payments, a fixed percentage of the revenue from the land, and to permit reimbursement of the general fund of the Treasury.

However, Title II of the 1937 Act refers only to lands revested under the 1916 Act, which was concerned only with the Oregon and California Railroad lands. As no provision was made for the distribution of funds derived from the Coos Bay Wagon Road lands, the Act of May 24, 1939, 53 Stat. 753, was passed. This is explained by the Secretary of the Interior, quoted in S. Rep. No. 371, 76th Cong., 1st Sess. 3 (1939):

"Provision was made in this legislation in 1937 for distribution to the counties in which the lands are located of a percentage of the receipts derived from the lands, above the amount retained for administrative costs, insofar as the Oregon and California railroad lands are concerned. Obviously through oversight, no like provision was made for the Coos Bay Wagon Road grant lands.

"The purpose of H.R. 2317 is to correct this oversight and place all these lands upon substantially the same basis, both as to administration and distribution of proceeds."

Despite this statement of intent to place the Coos Bay Wagon Road lands on the same basis as the Oregon and California Railroad lands as to distribution of proceeds, the 1939 Act provides for a means of distribution for the Coos Bay lands which differs from the method which applies, by virtue of the 1937 Act, to the Oregon and California railroad lands. The principal difference is that under the 1939 statute, the procedures prescribed for appraising, assessing, and taxing these lands are the same as those applicable to comparable private lands. (See Report No. B-105156, March 23, 1970).

The 1939 Act provides for appraisal of the Coos Bay Wagon Road lands, and provides that payments to Coos and Douglas counties are to be distributed between the counties according to the ratio that the total assessed value of the portion of the Wagon Road lands in each county bears to the total assessed value of the lands in both counties. Moreover, the statute contemplates that, upon completion of appraisal, the land and timber "shall be assessed as are other similar properties within the respective counties * * *."

The Deputy Solicitor says that the 1939 Act "sets forth the procedure to be used in assessing the property and seems to contemplate only an ad valorem property tax". Assessment is of course associated with the imposition of an ad valorem tax and would presumably not be necessary for purposes of a tax based on severance.

The same sentence in the statute quoted in the preceding paragraph goes on to say: "and payments hereunder in lieu of taxes shall be computed by applying the same rates of taxation as are applied to privately owned property of similar character in such counties". Arguably, this latter phrase, read together with the preceding phrase which deals with determination of the assessed value of the land, means that the payments in lieu of taxes are to be computed by applying an ad valorem tax rate to the assessed value. If so, and if that reading is deemed to represent the exclusive method of computing payments in lieu of taxes, then payment based on severance would not be authorized.

However, in light of the congressional purpose, we do not believe that the statute must be so read. Oregon's decision to place a severance tax on timber in no way interferes with the basic purpose of the 1939 Act--to require payments in lieu of taxes to Douglas and Coos counties on a tax equivalency basis, but limited to a percentage of revenues from the lands. There is no evidence in the legislative history of the 1939 Act that payments on the public lands in Oregon were to be based on an ad valorem tax. At most, we may assume that the statute was couched in terms of an ad valorem tax because that was the basis for State taxation at the time of the enactment of the provision for payment in lieu of taxes.

The fundamental requirement in the 1939 Act, regarding the amount paid to the counties, is that payments be computed at the same rates applicable to comparable private property in the State. That requirement is met if payments are made based on the severance tax. Since the statute places a maximum of 75 percent on the revenues which can be paid to the counties in lieu of taxes, a change by Oregon in the rate or the method of computing local taxes cannot defeat the intent of the Congress by increasing the tax beyond what the Congress contemplated.

On the other hand, if we were to hold that because the method of computing State tax has been altered, the payments in lieu of taxes may not be made, the result would be that the counties would receive revenues under the 1937 Act based on the value of land and timber, but would receive revenues under the 1939 Act based only on the value of the land. The Congress intended that the counties receive revenues from the revested lands on substantially the same basis. S. Rep. No. 371, supra.

Accordingly, under 43 U.S.C. §§ 1181f-1 through f-4, BLM is authorized to certify payments to Douglas and Coos Counties on the basis of Oregon's severance tax on timber.

R. F. Keller

Acting Comptroller General
of the United States

John Sweet

To: Ray Bucheger
Subject: FW: Acreage Report for CBWR - BLM RMP Acres by Age Class and Allocation
Attachments: CBWR Age Class and Allocations.xlsx

Ray,
Here's some numbers that Bob got relating to what part of the CBWR lands are harvestable and which are not under the proposed RMP.

From: Bob Main
Sent: Monday, October 03, 2016 3:13 PM
To: John Sweet; rangus572@wildblue.net
Subject: FW: Acreage Report for CBWR - BLM RMP Acres by Age Class and Allocation

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From: chris cadwell [mailto:ccadwellconsulting@gmail.com]
Sent: Monday, October 03, 2016 1:33 PM
To: Bob Main
Cc: Rocky McVay; ccadwellconsulting@gmail.com; kqdjd1@gmail.com
Subject: Acreage Report for CBWR - BLM RMP Acres by Age Class and Allocation

Hi Bob

Attached is a spreadsheet with the acreage report you asked for the CBWR lands. In the spreadsheet it also contains the Douglas and Coos County split.

This data is from the BLM modeling for the proposed RMP – It is a good approximation of the final RMP. The land status data they use in the modeling is not real precise and may be a bit different than other figures you have seen.

In general terms the ages 0-70 in the reserves are available for one time thinning harvest. It is not sustainable for harvest over the long term. Generally the ages 80+ in the reserves there is no harvest. The Harvest Land Base is where the sustainable harvest will come from (very small in the coast range).

Coos Bay Wagon Road Summary of the BLM 2016 RMP
Acres - Age Classes by Reserves and Harvest Land Base

Age Grp 2013	Reserves	Harvest Land Base	Total
0-30	11,054	2,041	13,095
40-70	25,250	3,939	29,189
80-110	5,109	213	5,322
120-150	8,827	571	9,398
160-190	4,354	-	4,354
200+	8,562	52	8,614
	63,156	6,816	69,972

1 } FROM FOLLOWING PAGE

200+	8,562	52	8,614
Total	63,156	6,816	69,972

- Chris

From: Bob Main [mailto:rmain@co.coos.or.us]
Sent: Sunday, September 25, 2016 8:47 PM
To: Chris Cadwell
Subject: Re: Wyden, Merkley Call for Immediate Action on County Payment Funding

Thanks Chris !

Robert "Bob" Main
Coos County Commissioner

In compliance with Oregon public meeting law, this message is intended for the listed recipient(s) only. Please do not forward this message without the express permission of the sender.

On Sep 25, 2016, at 2:34 PM, Chris Cadwell <ccadwellconsulting@gmail.com> wrote:

Hi Bob

I will generate the CBWR report of age classes and allocations for you by Oct 3rd. I am headed off on a trip this week.

- Chris

From: Bob Main [mailto:rmain@co.coos.or.us]
Sent: Friday, September 23, 2016 10:56 AM
To: smithd@co.curry.or.us; Rocky McVay; Craig Pope; RobertCL@jacksoncounty.org; Sam Brentano; kmorris@klamathcounty.org; tjosi@co.tillamook.or.us; Tim Freeman; hydet@co.columbia.or.us; Faye Stewart; robertsonjd44@outlook.com; ccadwellconsulting@gmail.com
Subject: Fwd: Wyden, Merkley Call for Immediate Action on County Payment Funding

Robert "Bob" Main
Coos County Commissioner