OREGON BOARD OF FORESTRY FOREST LANDS

AN HISTORICAL OVERVIEW
OF THE ESTABLISHMENT OF STATE FOREST LANDS

The history of Oregon's state forests is inseparable from the history of forestry in Oregon. Acquisition of forest land by the state was the result of a long progression of forest policies and practices that began with the disposal of public lands after Oregon statehood, and culminated in the logging, abandonment and tax delinquency of millions of acres of once-productive private forest land. A review of Oregon's forests and forest industry provides an essential historical context for understanding the problems that developed in the 1920's and the political solutions that followed.

Knowledge of the history of Oregon's forests is also important in developing a management strategy for the state forests. Forest policies and practices have undergone a profound evolution during the past fifty years, and the state forests have played a central role in that process. Forestry practices of the late nineteenth century left millions of acres of forest land cut over and unreforested. The emergence of modern forest management ideas around the turn of the century, with their new focus on forests as sustainable, public resources, ultimately led to state acquisition and management of abandoned and unproductive forest lands. The development and evolution of forest management policies and practices by the Board of Forestry and the State Forester, especially from 1900 to 1940, established the principles that would guide management of the State Forests after 1940. Many of the policies were developed in cooperation and consultation with Oregon counties, which found themselves owning hundreds of thousands of acres of cut-over and burned-over forest lands in the late 1920's and 1930's.

Forest policies and practices continue to mature, in response to advances in forest science, technological improvements and social understandings of the uses and values of forests and forest lands. Oregon's state forests have participated in that development, as a laboratory for and an illustration of progressive forest management.
1846 - 1900: ASCENT OF THE TIMBER INDUSTRY

In the middle of the nineteenth century, Oregon was a vast territory that held enormous forests, all of it owned by the United States Government. By 1900, half of all the land, and much of the richest forest land, was in private hands; logging was proceeding as fast as people and their machines would allow. The patterns of public land disposal and the development of the timber industry during that period laid the foundation for the abandonment of millions of acres of cut-over and burned-over land between 1900 and 1940.

I. Disposal of the Public Lands

During the first part of the 19th century, both England and the United States claimed the sprawling region of the Pacific Northwest. British fur trappers had discovered a plentiful supply of beaver; American settlers found fertile farmland and immense forests. By 1840, the beaver were gone and the British were overwhelmed by American settlers. A treaty with England in 1846 established the boundary between the United States and Canada at the 49th parallel. In 1848, Congress created the Oregon Territory, which extended from the 42nd parallel (the present boundary between Oregon and California) to Canada, and from the Continental Divide to the Pacific Ocean. Washington Territory was carved out of the Oregon Territory in 1853, and Oregon became a state in 1859.

In 1848, virtually all of the territory, including the vast forests of the Pacific Northwest, was owned by the United States government. Beginning immediately, and continuing through the turn of the century, millions of acres of heavily timbered, virgin forest land were transferred from public to private ownership. Congress enacted a series of public land laws to provide land for settlers, farmers and new communities, and to encourage the construction of railroads. The Donation Land Act of 1850 provided free lands to people who settled in Oregon between 1850 and 1855. The Homestead Act of 1862 and the Timber and Stone Act of 1878 also resulted in the disposal of millions of acres of public domain, including millions of acres of Oregon forest land.

The Territorial Act of 1848 reserved sections 16 and 36 of each township to the state for the use of schools when Oregon reached statehood. Admission of Oregon into the Union in 1859 included land grants of 6,959,405 acres for schools and other purposes. The state was authorized to sell the public school lands for the support of schools. Sales began slowly, administered by county school superintendents until 1867 when authority was transferred to the State Land Board. In 1887 the Oregon Legislature established the State Land Office of Oregon and directed the Land Board to sell remaining tracts state land, for $1.25 per acre. Sales of common school lands increased rapidly in the 1880's, and by 1910 the state had disposed of most of its choice forest lands.

The various disposal acts had several characteristics in common. Together those characteristics created the conditions that ultimately led to the abandonment of millions of acres of cut- and burned-over forest land in western Oregon.
The acts were designed to encourage settlers to live on the land they acquired from the federal government. As a result, the amount of land any single person or couple could legally acquire was limited. The Donation Land Act generously allotted 320 acres per person; the Homestead Act and the Timber and Stone Act provided 160 acres to each settler. These relatively small parcels, especially when located in rugged and densely forested mountains, proved inhospitable to settlement. And as forest land, they were too small and isolated to be economically held and managed by individual owners for long-term forest production.

Another salient feature of the disposal acts was the cost of the land. Several acts provided land free to settlers who would live on the land for a specified number of years. However, all allowed payment in lieu of occupation. Under the Homestead Act, land could be purchased for $1.25 per acre; under the Timber and Stone Act, vast tracts of Oregon forest land were acquired for $2.50 per acre. Those lands often held timber volumes in excess of 100,000 board feet per acre. Some parcels in Linn County were cruised at more than 300,000 board feet per acre. Even with nineteenth century lumber prices, the timber on Oregon's forest lands was of enormous value; the land itself was practically worthless.

The Donation Land Act, Homestead Act, Timber and Stone Act and others were intended to furnish land for settlement, providing the land base for establishment of communities in the new territory, later the state. Although a substantial amount of public land disposal involved various forms of fraud, leaving much of Oregon's forest land in the hands of syndicates and speculators rather than settlers, the disposal acts by and large accomplished their purposes. By 1900, virtually all of the tillable land in Oregon, and most of the prime timberland, had passed into private ownership. Individuals had acquired property for farms and ranches and private forests, and the townsites for the growing communities of the state.

Much of the land acquired for purposes of "settlement" was rugged and mountainous, covered by a dense stands of enormous trees. It was completely unsuited for farming or grazing, although naturally some of the richest forest land in the world. The patterns of land ownership, the rich and immediate profits from logging, the availability of a seemingly endless supply of virgin forest land at virtually no cost, and the disincentive of a tax system that did not distinguish between forested and logged land all combined to create a situation where it was neither practical nor economic for many landowners to retain, reforest and manage forest lands for a future harvest. As a result of all these factors, eventually millions of acres of forest land were cut over and then abandoned, by speculators, land fraud syndicates and hopeful, but unrealistic, settlers.

By 1900, the problems had become widespread. During the next forty years, professional foresters, politicians and the public would struggle to find solutions.
II.
Expansion of the Timber Industry

During the second half of the nineteenth century, the logging and lumber industry expanded from a few, small mills supplying lumber for local uses, into a huge enterprise ranging into remote forests and exporting timber across the globe. The first sawmill west of the Mississippi River was established near Fort Vancouver in 1827. The first steam-driven circular saw was put into operation at Portland in 1850. The gold rush in California created a demand for Oregon lumber, the first of many booms the industry was to enjoy. By 1850, 29 sawmills in Oregon, located mostly along the lower Willamette and Columbia Rivers, were producing 18 million board feet of lumber per year. The demand for lumber increased steadily, not only from the expanding housing markets of California, but from China, Hawaii and Australia as well. By 1870, about 75 million board feet of lumber was produced annually.91

Mechanical advances at the end of the nineteenth century revolutionized western logging. Before 1880, trees were felled with axes, bucked into logs with crosscut saws, and hauled to a nearby mill or river by teams of oxen. In the 1880's, improvements enabled felling using crosscut saws, allowing trees to be cut in a fraction of the time needed for the axe. The steam-powered "donkey" spool was introduced, and by about 1900 had generally replaced oxen. Railroads snaked through the mountains, hauling timber from remote valleys to distant mills.101

As a result of these developments, and driven by worldwide demand, timber production in Oregon increased ten fold, to about 750 million board feet by 1900. In 1904, 1 billion board feet of timber was cut in Oregon; in 1910, 2 billion board feet was harvested, and Oregon ranked fourth among all states in lumber production.111 The disposal of public lands and the resulting surge in timber production played a significant role in the development of the state. The forests and mills provided jobs and wages for a growing population and tax revenues for counties and the state.

The extraordinary expansion of the logging industry in the first fifty years after statehood brought profound changes to the forests, the nation, and the state.

1900 - 1911: DAWN OF FOREST MANAGEMENT

A potent mixture of philosophy, science, technology, law and nature combined to make the decades immediately before and after the turn of the century a seminal period in forest management. Unregulated logging had left behind a sea of slash and debris, an invitation for catastrophic fires. And millions of acres of once-productive forest land had been cut and neglected, threatening the future vitality of the state. At the same time, many foresters and others were beginning to understand the public value of healthy and productive forests, and the need for responsible forest management.
I.

End of the Great Land Rush

As Oregon's forest industry expanded in the 1880's and 1890's, the race for timber created intense pressure for access to the public forest lands. By 1890, disposal of federal lands was proceeding at a breakneck pace, attracting national attention. As a result, in 1891 Congress authorized the President to set aside forested public lands as "forest reserves." By 1901, some 50 million acres, including the Cascade Forest Reserve, had been withdrawn from disposal. In the next few years President Theodore Roosevelt, with the advice of Gifford Pinchot, his Chief Forester, withdrew another 150 million acres. Roosevelt spoke for many in the fledgling forestry community when he noted:

In the past we have admitted the right of the individual to injure the future of the Republic for his present profit. The time has come for a change. As a people we have the right and the duty, second to none other but the right and duty of obeying moral law, of requiring and doing justice, to protect ourselves and our children against the wasteful development of our natural resources, whether that waste is caused by the actual destruction of such resources or by making them impossible of development hereafter. 121

The Organic Act of 1897 authorized protection and management of the reserved forest lands. In 1905 the reserves were transferred to the United States Department of Agriculture, the United States Forest Service was created and Gifford Pinchot was appointed the nation's Chief Forester. 131

The rapid disposal of public forest lands, the huge increases in logging, the mounting acres of slash covered lands, and the increasing amount of cut and burned over land that was not reforested led to a realization that the forests were not, after all, endless. The lessons of the past, particularly the crash of the timber industry in the Lake States when those forests were gone, led to calls for action. As part of the growing interest in what had become known as "conservation," President Roosevelt in 1908 convened the nation's governors to discuss forest conservation. The convention issued a declaration which stressed the overarching social benefits of healthy forests and forest industries, and the importance of conservation and proper management of this great source of public prosperity:

We urge the continuation and extension of forest policies adapted to secure the husbanding and renewal of our diminishing timber supply, the prevention of soil erosion, the protection of the headwaters and the maintenance of the purity and navigability of our streams. We recognize that the private ownership of forest lands entails responsibilities in the interest of the people, and we favor the enactment of laws looking to the protection and replacement of privately owned timberlands.
The great natural resources supply the material basis upon which our civilization must continue to depend, and upon which the perpetuity of the nation itself rests.

We declare our firm conviction that this conservation of our natural resources is a subject of transcendent importance, which should engage unremittingly the attention of the Nation, the States, and the people in earnest cooperation.

Sources of national wealth exist for the benefit of the people, and monopoly thereof should not be tolerated. 14

II. The Oregon Conservation Commission

The Oregon delegation to the National Conservation Convention returned to the state with a profound sense of the state's responsibility to conserve the natural wealth of the state for future generations. 15 The 1909 Oregon Legislature responded, creating the Oregon Conservation Commission "for the purposes of ascertaining and making known the natural resources of the State of Oregon... to the end that the natural resources of the State may be conserved and put to the highest use." 16 The Commission was directed to cooperate with the National Conservation Commission and to report to the Governor annually on the conditions of the state's natural resources and recommendations for legislation.

Legislative recommendations were not long in coming. Inspired by the lofty purposes of their mandate and spurred by the devastating fires of 1910, 17 the Conservation Commission in November, 1910, issued a thorough review of Oregon forests and recommendations for legislative action. 18 The Commission was highly critical of the state's failure to provide fire prevention and protection, encourage reforestation and discourage milling and logging waste.

The report conveyed a new vision of Oregon's forests. For the first time, the forests were seen not only as a source of personal wealth, but as public resources which enriched the entire state. "Oregon's forests, next to land itself, are by far her most important natural resource," the Commission reported. It emphasized that "Forest wealth is community wealth." 19 The Commission stressed the importance of healthy, productive forests to the public and the State.

Oregon's forests are the assets of all its citizens. The lumberman or timber owner is, economically, only their agent in using them. The lumberman can change or move his business, but the people as a whole have a stake in forest preservation that is unalienable and paramount. Their prosperity depends upon it now and always. The question involved is not one of personal property but one of a community resource.
The Commission recommended the legislature take immediate action to provide for a trained State Forester; create a comprehensive, and liberally funded, fire prevention and protection system; make a systematic study of forest conditions; and undertake popular education on important forest issues.

The Commission was well aware of the problems of cut over and burned over lands that were not reforested, and the threat of wholesale abandonment of those lands. To address those problems, it recommended the legislature devise a tax system that would provide low taxes on deforested lands, thereby encouraging it to be held and managed for future harvest. The Commission further recommended that the State acquire cut or burned over forest lands. Those state forest lands would allow the application of modern forest management principles and "furnish educative examples as well as maintain State revenue and proper forest conditions."

III. The Legislature

Following the recommendation of the Conservation Commission, the 1911 Legislature enacted a comprehensive Forest Code. The law established the office of State Forester and vested it with authority for all matters pertaining to forestry in the state. Although his duties were primarily focused on fire suppression, the State Forester was also directed to "advise and encourage reforestation", and "direct the improvement and protection of state lands; collect data relative to forest conditions; and publish information on forestry." The Legislature also directed the State Forester to "prepare annually a report to the Governor on the progress and condition of state forest work, containing recommendations for improving methods of forest protection, management and reproduction within the State of Oregon."

With the appointment of the State Forester and the establishment of a professional organization, forestry entered a new era. Principles of long-term forest management, based upon reforestation, stability, social and community responsibility, began to be voiced, vying with the liquidation or "cut and run" ethic that had driven the industry for the past sixty years. Disposal of the public land had ended. A new awareness of the limits of Oregon's forests and the calls for long-term, sustainable forest management practices slowly began to gain an audience.

1911 - 1940: ERA OF EDUCATION

The Oregon Legislature had created a professional forest management agency, led by a trained and experienced State Forester. During the next thirty years, as it struggled to address Oregon forestry problems and issues, the Board of Forestry would develop and refine a set of principles for responsible forest management.
The Industry

Through periods of growth and recession, the timber industry continued to expand, spurred by continuing technological developments. The high lead system came into general use by about 1920, allowing rapid removal of enormous volumes of timber in one setting. In the late 1920's, the bulldozer equipped caterpillar tractor and the logging truck replaced the steam donkey and the train. As a result, logging reached into isolated stands and areas that had been left by older systems. The volumes of timber produced in Oregon forests continued to grow rapidly. Some 3.3 billion board feet of lumber were produced in 1920.\textsuperscript{22} By 1929, Oregon forests were producing 5 billion board feet of lumber annually.\textsuperscript{23}

Logging and the lumber industry continued to generate wealth for the state. They provided jobs for individuals, profits for land and mill owners, and tax revenues for counties and the state. As the State Forester noted in 1914:

> It has been repeatedly pointed out that the State's interest in timber is very direct. No small part of our taxes come from this resource; in some counties the bulk of them. A large part of our field for labor is furnished through forest industry. This field will greatly increase the next few years. With such increase will come better home markets for farm produce, prosperity in towns and cities and a general impetus to all lines of commercial endeavor. Even now the barometer by which good or bad times in Oregon can best be gauged is the condition of the lumber industry, and the reason for this is simple; it is our greatest distributor of wealth; our only large manufacturing industry.\textsuperscript{24}

From the beginning, the State Forester understood the importance of the forests as a great engine for the health and prosperity of the state as a whole. Although a few foresters and concerned public officials stressed the necessity for reforestation and responsible forest management, they were working against the perception that Oregon's forests were boundless. As a State Forester later described the era, "[T]here was still the 'inexhaustible' forests of Oregon and as has always been the case, abundance create a sense of indifference.\textsuperscript{25} Consequently, logging continued with little thought or effort expended to ensure that future generations would have forests available once existing forest lands had been logged.

Political Discussion and Public Education

The newly-appointed State Forester, F.A. Elliott, immediately took up the themes sounded by the Oregon Conservation Commission and the State Legislature. In his first annual report, and continuing without fail for the next twenty years, he sounded the importance of the
state's forest resources for the public, the community and the state. The reports were an important part of the ongoing evolution of Oregon forestry: they educated the industry, the politicians and the public, and in the process formed the body of knowledge and principles that the Board of Forestry would bring to its management of the state forests once they were acquired.

The experiences of other areas of the country, particularly the Lake States, served as a constant reminder that even the extraordinary sweep of Oregon's wild forests was not without limits. The practical and political developments in Oregon forestry were to a great extent an attempt to alter the conditions that could lead to a similar collapse of Oregon's timber industry.

Oregon is blessed with forest resources that to many people seem inexhaustible. The magnificent pine forests of Michigan and Wisconsin were 40 years ago also considered inexhaustible, but their present almost total depletion proves the fallacy of such statements... Oregon should profit by the experiences of older states who exploited their forest resources with no thought for the future. Plans should be evolved for harvesting of our present crop of timber in such a way as to insure future crops. The permanence of a great industry depends upon steps being taken speedily to bring this about.26

Looking back on the era, a later report of the State Forester recognized the practical and economic disincentives standing in the way of progressive forest management:

During these days when the logger was cutting quite a wide swath in this Oregon wilderness and people were beginning to ask about the large areas of slash that had all the earmarks of devastation, the conservationist had been holding the Lake States up as the horrible example of cut out and get out. The trail of abandoned towns and bankrupt mills and service industries was a fair warning.

This was nothing new to the logger. He had heard it since the turn of the century when the Lake States migration was well under way. He admitted that cutting practices left much to be desired but pointed out that there were two sides to the question. One was the profit motive and the other consideration of public welfare. He was somewhat skeptical about these two being tied together in a logging operation.27

Although the federal government and some larger private land owners had begun to recognize the importance to the public of responsible forestry,28 the economics of small, private forest lands did not encourage reforestation or even retention of the land after harvest.
There was taxation, capital investments, interest, protection and other carrying charges, fluctuating markets and the unknown values of future markets. A century was just too long to wait for another crop of trees. Liquidation by private owners seemed to be the only answer. Let the public agencies farm this crop since they had adopted such a policy and were practicing it. Profit was neither a motive nor a necessity with them.\textsuperscript{29}\textsuperscript{1}

The task of Oregon forestry was to somehow create a system that would satisfy the requirements of private industry and at the same time protect the public welfare.

A crucial element for progressive forest management was a stable pattern of land ownership. To encourage that, the reports constantly stressed the necessity for a system of taxation that would create incentives for private landowners to hold, reforest, protect and responsibly manage forest lands after harvest. This issue was referred to by the State Forester in his first annual report,\textsuperscript{30}\textsuperscript{1} and discussed numerous times during the next 20 years.\textsuperscript{31}\textsuperscript{1} Proposals to revise the taxation of timber and forest lands were before the legislature in 1923 and 1925 but failed to become law, due in part to the lack of public understanding of the problems.\textsuperscript{32}\textsuperscript{1}

An equally important element of progressive forestry was reforestation, especially of lands that had been cut or burned and then neglected. The production of new forests to replace those that had been cut would provide wealth for the state for generations to come.

The perpetuation of our forests by securing reproduction of commercially valuable species becomes of increasing importance as more and more of the timbered areas are cut over. There are thousands of acres of burned and cut-over forest land in private ownership in the State which should be reforested.\textsuperscript{33}\textsuperscript{1}

As part of that drive to secure a stable supply of trees for harvest, and thereby avoid depletion of the forests that had occurred in other regions of the country, the State Forester and others recognized the need for reforestation of the millions of acres of burned and cut over land that was not coming back into timber. These lands were a concern of the state from the beginning of Oregon forestry. They represented not only lost income for owners, but also lost tax revenue for the counties and the state. More importantly, they threatened the future security and stability of the state.

The 1919 Report of the State Forester proposed a "Forest Policy For Oregon." In comparing the management of the national forests with that of private forest lands, the report notes:

A wise provision of the [federal] government makes sure that these lands will permanently be devoted to their best use. However, Oregon has in
private ownership millions of acres of land good for nothing else except the growing of forest crops, which is being rapidly mined by the owners and then left unproductive, an economic loss to the owners and to the state. Oregon now has more than a million acres of such logged-off, unproductive land and each year thousands of acres are being added to the area. The time is here when, as a matter of plain, simple business, the state should grapple with this economic problem.\textsuperscript{340}

To remedy this problem, the State Forester proposed that the state immediately begin a program of acquiring and reforesting cut and burned over lands. These lands were seen as a resource that could benefit the entire state: "The possibility of increasing the wealth of the state by this sum annually, from a source at present entirely unproductive, presents a problem which no patriotic citizen can ignore.\textsuperscript{351}

Following the State Forester's recommendations, the Board of Forestry in 1920 adopted a comprehensive and far-sighted Forest Policy for Oregon. Included were recommendations for federal action, and state and federal cooperation. The Board also stressed the importance of reforestation for the health of the state and society, declaring, "Every citizen in the state is vitally interested in the timber and timberland within its borders." It recommended that the State of Oregon enter into a program to acquire and manage logged-off and unproductive forest land, to secure the benefits for future generations.\textsuperscript{360} The board also recommended that the state engage in a thorough study of forest taxation. Both would take years of public education and political discussion before bearing fruit.

Concepts now considered cornerstones of modern forest management received increasing attention and discussion during this period. Ideas about the values of forests as resources that benefit society and the importance of reforestation and "sustained yield" management for future generations were discussed by professional and layman alike. They arose out of the specific circumstances facing the state: the continuing concern of forestry professionals and policy makers over the millions of acres of cut over and burned over lands that had been abandoned by private owners. In 1925, the State Forester's report included a discussion of the problem by E.H. MacDaniels, an official with the United States Forest Service:

> Every year something over 100,00 acres of logged-off land are added to the five million acres now deforested.\textsuperscript{370} Possibly one-tenth of it may be used for agriculture. The rest of it will produce timber or nothing. What to do with this huge and growing territory is an economic problem of the first importance.\textsuperscript{380}

It was thought that some of this land might attract capital and become profitable commercial forests, but other areas would not support private ownership.
These less attractive areas may perhaps be made to grow timber under some form of public ownership, and will produce property that will support industry and pay taxes; or they can be left unproductive, and the wealth of the state will be reduced by that amount. The course that will be followed is a public question, and furnishing the means to carry out the policy decided upon is largely a public responsibility.\textsuperscript{39}

In 1925, as a first attempt at providing a remedy for the problem of cut over and neglected forest lands, the Oregon legislature passed the first land acquisition act.\textsuperscript{40} The law allowed the Board of Forestry to receive gifts or donations of forest or brush covered lands. However, the law required that donated lands have clear title, free from all liens and encumbrances. Many of the lands were encumbered by liens for delinquent taxes owed to the counties, and the law did not provide a mechanism for the counties to transfer those lands to the state. As a result, no lands were acquired by the state under the terms of the act.

The statute is notable, however, because it provides the first statement by the Oregon Legislature of the purposes for which state-owned forest lands should be managed. The State Forester had previously suggested that forest land management should include consideration of water\textsuperscript{41} and protection of scenic resources.\textsuperscript{42} The act allowed the board to accept forest or brush covered lands that the board determined were valuable "for forestry purposes or for the conservation of water or watershed protection, or for public parks or campgrounds."

Although the state had not yet found a solution for the problem of neglected lands, the slow and steady progress of education continued. In the report of 1926, after 15 years of discussion and education about Oregon's forest problems and the principles of responsible forestry, the State Forester philosophically observed:

> The building up of an efficient forestry organization is, of necessity, a gradual process. New conditions and problems constantly arise. There is the old work to be continued and pioneering work to be undertaken. Occasionally steps have to be retraced. Developments, accomplishments and misfortunes of forestry practice or lack of it in other states, must be studied and the lessons learned applied to local conditions. But despite the method, the ultimate goal to be attained is always the same—that of forest perpetuation.\textsuperscript{43}

In reflecting on the state responsibility, the State Forester reviewed the tremendous financial contribution of the forest industry to the wealth of the state, including creating employment for some 50,000 people and placing more than $40,000,000 per year into circulation in the state. The State Forester also recognized the importance of other values provided by the forests and the state's duty to consider those in addition to revenue:
The state's responsibility lies not only in permanent employment for the industrial population and a stabilized tax revenue, but also in watershed protection and perpetuation of fish and game and other recreational pursuits. To accomplish these ends the state must promote and enact progressive forest legislation, enforce present forest laws and carry on a vigorous campaign of education.\textsuperscript{441}

While the forests had and would continue to provide jobs and bolster the economy, interest in other uses and values of the forests continued to evolve. Oregon's growing population (783,389 in 1920) was making increasing use of the forests for hunting, fishing, hiking and other forms of recreation, uses that responsible forest management could not ignore.

The amount of unproductive, cut- and burned-over forest lands continued to increase through the 1920's. By 1928, it was estimated that private owners held 2,600,000 acres of cut-over land, and that logging operations were adding an additional 125,000 acres annually.\textsuperscript{451} At the same time, economic problems facing private landowners mounted; the amount of cut-over land delinquent in tax payments multiplied. It was estimated that 10 percent of the private land in the state was tax delinquent in 1919, 16 percent in 1921, and 25 percent in 1925. For western Oregon counties, which held most of the cut-over forest land, the numbers are even higher: in 1925, 36 percent of the land in Tillamook county was tax delinquent, 37 percent of Clatsop County was tax delinquent, and 52 percent of Polk County was tax delinquent.\textsuperscript{461}

The State Forester's report for 1928 reviewed "The Progress of Forestry in Oregon." The report surveyed the change in public attitudes toward the forests over the previous 30 years. The limits of the forests were understood, public and social value of the forests accepted, the necessity for reforestation and sustained-yield management promoted, and state responsibility shouldered:

Coincident with the agitation for equitable taxation on forest lands came the question of state and federal responsibility in the perpetuation of forests on private and state owned lands. It was considered clearly a state and federal responsibility to promote forest growing on private lands and thereby insure stable tax revenue, industrial payrolls, watershed protection so as to insure a continual supply of water for domestic use, irrigation and hydroelectric development, perpetuation of game and fish and recreational areas. It was clearly an injustice for the owner to carry the entire load.\textsuperscript{471}

By the mid 1920's, the problems of neglected and abandoned forest lands were established and recognized. The 1920's and 1930's were years of continuing education and repeated efforts to craft appropriate and acceptable political solutions. They also established the principles of responsible forest management the board would bring to the state forests.
III.

Tax Relief

Legislation introduced in the Oregon Legislature in 1923 and 1925 proposed solutions for the tax burdens borne by owners of cut-over forest lands. Neither was enacted. Finally, after 20 years of public education and political discussion, the 1929 Legislature provided tax relief for private owners of cut-over lands. The Forest Fee and Yield Tax Act, commonly known as the "Reforestation Act," provided for automatic classification of cut-over forest lands. Upon classification by the Board of Forestry, the county tax on the land would be set at five cents per acre, supplemented by a 12 1/2 percent yield tax on the future harvest. Although counties were nervous about the removal of property from the ad valorem tax base, early calculations from Clatsop County indicated that the county actually collected more tax revenues after classification than before. In addition, the act offered the hope that millions of acres of cut-over lands threatened with tax delinquency might remain solvent and in private ownership.

The Reforestation Act provided prospective tax relief for many private land owners. By 1932, 628,000 acres were classified and receiving the benefits of the system, and by 1935, 939,000 acres of cut-over and immature forest lands were classified under the Forest Fee and Yield Tax Law. Although the Act did not address the problems of lands already tax delinquent, foreclosed or in county ownership, at least for the moment it eased the threat of wholesale abandonment of millions of acres of cut-over land. It also represented the first step in stabilizing land ownership and accomplishing the goals set by the board almost twenty years before.

IV.

State Acquisition of Abandoned Lands: A Decade of Debate

The problems of abandoned and tax delinquent lands continued to grow. During the 1920's and 1930's, the state levied a property tax for state purposes that was included within each county's total tax levy. That amount was a direct obligation owed to the state by the county in its corporate capacity. The county was required to pay out of general funds taxes owed but not collected from tax delinquent property.

Throughout the 1930's, counties, especially in western Oregon, faced increasing tax delinquencies that were straining county finances. Tax delinquencies in Lane County, for example, increased from $47,382.13 in 1930, to $356,535.31 in 1936. By 1932, fully 34 percent of property taxes statewide went unpaid, amounting to over $14,000,000 dollars.

In 1931, the legislature again attempted to provide a mechanism for transfer of cut-over, tax delinquent lands to the state, to relieve the counties of tax liabilities and bring the lands back into production. A reworked bill allowed the board to acquire by gift, purchase or transfer of title by any county lands "suited chiefly for any or all of the following purposes: growing forest crops,
water conservation, watershed protection, recreation. Counties would receive five cents per acre per year, and 12 1/2 percent at the time of harvest, the same amount they were collecting from private lands classified under the Reforestation Act.

The Act also confirmed the management principles advocated by the Board of Forestry and the State Forester. The board was authorized, at its discretion, to manage state forest lands for "any or all of the following purposes: (a) continuous forest production and so far as practicable to promote sustained yield forest management for the forest units of which said lands are a part; (b) water conservation or watershed protection; (c) recreation."

Preparations were made for transfer of lands to the state, but once again technical problems intervened. Lane County deeded over 10,000 acres of county-owned land to the state. However, it was discovered that the state could only receive property with a clear and merchantable title and that the cost of the title exceeded the actual value of the land. The proposed transfer was abandoned. The counties were also precluded from transferring tax-foreclosed property until the four-year redemption period had run, rendering ineligible many of the lands the counties held.

The Great Depression compounded the problem of abandoned forest lands. By 1932, more than 2,000,000 acres of forest land were tax delinquent; much of it had already been returned to the counties or was in foreclosure. At the same time, Oregon's timber industry and timber workers suffered a precipitous decline. By 1932, production had fallen to 1.7 billion board feet, from 5 billion board feet in 1929. At a time when the depression was squeezing everyone, when tax revenues and the ability of individuals to pay taxes were plummeting, the burden of the abandoned lands on the counties was large.

The legislature continued to search for a workable solution to the problem of tax delinquent lands. In 1933, the acquisition act was amended to promote conveyances to the state. Some of the restrictions on title were removed, and counties were allowed to transfer foreclosed lands after holding them for only one year. However, no funds were provided to purchase land or facilitate the transactions, and only a few transactions were completed. In 1936, in the first conveyance of tax foreclosed property, 619 acres were deeded to the state by Clatsop County for tree planting experiments, becoming the Hamlet State Forest.

During this period, state and county officials and forestry professionals continued to debate alternatives for the abandoned forest lands. Transfer to the federal government for inclusion into the National Forest system was opposed by many because the counties would lose the tax revenues provided by private property. Transfer to the state was opposed for similar reasons. Although county forest management was authorized by the 1937 Legislature, many counties had neither the financial resources nor the expertise to reforest and manage large amounts of cut or burned over land. The State Forester later reported:
There was quite a liability in these foreclosed forest lands. Counties were in the forestry business and no means whereby the activity could be financed. It not only represented a serious financial problem but a definite threat. The state law said that the owner of the forest land was responsible for the hazard to life or property which might arise because of a forest fire. Liability could be escaped through a well-financed protection program. Because of inadequate finances to meet the law requirements, some of the counties found themselves wide open for damages and costs in the case of destructive fires. They were considerably disturbed over the situation and looked for a way out without cost to themselves. Forestry did not mean very much in the face of this critical condition.  

Transfer of property to the state may have been hindered because there was no clear consensus among state and county officials on a preferred option. Certainly, the counties were interested in maximizing returns for property they owned and, if possible, in returning the property to private ownership to augment the county tax base. And as Governor Meier noted, as a practical matter, with Oregon deep in the throes of the depression, the state had very little money available to pay the counties the five cents per acre fee required by statute.

Counties, burdened by their state tax obligations on foreclosed lands and desperate for tax revenues, began to return property to private ownership. Foreclosed land was sold for a small fraction of its value; often, remaining merchantable timber was removed, and the land was once again abandoned and allowed to become tax delinquent.

The problems related to the neglect and abandonment of cut-over and burned-over forest lands were discussed by the State Forester and state officials throughout the decade. The discussions focused on three areas of special importance: first, the statewide interest in healthy, productive forests, and the responsibility of the state to bring about those conditions; second, the importance of state acquisition and management of neglected and abandoned forest land; and third, the particular principles that the state would bring to management of the state forests.

During the 1930's, the state's understanding of "sustained yield" continued to mature. Two of the most important elements for sustained yield management were identified as stabilized land ownership and ownership in blocks of sufficient size to create a sustained yield management unit. The State Forester believed that the state had a responsibility to create the conditions and legal mechanism whereby sustained yield management could occur, including legislation to remove economic disincentives to long-term private forest management. However, the state also expressed its responsibility for directly acquiring and establishing sustained yield management units.

Other agencies agreed with the State Forester. In July of 1936, the Forestry Division of the Oregon Planning Board reported to the Governor on the problems facing Oregon's forests.
The report recommended the transition of the timber industry from a "liquidating" industry to a "sustained yield" industry. To accomplish that, it encouraged the state to acquire cut-over and abandoned forest lands and urged the legislature to provide for the formation of legally recognized sustained yield units. The report also made a strong statement about the importance of forest management principles that included consideration of other forest uses, including water conservation, forage and recreation.

Insofar as practical, the principle of multiple use management should be followed in all forest areas which naturally lend themselves to two or more uses. Timber products are not the only values derived from forest lands. Other values, which in the aggregate may be just as important, reside in the forest cover. To the irrigated districts, adequate protection of water resources in mountain watersheds is vital. The forest cover not only conserves the run-off but prevents erosion and the silting of reservoirs. In the region east of the Cascades, there is the highly important livestock industry with an investment of more than twenty million dollars. The forests produce a large part of the summer forage for this livestock. With the completion of an excellent system of motor highways, recreation is becoming increasingly important. This implies that efforts should be made to preserve, as far as possible, the natural beauty of the mountain areas and protect the wild life which they contain. There are certain areas, however, that should be used exclusively for municipal watersheds, for recreational purposes or as game preserves.

The State Forester summarized the responsibilities of the state regarding forests in the 1936 report. The state had a responsibility to encourage, through legislative and administrative action, the retention and production of private lands. The state also had a responsibility to acquire a substantial area of forest land in order to stabilize land ownership.

There are thousands of acres of this no man's land in Oregon at the present time and it is increasing annually as the timber is removed. It must be placed under a responsible ownership, protected and dedicated to the production of future forests. The state is not meeting its social responsibilities of assuring permanent industries and communities so long as it permits continuation of an economic system that is directly antagonistic to good forest practice.

The following year, the State Forester again outlined the reasons for state acquisition of forest lands. State ownership would stabilize land ownership and make possible the establishment of cooperative sustained yield units. When linked with private lands, it would extend the requirements and benefits of responsible forest practices. But that was not all:
State forests mean an eventual income to the state; they form a laboratory for the practice of forestry as an example to private individuals and are a stopgap in the rapid accumulation of "no man's" land. However, the state's obligation does not cease with industrial stability. It goes further than private responsibility. It includes such intangibles as the development of recreational areas and facilities, erosion control, watershed and wild life protection, and highway beautification.

Trends in county acquisition of forest lands continued. In 1933, counties had 400,000 acres of forested lands; in 1937, that total had doubled to 800,000 acres, "with many additional acres delinquent and ready for tax foreclosure." By 1938, counties had title to 900,000 acres of forest land, with the threat that much more would soon follow.

Thirty years had passed since the Oregon Conservation Commission had ushered in a new age of forestry. After a generation of discussion and education, the principles of responsible forestry had been developed, and management goals for state forests established. The next decade would bring to fruition those many years of work and bring enormous strides in forestry.

1939 - 1949: DECADE OF DECISION

Decades of private and public education, of philosophical and political discussion bore fruit in legislation adopted in this decade. An effective instrument for acquisition was developed, reforestation was mandated by state law, and the citizens of the state extended the credit of the state in order to reforest cut and burned-over lands. All were an expression of the value of the forests to the state and to future generations.

I. Establishment of State Forests

In 1939, the legislature enacted a new Acquisition Act. The law allowed the State Board of Forestry to acquire from any county, municipality, state or federal agency lands "chiefly valuable the production of forest crops, watershed protection and development, erosion control, grazing, recreation or forest administration." The lands would be designated state forests and the board was given discretion to manage them according to the "best grazing and forest management practices." The board was given the authority to sell forest products as it deemed advisable and authorized to permit the use of the lands for other uses, including grazing and recreation "when, in the opinion of the board such use does not and will not impair or be injurious or detrimental to any of the purposes of the act."

The 1939 Act enabled the board to make "adjustments" in the accrued delinquent fire patrol liens on the tax foreclosed property. The act also established a revenue distribution formula under which the counties would receive 90 per cent of the proceeds from the sale of
forest products, after deduction for reforestation, protection and management costs. In addition, the Act provided that the board could not accept title to any lands without the approval of the county in which the lands were located. 79

The Acquisition Act was amended in 1941, 1943 and 1945, primarily to adjust the future distribution of revenues from those lands. But provisions of the 1939 act provided the basis for transfer of almost 600,000 acres of cut-over and burned-over land from the counties to the state over the following ten years. In 1939 and 1940, approximately 65,000 acres were conveyed by the counties to the state under the terms of the 1939 Act. However, in 1940 the counties still held over 1,000,000 acres of cut-over land. 80

The 1941 Legislature made several significant amendments to the 1939 Acquisition Act. 81 The clear title requirement was relaxed to facilitate transfer of county owned lands, and the revenue distribution formula was revised to give the counties 75 percent of the revenues from the lands, after deduction of five cents per acre per year for fire patrol costs. 82 The act authorized counties to convey foreclosed lands to the state "in consideration" for the statutory revenue payment. 83

The 1941 amendments also expanded the authority of the board to acquire property. The board was authorized to acquire land by purchase from private parties and empowered to issue forest development revenue bonds to finance those acquisitions. 84 By 1944, the board had purchased 35,485 acres from private owners. Most of the bonds were purchased by the state bond commission, allowing for cash transactions. 85 The deeds from private forest land owners were acquired by the state pursuant to the provision of the acquisition acts, noted above, which stated that the board "shall not acquire any land without prior approval, duly made and entered, of the county court or board of commissioners of the county in which the lands are situated." 86

Most significantly for the board, two of the positions that it had advocated for many years were established in the 1941 law. The legislature confirmed that state forests were resources of statewide concern and directed the board to manage the lands "so as to secure the greatest permanent value of such lands to the state." 87 The legislature also ratified the board's position on the importance of sustained yield by giving it broad authority to enter into cooperative agreements with other landowners for the establishment of sustained yield units. 88

By 1942, the state had acquired about 112,000 acres from the counties for use as state forests. 89 The State Forest Acquisition Act was again amended in 1943. The five cents per acre fee was eliminated in order to match the federal program and give the counties 75 percent of the gross revenues from county-deeded lands. By July, 1944, the state had acquired 321,000 acres under the state forest acquisition laws, 285,000 acres from the counties and 35,485 acres from private owners. 90

In 1945, in order to correct a defect in the title of the 1943 Act, the legislature repealed previous acquisition authority and reenacted substantially the 1943 Act. By June 1946, the state

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forests totalled approximately 445,000 acres. By 1952, the Department administered 710,027.39 acres. The Elliott State Forest, formed by an exchange with the United States and carrying the status of school lands, included 71,227.47 acres. 638,799.92 acres had been acquired under the various acquisition acts. Of that total, 550,027.76 acres were deeded from the counties to the state, and 88,772.16 acres were purchased.

The Acquisition Act was amended a number of times between 1941 and 1963, primarily to modify the distribution of revenues and reallocate funds for protection and management of the forests. In 1953, the act was amended to create a subaccount of the State Forest Development Revolving Fund (referred to as the Protection Subaccount) to pay costs incurred in the suppression of fire originating on or spreading from state forest lands acquired under the Acquisition Act. Ten percent of the gross revenues were allocated to a subaccount until the amount reached $300,000. Thereafter revenues were split under the 75-25 percent formula. A 1965 amendment raised the ceiling to $950,000.

II. State Efforts to Acquire County-Owned Forest Lands

Beginning in the late 1930's, the Board of Forestry worked closely with the counties to facilitate the transfer of abandoned and tax delinquent forest lands from the counties to the state. The counties were burdened with abandoned forest lands and state property taxes owed to the state. During the 1930's, these lands strained the resources of the counties, making county management difficult. The state was interested in bringing the cut-over forest lands back into production, resolving the matter of delinquent tax payments, and helping the counties stabilize their land base. The state believed that transfer of the lands to the state was the best solution to the problems and was enthusiastic about acquiring some of the county-owned lands to establish state forests. To bring this about, the state consulted and negotiated with the counties to craft solutions to the problems that would benefit all parties.

In the 1930's, the delinquent fire patrol taxes were a significant problem for the counties, and of concern to the state and the independent Fire Patrol Associations that provided the actual services. By 1936, delinquent fire patrol taxes amounted to $187,286 on 752,241 acres of county-owned lands. The board decided to retain an attorney to contact the county courts in order to arrange for settlement of the delinquencies. Further work with the association of county courts led to a proposal whereby the department would accept ten percent of the delinquent amount; in return the counties would pay current assessments in full. Although the proposal was not implemented, the state continued to work with the counties to resolve the problem.

On September 28, 1938, the board devoted an entire afternoon to a presentation by County Judge Guy Boyington of Clatsop County on behalf of western Oregon counties. The counties found themselves in desperate circumstances, due in large part to a loss of tax base and revenues from the abandoned forest lands. The Governor stated that he would appoint a
committee to work with the counties that would "serve the best interests of the state in general."\textsuperscript{100}

On November 26, 1938, the board discussed the misunderstandings that had arisen in the counties over administration of the present laws, particularly the reforestation law. The board agreed that it bore part of the responsibility and proposed ways to work with the counties to resolve the problems.\textsuperscript{101} Subsequently, at the beginning of the 1939 legislative session, the board resolved to aid the counties and to do "whatever is in their power to assist the counties in their land use problems."\textsuperscript{102} The board stressed the need for cooperative solutions: "[I]t is essential to arrive at a mutual understanding between the board and the county officials." It also continued to emphasize that any solutions had to be in the best interests of the state at large.

In 1939, several county courts expressed their willingness to transfer county-owned lands to the state, but believed a new acquisition law was necessary.\textsuperscript{103} At the same time, some of the counties again expressed an interest in deeding county-owned lands to the state in lieu of delinquent fire patrol assessments.\textsuperscript{104} That same year, the board agreed to work toward a solution that would not cause injustice to the counties.\textsuperscript{105}

The Acquisition Act, approved March 22, 1939, was a result of that cooperation; after enactment, the board continued to work closely with the counties. The board immediately expressed a policy of acquiring property only when the county courts were willing and agreeable to the conveyance. In the first meeting of the board after the Acquisition Act was approved, the Governor stated that the state should "proceed cautiously", and directed the State Forester and the board to confer with the county courts to find out what areas they were "willing to turn over to the state."\textsuperscript{106} The board is on record as admitting that it "actively promoted the benefits of county participation in the program."\textsuperscript{107}

During the late 1930's, the board also continued to work closely with the counties regarding the delinquent fire patrol assessments.\textsuperscript{108} In 1939, the board considered whether it should begin a friendly suit, with the consent of the counties, to determine county liability for the delinquent fire patrol assessment. However, it decided instead to work through a committee to determine "reasonable equities".\textsuperscript{109} In 1940, after reviewing the issue with the Association of Oregon Counties, the board agreed that the matter would be referred to the State Forester "to be worked out by him in cooperation with the association officials."\textsuperscript{110} In 1940, Josephine and Curry counties, for example, proposed deeding tax delinquent lands to the state in consideration for cancellation of delinquent fire patrol assessments.\textsuperscript{111}

The counties may have received some relief from the burdens of foreclosed land after 1940, when the Attorney General issued an opinion to the State Forester that delinquent fire patrol assessments would be invalidated pursuant to Chapter 402, Or Laws 1937, upon foreclosure by the county. 19 OAG 727 (1940).\textsuperscript{112} Beginning in 1940, there was little further discussion of delinquent fire patrol assessments.
As implementation of the Acquisition Act proceeded in the 1940's, the state worked closely with the counties to identify the foreclosed lands that the counties might be interested in deeding to the state. The State Forester described the cooperative program in his 1942 report:

The disposition of tax foreclosed lands has been one of the most serious problems that has faced the county courts. The establishment of state forests is one solution. Otherwise the counties find themselves in the forestry business. The management or disposition of the county forest lands is a matter for the county courts themselves to decide. Transfer of the tax foreclosed areas to the state is purely a voluntary procedure. 1131

The board agreed that the counties could be of great assistance in helping the department develop a uniform, statewide acquisition policy. 1141 The board also conferred with the counties regarding proposed amendments to the acquisition act. 1151

As a result of the board's efforts and the cooperative development of policy and legislation, the counties expressed their willingness during the 1940's to transfer tax delinquent lands to the state. 1161 The plans developed in this manner led Tillamook County in 1943 to propose turning over to the state all of the county-owned forest lands. 1171 Although that did not occur, ultimately Tillamook County and other western Oregon counties did willingly convey hundreds of thousands of acres of tax-delinquent forest lands to the state.

Demands for material from the war drove prices of lumber and timber sharply higher in the mid-1940's. As a result, the small, scattered stands of mature timber on foreclosed lands suddenly became valuable; snags and windfalls were sought after commodities. 1181 The increasing stumpage prices and rising markets for land caused many areas to quickly pass into private ownership. 1191 The improving economic situation also led to improving finances for the counties. Delinquent property tax levels fell into single digits for most counties, from Depression levels that had neared 50 percent. 1201

The improved economic situation and demand for stumpage slowed the transfer of land to the state in the mid-1940's. While the counties still desired to convey these lands to the state, they also wished to profit from the remaining timber. Consequently, the state agreed to take title to the land, but allow the counties to keep title to the timber for ten years. Under these agreements, the state administered the timber sale contracts and returned 90 percent of the revenues to the counties. 1211

The nature of relationship between the state and the counties regarding acquisition of the foreclosed lands was discussed before and after passage of the 1939 Acquisition Act. The relationship was characterized by some as a "trust". 1221 However, neither the 1939 Act nor any of the subsequent Acquisition Acts use the term "trust" or refer to a "trust" relationship. The issue of the nature of the relationship between the state and counties was raised in the 1980's litigation.
over tax-foreclosed forest land Linn County had conveyed to the state. The case concerned the proposed exchange of the former county-owned forest lands for privately owned lands in Crabtree Valley. The state intended to preserve the old-growth forest in the valley in its natural state as a state park. Linn County objected to the exchange, arguing it would be deprived of revenues from the exchanged state-owned lands. The court determined that the county's conveyance of tax foreclosed lands pursuant to ORS Chapter 530 created a relationship between each county and the state that entitles the county to revenue as set forth in the statutory distribution formula. 123/

The court concluded:

The trial court held that a contractual or trust relationship existed between the state and the counties. We deem it unnecessary to describe the arrangement in contract or trust terms. Rather, we look to the statutes to determine what flows from them. 124/

Under ORS Chapter 530, each County has a protected, recognizable interest in lands it transferred to the state that can be asserted against the state. Counties transferred these forest lands, lands that each could have kept and administered for its own benefit, to the state "in consideration of the payment to [the County] of the percentage of revenue derived from such lands. [Counties are] entitled to enforce that claim for [their] percentage of revenue, and the state cannot avoid its obligation to [a County] by conveying [the] property to a third person." 125/

III.

Forest Conservation and Rehabilitation

The progress of Oregon forestry continued on other issues as well. In 1941, the legislature reaffirmed the state's interest in responsible forest management on all the forest land in the state by making reforestation a statutory requirement. The Oregon Forest Conservation Act of 1941 was an outgrowth of Title X of National Industrial Recovery Act of 1933, which required loggers to conduct operations so as to leave young growth or seed trees for reforestation. Although the act was declared unconstitutional in 1935, many loggers continued to comply on a voluntary basis. 126/ As part of the growing sense of the state's interest in healthy forests, the legislature stepped in and mandated forest practices to encourage reforestation. The act summarized the policies that the board and the State Forester had been proposing for many years:

The preservation of the forest and the conservation of forest resources for the equal and guaranteed use of future generations, and the protection of forest and water resources and the continuous growth of timber on lands suitable therefor hereby are declared to be the public policy of the state of Oregon. 127/

A few years later, the State Forester's report described part of the political incentive for the act:
The abuse of forest lands through destructive logging methods by some of the timber owners, together with agitation on the part of the federal government that the only cure for existing forestry ills was federal control, resulted in a state-industry designed conservation act which placed in legal form the minimum requirements in carrying out approved forest practices during logging. Thus Oregon became the first state in the Union to approve legislation granting the Board of Forestry control over private logging operations along conservation lines.\textsuperscript{128}\textsuperscript{a}

Timber harvesting had rebounded to pre-depression levels by 1940 and the next decade saw enormous volumes of timber removed from Oregon's forests. 6.3 billion board feet of timber was harvested in 1941; in 1943 and 1944 production topped 7 billion board feet.\textsuperscript{129}\textsuperscript{a} These levels of timber harvesting produced large areas of unforested land and raised the public's interest in reforestation.

The large amount of cut- and burned-over land that was not naturally regenerating increasingly became a matter of statewide concern. Of particular concern was the condition of the Tillamook burn, almost 300,000 acres of ashes and snags. Fires that swept through the snags, debris and new growth after the great fire of 1933, including fires in 1939 and 1945, destroyed the possibility that the burn would naturally rehabilitate any time soon. The failure of the state to rehabilitate and reforest the burn was criticized within the state and across the nation. The condition of the burn symbolized for many the need for state action on a statewide basis to address rehabilitation and reforestation.\textsuperscript{130}\textsuperscript{a}

A Special Forestry Committee was appointed to study the problem and propose solutions for rehabilitation and reforestation of the Burn and other unregenerating forest lands in the state. Two years of intense arguments followed, many of them over the funding mechanism. An initial proposal for funding through a severance tax on timber was replaced by a recommendation that reforestation be funded by all the citizens of the state, through a $25,000,000 bond issue.\textsuperscript{131}\textsuperscript{a}

The 1948 Oregon Legislature adopted a resolution to put the reforestation to a vote of the people. HJR 24 proposed a constitutional amendment authorizing the legislature to issue $25,000,000 in state bonds for the rehabilitation and reforestation of state forest lands. The Board of Forestry took no official position on the measure. However, the Voter's Pamphlet statement in favor of the amendment recited the dire conditions of the state forests and the benefits that would accrue to all of the citizens in the state from reforestation.\textsuperscript{132}\textsuperscript{a}

The amendment passed, with a majority of 1,875 out of more than 420,000 votes cast statewide. It was rejected by voters in Tillamook, Clatsop and Marion counties, but passed on the strength of votes in Multnomah, Benton and Lane counties.\textsuperscript{133}\textsuperscript{a} The 1949 Legislature enacted HB 87, giving the board authority to sell bonds, and creating the "Oregon Forest Rehabilitation Fund" for use by the board.\textsuperscript{134}\textsuperscript{a} The act also declared that the duty of the State Forester, under the
direction of the board, would be to "rehabilitate, reforest and develop state owned forest lands so as to secure the highest permanent usefulness to the whole people of the state of Oregon."\textsuperscript{135/}

**1950 - PRESENT: ERA OF MANAGEMENT**

By 1952, the state had acquired most of the forest land it would receive from the counties. The state had received 550,000 deeded acres directly from the counties and had purchased an additional 89,000 acres, creating a state forest system of 640,000 acres.\textsuperscript{136/} With passage of the Rehabilitation Act in 1949, the state was primarily concerned with rehabilitation and reforestation of the state forests during the 1950's.\textsuperscript{137/} However, a growing and mobile population was making increasing use of the state forests for recreation and other purposes. Individuals and counties were interested in developing recreation sites, including campgrounds, in the state forests.\textsuperscript{138/} As always, principles of forest management continued to evolve in response to new understandings of the forests.

In 1958, Clatsop County presented proposals to the Board of Forestry's Timber Sale and Right of Way Committee for recreational use and development of state-owned forest lands within Clatsop County. The Committee brought the request to the Board of Forestry and reported the Committee's feeling that the board should recognize multiple use of the state forests and formulate policy in that regard.\textsuperscript{139/} At its next meeting, in June 1959, the board exercised its authority under ORS 530.010 and adopted a resolution recognizing multiple use of state forest lands:

\begin{quote}
NOW, THEREFORE, be it and it hereby is resolved by said board at its duly constituted meeting of June 3, 1959:

THAT, the principle of multiple use of said lands be recognized insofar as determined by the State Forester to be practicable and feasible, and that such use be inclusive of public campground recreation on sites designated therefor.\textsuperscript{140/}
\end{quote}

The resolution required the board to "cooperate with and seek the advice of" the county in which the lands was located and suggested an understanding of "multiple use" as a site specific rather than general management prescription.

The board soon broadened its multiple use policy, following a concept of forest management articulated in the 1930's.\textsuperscript{141/} Later in 1959, the newly-formed State Forests Committee followed the direction of the board to revise and propose additional policies as necessary to "set forth the intent and purpose of the Board" on certain matters, including land acquisition and exchange, reforestation and multiple use.\textsuperscript{142/} On March 9, 1960, the board adopted the revised multiple use policy that was to guide state forest management until 1972.
The policy, designated "F-1-1", and its "Objectives" outlined the broad management discretion of the board:

It shall be the objective of this policy to recognize other uses of state forest lands in addition to the yield of forest products. Such uses may be deemed either acceptable in the growing of forest products during an interim or perpetually, or uses more in the public interest than the yield of forest products. Such uses may include, but not be limited to, watershed protection and development, recreation, mining, fish and wildlife management, research and education, grazing, erosion control and administration. Cutting practices will be followed that will preserve the scenic beauty in every way consistent with good forest practices and sound economics.143/

The plan retained the requirement for cooperation and consultation with the counties for site specific recreational developments, but left the management for other uses within the discretion of the board.144/

The State Forester of the time described the state's forest management principles in his report to then-Governor Mark Hatfield:

Yesterday state forestry in Oregon was concerned largely with protection from fire. Today it follows the multiple use concept of forest management. Tomorrow it will ponder the problems of too many demands on an insufficient area of forest land and plan to meet and solve them.

The social and economic benefits of forestry on a statewide basis is of concern to the State Forestry Department. . .

This broad program recognizes the concept of multiple use. More than ever before it is becoming basic. The concept from the state standpoint has developed over a period of fifty years. It has set up a program of reforestation second to none in the nation; state forests have been created and managed under intensive management; a conservation measure requires the operator to leave his land in a productive condition; watershed management is recognized as a primary part of forest management and recreation becomes an essential part of forestry.145/

The interest in management of the state forests for a variety of uses also reached the Oregon Legislature. In 1967, the legislature amended the Acquisition Act to give the board greater authority to consider and manage for uses other than timber production on the state forests. The legislature continued the general mandate to manage the state forests to "secure the
greatest permanent value" of those lands to the state. But it amended the section concerning other uses, giving the board authority to:

Permit the use of the lands for other purposes, including but not limited to forage and browse for domestic livestock, fish and wildlife environment, landscape effect, protection against floods and erosion, recreation, and protection of water supplies when, in the opinion of the board, such use is not detrimental to the best interests of the state. (Emphasis added.)\textsuperscript{146}

Since 1941, the board had been required to evaluate other uses to determine whether they were "detrimental to other purposes of the act." Hereafter, other uses of the state forests would be evaluated according to the best interests of the state as a whole. This language was codified at ORS 530.050(3) and remains as the statutory authorization for management of other uses in the state forests.

The 1970's opened with the greatest interest in natural resources and the environment since the creation of the Oregon Conservation Commission in 1910. Recycling, land use and pollution control were all addressed, at either the national or state level\textsuperscript{147}. Proposals were floated to create an Oregon Department of Natural Resources. Forest management policies did not escape public attention.

The board was accused of being in the grip of the timber industry, a charge that reached even editorial writers in southern Oregon\textsuperscript{148}. The matter came to a head in the infamous "brochure incident" of 1972, when the Department of Forestry distributed industry materials at the Oregon State Fair criticizing wilderness designation and environmentalists\textsuperscript{149}. Responding to the public outcry, Governor McCall directed the Department to cease distribution of the brochures. In an editorial on the matter, \textit{The Oregonian} quoted a statement made by the Governor in his endorsement of the forestry theme at the fair:

\begin{quote}
Forestry provides our number one breadwinner. Environment provides our number one hope. A balanced marriage of the two provides us our best chance for a long and livening future.
\end{quote}

In many respects, the forest policy of the board reflected a similar perspective.

In the midst of this turmoil, the board conducted a formal review of its management policies for state forests, including the F-1-1 policy regarding multiple use\textsuperscript{150}. After almost a year of work by the State Forests Committee and with the blessing of the Attorney General\textsuperscript{151}, the board adopted a revised forest use policy that emphasized the importance of timber production:

The Board of Forestry recognizes that a balanced management program for state forest lands is in the best public interest, whereby
production of timber on a sustained basis is a primary goal but where due consideration is given to all other appropriate uses of the lands. The Board of Forestry considers that, whenever possible, a combination of uses should share the lands and dedication of lands for single use should be minimized.\(^{152}\)

The Objectives section was amended in similar fashion:

The objective of the management of state forest lands is to achieve optimum growth and harvest of forest products consistent with the protection of watersheds, fish and wildlife habitat, and recreation ad aesthetic considerations. Management plans for all state forest lands will also recognize other appropriate uses, such as grazing, erosion control, mining, research and education, and administrative use; whenever possible, management practices shall be designed to provide for such uses without complete elimination of timber harvesting or other uses.\(^{153}\)

State forest land management and long range planning has reflected this policy ever since, as have Board of Forestry policies concerning silviculture and the most recent Forestry Plan for Oregon.
railroads were the greatest beneficiaries under these acts. By the end of the disposal era, railroads had received in excess of 150,000,000 acres of land, far more than all homesteaders combined. The size of the transfers and the "checkerboard" pattern created across the west have had an enormous impact on the development and management of both private and public lands. See COGGINS, WILKINSON & LESHY, PUBLIC LAND AND RESOURCES LAW 97-98 (3rd ed 1993) for a discussion of the transfers. (COGGINS).

2/ A survey of public land disposal laws may be found in COGGINS, supra, at 49-106. See also, FROME, WHOSE WOODS THESE ARE: THE STORY OF THE NATIONAL FORESTS 33-40 (1962). (FROME).

3/ ONE THIRD OF OUR NATION'S LAND

4/ 19TH ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 14 (1929). "Much of the balance of the state, especially that within the national forests, carried stands of inferior timber, was of the alpine type or so isolated and scattered as to be practicably valueless to the state."

Beginning in 1919, the state began negotiations with the United States Forest Service to exchange scattered sections of state land within the United States forests, totalling about 70,000 acres, for a single block of forest land. The negotiations were eventually concluded by Governor Oswald West, with the state acquiring a block of about 70,000 acres of forest land south of the Umpqua River between Scottsburg and Reedsport. The forest was named the Elliott State Forest in honor of F.A. Elliott, Oregon's first State Forester.

5/ COGGINS, supra.

6/ FROME, supra.

7/ A substantial but unknown amount of both state and federal lands were transferred to private owners through fraudulent transactions. As Oregon's forest industry expanded, the race for timber created intense pressure for access to the public land. Many syndicates used dummy "entrymen" who applied for lands, paid the per acre fee (provided by the syndicate) to "prove up" the land for title, then immediately transferred ownership to the syndicate. The size of some of the swindles were matched only by the arrogance of the swindlers. See FROME, supra, at 39-44.

The rapid disposal of public forest lands attracted national attention, beginning in 1892. Federal investigations into land fraud in Oregon culminated in 1904 and 1905, when 26 indictments were returned against more than 100 persons. Among those subsequently convicted were a United States Senator from Oregon and a former commissioner of the United States
The Oregon Conservation Commission addressed the problem in its first report to the Oregon Legislature:

To the careless waste of existing resources which we and our families should share, we add the idleness of all the land cut and burned over each year, a dead loss of many millions of dollars. Fear of fire and discouraging taxation justly warrants the owner in not taking the necessary steps to make this land useful, hence much of it reburns and turns into a desert, ultimately to be untaxable, unproductive, and offering no reward to labor.

REPORT OF THE OREGON CONSERVATION COMMISSION 13 (1910).


BIENNIAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 6-7 (1952-54).

2ND ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 12 (1912).

Quoted in FROME, supra at 35.

See FROME, supra at 45-63, for a discussion of the life of Gifford Pinchot. Pinchot played a pivotal role in the development of the new forest ethic. Educated at Yale and the National School of Forestry in France, and a friend of both Grover Cleveland and Theodore Roosevelt, Pinchot was instrumental in introducing ideas about the public value of forests and the necessity for reforestation and long-term productivity to American foresters and the public.

Declaration of the Governors of the States and territories made at the Washington Conference, May, 1908.

The Commission's Report from the convention stated:

We declare our firm conviction that this conservation of our natural resources is a subject of transcendent importance, which should engage unremittingly the attention of the Nation, the States, and the people in earnest co-operation.

REPORT OF THE OREGON CONSERVATION COMMISSION 5 (1908).
16/ Or Laws 1909, ch. 81, §1.

17/ Forest fires were a fact of life in 19th century Oregon. Between 1811 and 1911, it is estimated that major fires alone burned 4 million acres, destroying 160 billion board feet of timber. 2ND ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 16 (1912). And the huge expansion of the logging industry increased the risk of major fires. Logging in the era of 1880 to 1920 was a high grade, high volume industry; only the best logs of the best trees were taken, leaving enormous expanses of slash and debris. BIENNIAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 8-10 (1952-54). Fire prevention and protection were almost nonexistent; the supply of mature timber seemed endless. Fires started in logged or brush lands often burned all summer until extinguished by fall rains. BIENNIAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 20 (1946-48).

Fires not only damaged or destroyed standing trees, they often roared through slash and brush covered areas. These fires often killed the young trees and, if hot enough, sterilized the soil, thereby depriving Oregon's future citizens of forest resources that they could have relied upon to replace the virgin trees being cut.

Logging before the turn of the century was virtually unregulated. The first Oregon forestry law, enacted in 1864, made setting fires maliciously or allowing them to escape to the land of another a crime punishable by imprisonment or fine. The Game and Forest Warden Law, enacted in 1899, directed the warden to enforce the laws of the state relating to forestry. Or Laws 1899, ch. 132, §18. However, with few laws and inadequate funding, little fire prevention or protection was accomplished.

Expansion of the logging industry also bought more people into the woods, whose carelessness around so much fuel could easily spell disaster. Increasing use of steam-powered equipment, including donkeys, tractors and trains, further added to the risk of fire. Recognizing the danger and the need for some kind of fire protection system, private forest patrols were organized, beginning in Linn County in 1904 and Tillamook County in 1905. In 1907 the Legislature enacted the first fire prevention and protection legislation. Or Laws 1907, ch. 131. The law created the State Board of Forestry, but gave it funding only for stationery and office supplies, again leading to little actual fire protection.

18/ REPORT OF THE OREGON CONSERVATION COMMISSION (1910).

19/ 1912 REPORT supra at 9.

20/ 1912 REPORT supra at 17.

21/ Or Laws 1911, ch 278, §2.


26/ 2ND ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 19 (1912).


28/ BIENNIAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 11-12 (1952-54). The Report noted that there was an interest in forestry, if it was economically feasible:

There was the earnest desire to practice forestry if the cards showed that it approached good business standards. Something more than the profit motive was coming into the picture, something that the liquidation logger had mentioned. This was the industry acknowledgment that it did have a responsibility from the standpoint of public welfare. It did not seem just exactly right to remove a crop of timber and then let someone else, probably a public agency, take over while a new crop was growing. There were so many tangibles and intangibles involved in this matter. They included the wages, and money spent for materials and supplies, the recreational facilities of the forests, watershed protection, taxes. The public had quite an interest there. Industry apparently had quite a responsibility.

29/ Id.

30/ 1ST ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 16 (1911)


33/ 1ST ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 16 (1911).


35/ Id.

36/ 10TH ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 52 (1920).

37/ The five million acre figure probably refers to both private and federal lands. Concurrent estimates by the State Forester were that approximately 2.5 million acres of privately held forest land was deforested. See 18TH ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 10 (1928).


39/ Id.

40/ Or Laws 1925, ch. 115.

41/ 1ST ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 16 (1911).

42/ 4TH ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 5-6 (1914).

43/ 16TH ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON (1926).

44/ Id.

45/ 18TH ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 10 (1928).

46/ Id. at 10-11.

47/ Id. at 6.

48/ Or Laws 1929, ch 328

For a discussion of the nature of the relationship between the state and counties regarding the state tax, see Eugene School Dist. No. 4 v. Fisk, 159 Or 245 (1938); Northrup v. Hoyt, 31 Or 524 (1897); State v. Baker County, 24 Or 141 (1893).

REPORT OF THE STATE TAX COMMISSION OF THE STATE OF OREGON 50 (1935)

Or Laws 1931, ch.93, §1.

Id.,§3.

OREGON BOARD OF FORESTRY, MINUTES, November 28, 1931.


Id.at 12.

Id. The State Forester reported, "[M]ost of [the counties] were on a warrant basis and some of the warrants were being sold at a discount."

Or Laws 1933, ch 305.

CHRONOLOGICAL HISTORY, supra Note 9, at 20.

Or Laws 1937, ch 402 granted counties broad authority to manage lands acquired through tax foreclosure.


OREGON BOARD OF FORESTRY, MINUTES, April 16, 1931.

Columbia County tree farmer Everett Skeans recalled that, during the era the "counties were 'begging' people to buy the tax delinquent lands to keep the lands on the tax rolls." THE FOREST LOG, OREGON STATE DEPARTMENT OF FORESTRY 5 (September, 1982).
The annual reports of the State Forester discussed these issues in almost every report from 1930 to 1950.


Id.


Id. at 8.


28TH ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 35 (1938)

Or Laws 1939, ch 478, § 1.

Id., § 2.

Id.


Or laws 1941, ch 236. The 1941 amendments were prepared by the Board of Forestry, in consultation and cooperation with the counties. MINUTES, OREGON STATE BOARD OF FORESTRY (November 9, 1940; November 30, 1940).

The 1939 act directed payment of revenues to the county general fund. The 1941 amendments required disbursement by the counties on a prorated basis as though the land was held in private ownership. Or Laws 1941, ch 236, §9(1)(b). Counties that had conveyed lands under the 1939 act were allowed to elect for distribution under the provisions of the 1941 act. Id.
§13.

83/ Id. §3. Many of the deeds that conveyed tax delinquent land from the counties to the state contained similar language. See Land Acquisition Records, Oregon Department of Forestry.

84/ Id. §1, §11.

85/ 32ND ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 25 (1942-44). The forest development bonds were retired with revenues from the sale of forest products from the purchased lands. Revenues from purchased lands were devoted entirely to retirement of the bonds until the purchase price was repaid. Thereafter, revenues were divided between the state and the counties. The division was set at 50/50 in 1941, and amended in 1945 to give the counties 75 percent. Or Laws 1941, ch 236, §9(2); Or Laws 1945, ch 154, §8(2).

86/ Or Laws 1939, ch 478, Section 1.

87/ Id. §5 Or Laws 1941, ch 236 § 85

88/ Id. §6


90/ REPORT OF THE STATE FORESTER OF OREGON, 1942-44, p.25.


93/ Or Laws 1953, ch 65.

94/ In his report for 1940, the State Forester observed:

Counties are now in possession of 1,103,000 acres of forest lands, largely cut-over areas that have been abandoned by the owners following logging. Past records of county forest land management cannot be classified as a step in improved forest practice, although tendencies in recent years indicate that some of the courts have become more forest conscious and efforts have been to eliminate past abuses. One impelling motive has been from the standpoint of land use planning--keeping settlers out of districts where the farm income is negligible and thus reducing the public tax burden which would thereby be imposed.
The costs of protection and administration is one factor that will largely govern the extent to which the various counties will retain title to their forest lands. A reduction in the tax basis follows logging and there is a corresponding decrease in the tax income. With the abandonment of the cut-over lands and subsequent foreclosure there is the ever increase in protection costs. At the present time some of the counties are the owners of over 200,000 acres of forest lands. Financing the cost of protection rapidly becomes a very pressing problem. Where the counties find it a burden to finance this work and undertake the responsibilities of administering county forests, the lands can be turned over to the state.


95/ For example, in 1941 State Forester Nels Rogers reported:

Under the 1941 [acquisition] act, a program is being outlined and is now under way which calls for definite efforts to increase the state ownership of lands through transfer of title from the counties. Clatsop County has set aside an acquisition area and has indicated its intention to turn county lands within the area to the state. Marion County Court, in regular session, stated that 16,000 acres of county-owned lands would be turned to the state. Some contact work has been done with Douglas County and representatives of this office will meet with the land use committee of that county on July 19 to discuss this matter. The Attorney General is being requested to prepare the form for the utility bonds to be used in timberland purchase. MEMORANDUM OF THE STATE FORESTER TO THE OREGON STATE BOARD OF FORESTRY 4 (July 17, 1941).

96/ MINUTES, OREGON STATE BOARD OF FORESTRY (August 21, 1936).

97/ Id.

98/ MINUTES, OREGON STATE BOARD OF FORESTRY (Jan 25, 1939).

99/ Judge Boyington noted that Clatsop county had taken over 58,809 acres of land valued at $2,875,343.00, with delinquent taxes of $2,534,096.00. The obligation of the county to pay state fire patrol taxes on the abandoned lands was severely hindering the ability of the county to retire other county debts accrued when the county issued warrants during the depression. As a result, the county had been forced to raise taxes on other landowners. For the six northwestern Oregon counties, property tax rates in 1936 were 24% higher than rates statewide.
The Judge requested that the state withdraw what he described as "the program of eventual confiscation of county-owned land by the state." However, he requested that, if lands were acquired by the state the state assume responsibility for the debts borne by the lands, and assure the county "sufficient revenue to maintain its normal governmental functions without unreasonable tax levies." MINUTES, OREGON STATE BOARD OF FORESTRY (September 28, 1938).

The "misunderstandings" seemed to relate to the authority of the state to remove land from Reforestation Act classification. The counties argued that the five cents per acre fee was not sufficient to sustain county government, and that return of some land to the general county tax base would increase county revenues. MINUTES, OREGON STATE BOARD OF FORESTRY (September 28, 1938).

Neither the 1937 Act nor the Attorney General's opinion suggest that the effect of the act would be retroactive. As noted above, by 1936, the counties already owned 752,241 acres of land, on which they owed $187,286. See text at nt 93. The counties also continued to be responsible for fire protection from the time the lands passed into county ownership, either through payment of state fire patrol assessments or through contract with private fire protection associations. Whatever relief the counties may have received under the 1937 act, as the State Forester noted in 1940, the costs of protection and administration of the county-owned lands, and the loss of tax revenues, continued to trouble the counties.
During 1934-35, property tax delinquencies reached 43% in Clatsop and Columbia Counties, 45% in Tillamook County, and 65% in Curry County. 13TH BIENNIAL REPORT OF THE OREGON STATE TAX COMMISSION (1937). In 1945-46, property tax delinquencies were 3.46% in Clatsop County, 6.97% in Columbia County, 9.8% in Tillamook County and 11.49% in Curry County. 18TH BIENNIAL REPORT OF THE OREGON STATE TAX COMMISSION (1947).

For example, prior to enactment of the 1939 act, the State Forester discussed one possible form of state control over the foreclosed lands:

From the standpoint of past experiences and the present tendencies, it is apparent that the solution of this problem, and also the first step in the establishment of state forests, is some form of state control over forest lands acquired by the counties. It is not intended to advocate outright acquisition unless a move of this nature has a universal appeal. The sole objective is some form of permanent administration. The most logical solution would be for the state to hold these lands in trust for the counties, with the state clothed with all administrative authority. 28TH ANNUAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 37 (1938).

Concerning the 1939 Act, in a speech to the Oregon Economic Council on January 12, 1940, Governor Charles Sprague stated in part:
The law directs the Board of Forestry to block these lands into practical operating units, to reforest, rehabilitate and manage them in perpetuity, in trust for the counties and the taxing units therein.

Papers of Governor Charles Sprague, Oregon Archives, RGG4, Speeches.

123/ Tillamook County v. State Board of Forestry, 302 Or 404, 412 (1986).

124/ Id. at 416.

125/ Id. at 416-17.


127/ Or Laws 1941, ch. 237, §2


129/ Memorandum from State Forester N.S. Rogers to Governor Earl Snel 2 (November 8, 1946).

130/ See BIENNIAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 28-31 (1952-54). Most of the burn, amounting to approximately 300,000 acres, was tax delinquent and had been deeded to the state under provisions of the acquisition act. Id. This land was recognized as highly productive forest land, whose production capacity justified expenditures for rehabilitation and reforestation. REPORT, GOVERNOR'S COMMITTEE ON THE TILLAMOOK BURN (Quoted in FICK & MARTIN, THE TILLAMOOK BURN: REHABILITATION AND REFORESTATION 23 (Oregon Department of Forestry, 1992)).

131/ Id.


133/ Id.

134/ Or laws 1949, ch 102, now set forth as ORS 530.210 - 530.300. The act created a "sinking fund", derived primarily from revenues from the sale of forest products from lands acquired or rehabilitated pursuant to the Rehabilitation Act, for payment of the bonds. For a number of reasons, the sinking fund was inadequate to retire the bonds. The state transferred general fund monies to the sinking fund to pay the bonds, and enacted ORS 530.115 for repayment of the "costs" through revenues from the sale of forest products from Rehabilitation
Act lands.

A disagreement arose over the meaning of "costs". The state argued that "costs" included interest that could have been earned on the general fund monies if they had been invested; the counties argued that "costs" did not include interest. The counties ultimately prevailed in Tillamook Co. v. State Board of Forestry, 75 Or App 344 (1985). The state did not challenge the Court of Appeals decision on this issue when the case went to the Supreme Court. Tillamook County v. State of Oregon, 302 Or 404 (1986).

Or laws 1949, ch.102, §11. After passage of the constitutional amendment, which provided the state with the authority to issue general obligation bonds to finance reforestation of cut and burned over lands, the state acquired an additional 167,291 acres, mostly within Tillamook County.


Id at 28; BIENNIAL REPORT OF THE STATE FORESTER OF THE STATE OF OREGON 31 (1952-54).

MINUTES, OREGON STATE BOARD OF FORESTRY (June 3, 1959).

MINUTES, OREGON STATE BOARD OF FORESTRY 4 (January 7, 1959).

MINUTES, OREGON STATE BOARD OF FORESTRY (June 3, 1959). The full text of the resolution is as follows:

Resolution No. 1

OREGON STATE BOARD OF FORESTRY

June 3, 1959

Relating to the Designation and Setting Aside by the State Forester of Certain State-owned Forest lands for Multiple use Purposes; Such to be Done in Cooperation with the County Involved.

WHEREAS, ORS 530.010 authorizes the State Board of Forestry to acquire by purchase, donation, demise or exchange from any public, quasi-public or private owner, lands which by reason of their location, topographical, geological or physical characteristics are chiefly valuable for the production of forest crops, watershed protection and development, erosion control, grazing, recreation or forest administrative purposes; and

WHEREAS, several counties of the State of Oregon have so transferred and conveyed
lands to the State of Oregon, acting by and through its State Board of Forestry under the provisions of ORS Chapter 530, particularly ORS 530.010; and

WHEREAS, the board and the respective counties are desirous of having certain of such lands designated and set aside as sites for multiple forest land use, including public campgrounds for recreational purposes.

NOW, THEREFORE, be it and it hereby is resolved by said board at its duly constituted meeting of June 3, 1959:

THAT, the principle of multiple use of said lands be recognized insofar as determined by the State Forester to be practicable and feasible, and that such use be inclusive of public campground recreation on sites designated therefor;

THAT in determining the multiple use sites on said lands, the State Forester shall cooperate with and seek the advice of the County Court or Board of County Commissioners of the County in which said sites are located; and

THAT the State Forester shall make periodic reports to the board as to the progress in selecting and designating such sites, and the development thereof.

141/ See Note 70 and accompanying text, supra.

142/ MINUTES, STATE FORESTS COMMITTEE OF THE OREGON STATE BOARD OF FORESTRY (February 24, 1960).

143/ MULTIPLE USE POLICY (F-1-1), OREGON STATE BOARD OF FORESTRY. The policy adopted by the Board was included as an attachment to the agenda. That attachment no longer exists, and therefore the text of the policy cannot be definitely established. However, the (F-1-1) policy was the established Board policy and subject to amendment by the Board in 1965, See MINUTES, OREGON STATE BOARD OF FORESTRY (June 9, 1965), and was again amended in 1972. See text at Notes 108,109, infra. The document used by the State Forests Committee and the Board in 1972 lists as its lineage Board approval on June 3, 1959, and Board amendments on March 9, 1960, and June 9, 1965. It is therefore reasonable to conclude that the F-1-1 policy was adopted by the Board on March 9, 1960.

144/ One commentator suggests that during this era the Board attempted to avoid being drawn into the "recreation business, in part because the Board arguably saw itself in the "timber growing business," and in part to avoid duplication of the Parks Division of the State Highway Department. See LEVESQUE, A CHRONICLE OF THE TILLAMOOK COUNTY FOREST TRUST LANDS 800-808 (1985). Whatever the motives of the Board, or of State Forester Ed Schroeder, the multiple use policies adopted by the Board provided at least the possibility for forest management that would take into consideration a wide array of forest values in addition to timber. That position was consistent with the understanding of forest management expressed by
the state for many years. *See e.g.* text accompanying Notes 43 and 70, *supra.*


147/ Measures enacted in this period include the Oregon Bottle Bill, the National Environmental Policy Act, the Clean Air Act and others.

148/ An August 29, 1972, memorandum from State Forester Ed Schroeder to the Board contained two newspaper articles critical of the board. One of these, an editorial from the Medford Mail Tribune, noted that "putting the forest products industry in command of the State Board of Forestry is like setting the foxes to guard the chickens." Complaining about the industry-dominated Board, the editor asked rhetorically "Where, on the State Board of Forestry are the representatives of campers? Back-packers? Picnickers? Ecologists? Water resources?"

149/ The brochures were produced by the Western Wood Products Association, and roundly criticize "propaganda attacks" of zealous environmentalists and proposals for additions to the National Wilderness system. AGENDA, OREGON STATE BOARD OF FORESTRY, Executive Session, (Attachments) (September 6, 1972). In doing so, however, the brochures argue strongly in favor of multiple use management, indicating the degree to which the concept had become accepted by the industry.

150/ Review of the multiple use policy may have been precipitated by concerns over the acquisition and exchange policies, especially the role that the "public interest" and other forest uses should play in forest land acquisition and exchange. Some members of the State Forests Committee wanted to give the Board more discretion to consider recreation and public interest values, in addition to timber values of lands available for acquisition or exchange. Other members were concerned that the state forest lands might be used for exchanges by other state agencies to meet public interest or other purposes. MINUTES, STATE FORESTS COMMITTEE, OREGON BOARD OF FORESTRY (August 15, 1972).

151/ In a May 22, 1973, letter to William Phelphs, State Forest Director, Assistant Attorney General Bonney found that the proposed policies conformed to existing law, ORS Chapters 526, 527 and 530. He opined that "the proposed policies not only conform to the law, but that Forestry is taking an excellent far-sighted approach in protecting our environment for the future."

152/ FOREST LAND USE POLICY (F-1-1).

153/ *Id.*