Testimony by
Mike Matz, Director, U.S. Public Lands
The Pew Charitable Trusts
Regarding
S. 132, the Oregon and California Land Grant Act of 2015 & S.1691, National Forest Ecosystem Improvement Act of 2015
U.S. Senate Public Lands, Forests, Mining Subcommittee
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I wish to thank you, Chairman Barrasso, Senator Wyden and members of the Subcommittee for the opportunity to testify today regarding the Oregon and California Land Grant Act of 2015 and the National Forest Ecosystem Improvement Act of 2015.

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

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

To conduct this work we partner with local organizations across the country to provide expertise in campaign planning and implementation. We are currently working with over 20 local groups in 12 states on more than 17 separate wilderness bills that are before Congress.

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

S. 132, The Oregon and California Land Grant Act of 2015

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

O&C Lands Background

Nestled throughout western Oregon are 2.8 million acres of federal lands—commonly referred to as O&C lands—rich with biodiversity and fraught with management challenges. These lands are some of the most unique landscapes in the world, harboring many distinct plant communities—temperate rain forests, ancient conifer forests, oak savannas—which include more than 300 plant species found nowhere else on Earth and which provide a home to a variety of endangered species, including wild salmon, steelhead, spotted owls, and marbled murrelets. At the same time, the ancient trees that once graced these lands were the economic backbone of many rural communities, and as such, for decades these lands have fallen into the all-too-familiar debate between species protection and timber production.

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

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

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

Moving forward on O&C

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

Senator Wyden, we believe that your bill, S.132, the Oregon and California Land Grant Act of 2015, is a step in the right direction in finding that balanced solution. We appreciate the leadership you have undertaken regarding this issue. This bill would protect some of the most unique landscapes and river resources in western Oregon while at the same time providing a more certain source of timber production than the status quo. In fact, the bill would more than double the current timber production on these lands, providing needed revenues to rural counties.

Engaging some of the original authors of the Northwest Forest Plan—Dr. K. Norman Johnson, of Oregon State University, College of Forestry, and Dr. Jerry F. Franklin, of the University of Washington, College of Forest Resources—to craft the timber management provisions in the bill has helped to ensure that your bill's approach is thoughtful and scientific. The important effort made to reach out to the conservation community and other stakeholders to discuss the important ecological components of the landscape and the rivers that flow through these forests has ensured a vast array of conservation protections for some key areas in the O&C landscape.

Conservation Protections in S.132

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

1. Wild Rogue and Devil's Staircase Wilderness Areas – Title III of S. 132 sets out the protection of two of the region's most important wild areas, the Rogue and Devil's Staircase. We appreciate the work your office has done.

2. Rogue and Molalla National Recreation Areas – Sections 10(d) provides protection for two notable river systems in Oregon, the Rogue River and the Molalla River, respectively. These areas, while important ecologically, also provide important recreational and economic opportunities in the state. The protection of these places as National Recreation Areas illustrates the point that protecting the environment is also beneficial for the economic bottom line.

3. Wild and Scenic River Protections – Titles I and III designate more than 252 miles of wild and scenic river. These rivers are the bloodlines of Western Oregon, providing clean drinking water to more than 1.8 million Oregonians in rural and urban communities and the habitat necessary to protect and restore Oregon's fabled wild salmon populations.

4. Legacy Old Growth Protection Network – Section 10(b) legislates the protection of old growth forests on O&C lands. Preserving the remaining stands of old-growth forests on federal lands in the Northwest has long been recognized as essential to the long-term health of the forests and the plants and animals that depend on them for survival. Protecting these ancient forests on O&C lands ensures that these invaluable trees continue to play an important role in producing clean water, absorbing carbon, and providing refuge for flora and fauna alike.

5. Primitive Backcountry Areas – In Sections 10(e)(4)-(10), the bill identifies six Primitive Backcountry Areas—Grizzly Peak, Dakubetede, Wellington Wildlands, Mungers Butte, Brumitt Fir, and Crab-tree Valley—all of which contain large swatches of land identified by the Bureau of Land Management as lands with wilderness characteristics. These areas are respites for hunters and anglers alike, as well as important for plant and wildlife species. While we believe at least some of these areas could and should be protected as wilderness, we appreciate the current designations and look forward to working with your staff on refinements.

6. Special Environmental Zones – The O&C lands include more than 95,000 acres identified by the Bureau of Land Management and citizens as "Areas of Critical Environmental Concern"—habitats, resources, or landscapes in need of special management. These ecologically important locations, found in approximately 133 places, are scattered throughout western Oregon. They range in size from the 1,700-acre Bobby Creek Research Natural Area, with its rare plants and endangered stands of Port Orford cedar, to a 10-acre tract of land that is home to the northernmost grove of rare Baker cypress. The Valley of the Giants, a 1,300-acre tract in the central Oregon Coast Range, is valued for its scenic beauty, its fish and wildlife habitat, and as an example of a healthy, ancient-forest ecosystem. These are truly some of the most unique acres in the O&C landscape and we support and appreciate their protection as designated under Section 10(e)(11).

7. Illinois Valley Salmon and Botanical Area Special Management Unit – The Illinois River Valley in southern Oregon is renowned for its remarkable salmon runs and its spectacular and truly unique botanical resources. Visitors from around the globe come to fish these waters and to admire the beauty of this valley. Section 10(e)(1) ensures the protection of these resources for future generations.

8. Drinking Water Special Management Units – Section 10(c) identifies four special areas—McKenzie, Hillsboro, Clackamas, and Springfield/Eugene—dedicated to the protection of clean drinking water for various communities. The rivers that run through the O&C lands produce clean drinking water for more than 1.8 million Oregonians, and the protection of these key areas from contamination is both imperative to retain the high quality of clean drinking water available in the state while at the same time reducing secondary filtration costs otherwise necessary for delivering safe and affordable potable water to citizens across the state.

9. Salmon Refuges and Sanctuaries – Oregon is world-renowned for its crisp cool waters and fabled salmon runs. Sections 10(e)(2) and (3) and Title III ensure that three of these special salmon rivers are protected

for future generations, the Kilchis, the Smith, and portions of the North Umpqua River, named after one of Oregon's World War II hero's, Frank Moore.

10. Riparian Reserves & Watershed Protections – The Northwest Forest Plan's (NWFP's) Aquatic Conservation Strategy (ACS) has proven to be one of the most effective management strategies on federal lands. This provision has ensured the protection and restoration of aquatic resources throughout the Northwest. We are pleased that S.132 legislates the ACS's goals and objectives of the NWFP, protects Key Watersheds, and applies the NWFP's current riparian reserves on approximately two-thirds of the O&C landscape. This approach is critical for clean drinking water resources, and protections for wild salmon.

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

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

As you know, this bill was not easy for Pew to support at earlier stages. Even today, there are provisions that are troublesome for Pew. For example, the land rationalization provisions in section 11 incorporate more National Forest lands than we believe are necessary or prudent. At the same time, unique lands within the National Forest landscape, such as Mt. Hebo, McKenzie River headwaters, Kalmiopsis backcountry, and North Umpqua River roadless areas, go unprotected. As you know, Pew strongly supports making each of these four areas new wilderness areas in Oregon.

I do also want to make clear that Pew has compromised as far as it can on this legislation. As you know, we came to the table on this bill and worked for many months in good faith and with a strong willingness to find compromise. We believe this bill is that compromise. No one involved in these deliberations gets everything they might want, but everybody gets some of what is important to them. This is what we believe defines a compromise. But, with any compromise of this sort, there are fine lines that once crossed means the compromise dissolves. We believe that the balance this bill represents is a fair approach to addressing both the conservation and local county needs associated with these forests. And given the strong conservation elements of this bill, we come here today—as we have before—to support S.132.

S.1691, National Forest Ecosystem Improvement Act of 2015

I'd now like to move to a short discussion of S.1691, the National Forest Ecosystem Improvement Act of 2015. Mr. Chairman, I want to thank you and your staff for listening to concerns expressed by Pew and others in the conservation community regarding provisions of your earlier forestry bill, the "National Forest Jobs and Management Act" (S. 1966, 113th Congress). While I acknowledge and appreciate that some positive changes were made in S.1691, Pew is unable to support this new bill in its current form, for several reasons. S. 1691 would create unrealistic timber mandates on our federal lands—potentially diverting already insufficient resources from other U.S. Forest Service demands such as wildfire prevention. The legislation would undermine key provisions of the National Forest Management Act of 1976 (NFMA), the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), as well as improperly expand categorical exclusions allowed under NEPA. And finally, it would inappropriately limit citizen access to the federal courts.

Summary of Issues with S.1691

Creates unrealistic timber mandates. S.1691 would significantly increase logging in our national forests while also reducing our environmental safeguards and opportunities for public involvement in national forest

management. The bill mandates annual minimum acreage requirements of 1 million acres of mechanical treatments and 1 million acres of prescribed fire (Sec. 104(a)). Currently, due largely to funding limitations, the Forest Service is able to harvest about 200,000 acres per year through mechanical treatments. Absent a major increase in congressional funding, the Forest Service could be required to divert its limited resources away from all other multiple-use activities in order to accomplish the bill's legally-required logging mandates. Thus the mandated logging minimums in the bill would undermine the multiple use provisions of the National Forest Management Act of 1976 (NFMA)

Undermines bedrock environmental laws. S. 1691 would undercut key provisions of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). Section 105 eliminates NEPA's requirement to analyze a reasonable range of alternatives by requiring the agency to analyze only two options—a "no action" alternative and the proposed action. NEPA's reasonable range of alternatives was put in place to safeguard against agencies simply picking a proposed action and pushing those actions forward without true regard to the environmental consequences of the action. While there may be times when agencies do examine too many alternatives, and thus increase the time and costs involved in NEPA reviews, just two alternatives undermines the very purpose of NEPA.

Section 205 allows projects falling under three new categorical exclusions (CEs) to by-pass traditional ESA consultation, allowing the USFS to analyze its own actions and to craft its own biological opinions instead of consulting with U.S. Department of Fish and Wildlife Service (USDFWS). Similar provisions under the Environmental Protection Agency's insecticide permitting regulations were struck down by a federal court in 2006 (*see, Washington Toxics Coalition v. Department of Interior (W.D. WA 2006).*). Trying now to legislate those illegal provisions on our federal forests cannot be supported by Pew.

Limits public access to federal courts. S.1691 would establish two new requirements that would severely limit the public's access to judicial review of USFS decisions regarding logging in federal forests. First, section106 eliminates judicial review and requires the USFS to establish a binding arbitration/alternative dispute resolution process for ecosystem restoration projects that have been collaboratively developed or identified in a community wildfire protection plan (Sec. 106(a) and (b)). The arbitrator is required to choose either the USFS project or the objector's alternative, which could be either more environmentally oriented or less so. The arbitrator is not allowed to propose his/her own proposal, is not allowed to propose a combination of the other proposals, and has no requirement to ensure that federal laws are carried out. The arbitrator's decision would not be subject to judicial review, except in instances of corruption, fraud, bias, or other misconduct by the arbitrator (Sec. 106(h)(3)). What's more, section107 would require anyone who files a lawsuit challenging projects still subject to judicial review to post a bond equal to the anticipated costs, expenses, and attorneys' fees of the USFS as defendant in the case (Sec. 107(a)(2)). The bond would not be returned unless the plaintiffs prevailed on all of their legal claims in the lawsuit (Sec. 107(c)) or through a settlement determination if a settlement is ultimately reached in the case. Due to average government salaries and hours required for litigation, litigation costs can easily run in the tens of thousands of dollars. Requiring such a litigation bond would severely limit the individuals and organizations able to access judicial review on such matters. While Pew does not oppose the idea of an alternative dispute resolution process for forestry proposals, and in fact, supports the concept, the ADR process set forth in S.1691 is unacceptable in its current form.

Three new Categorical Exemptions under NEPA are too far-reaching. Title II of S.1691 creates three new types of categorical exclusions (CEs) that exempt national forest logging activities up to 5,000 acres (or in some cases 15,000 acres) from complying with the requirements of the NEPA and with the normal consultation requirements of the ESA. Section 202 provides CE authority for "Critical Response" projects; forest management projects whose "primary purpose" is to address insect and disease infestations, reduce hazardous fuels, protect a municipal water source, protect critical habitat from catastrophic disturbance, or increase water yield (Sec. 202(a)). The projects generally can be up to 5,000 acres in size, but they can be as large as 15,000 acres if they are collaboratively developed, proposed by a Resource Advisory Committee, or covered by a community wildfire protection plan (Sec, 202(b)). This is a five-time increase over the CE for collaboratively-developed restoration projects under the 2014 Farm Bill. The Salvage Logging CE (section 203) at 5,000 acres is 20 times the size of

the USFS's current salvage logging limitation. And Early Successional Forest CE is all-together a new provision, allowing clear-cutting on up to 5,000 acres of our national forest with limited review of the water quality and terrestrial impacts. Pew understands the desire to expedite certain timber proposals and agrees that the expedition of those developed through collaborative processes might make sense. We believe this can be done without undermining our nation's bedrock environmental laws and look forward to working with you and your staff to find common ground in this respect.

Mr. Chairman, I am sorry to say that Pew cannot support S.1691 as currently drafted. We stand ready to work with you and others, however, to craft a forestry bill that more adequately balances the needs of our national forests and all the communities and wildlife that depend upon them.

Conclusion

On behalf of The Pew Charitable Trusts, I want to thank you for the opportunity to come before you today to voice our views on S.132 and S. 1691. We are committed to continuing to work with you, Chairman, Senator Wyden, and the Subcommittee to ensure we achieve bills that incorporate values we all hold dear—the protection of our natural environment and the economic vitality of rural communities.

I ask that my written statement and accompanying documents be submitted to the hearing record.