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Forest Service Receipt-Sharing Payments: Proposals for Change

Ross W. Gorte
Natural Resource Economist and Policy Specialist
Resources, Science, and Industry Division

Summary

In lieu of property taxes, the Forest Service generally shares 25% of receipts from the sale, lease, rental, or other use of the national forests to the states for use on roads and schools in the counties where the national forests are located. Some interests are concerned about the equity and stability of the payments, especially with the decline in timber sales over the past decade, and about the incentives of the current system. Bills have been introduced to modify the current system; one passed the House in 1999, and another has been ordered reported by the Senate Energy Committee. This report will be updated to reflect legislative action.

Current Forest Service Program

Since 1908, the Forest Service (FS) has shared 25% of its receipts from the sale, lease, rental, or other fees for using the national forests to be used for roads and schools in the counties where the national forests are located.[1] This receipt-sharing was enacted to compensate local governments for the tax-exempt status of the national forests, but the compensation rate (25%) was not discussed in the congressional floor debate over the measure. This program is called FS Payments to States, because the states allocate the funds to road and school programs, although the FS determines each county's payment based on national forest acreage in each county. (The states cannot retain the funds; they are to be passed through to local governments). These 25% payments are permanently appropriated from the National Forest Fund (an account used to collect receipts).

Congress has twice expanded the definition of receipts. Originally, the agency paid 25% of stumpage (timber) fees, grazing fees, and other charges on users. In the 1970s, the counties argued that agency decisions to allocate timber receipts to the Knutson-

[1]Department of Agriculture Appropriations Act for FY1909. Act of May 23, 1908; ch. 192; 6th unnumbered paragraph under "Forest Service." The Weeks Law (Act of March 1, 1911; ch. 186) contains an identical provision for acquired lands. Both are codified at 16 U.S.C. 500.

Vandenberg (K-V) Fund (primarily for reforestation) and to finance road construction with purchaser credits were discretionary, and were unfairly reducing receipts for sharing with the counties.[2] Congress agreed, and in the National Forest Management Act of 1976 (NFMA; P.L. 94-588) defined "gross receipts" to include K-V Fund deposits and timber purchaser credits. In the Continuing Resolution for FY1988 (P.L. 100-202, 101 Stat. 1329), Congress directed that deposits to the Salvage Sale Fund be counted as receipts, because timber salvage following large forest fires in California and Oregon would have eliminated the payments in these areas for a year or more. (As authorized in NFMA, Salvage Fund deposits were excluded from receipt-sharing.[3]) Similar provisions were contained in the subsequent annual appropriations acts, until it was permanently enacted in the Interior Appropriations Act for FY1993 (P.L. 102-381, 106 Stat. 1374).

The FS has four other county compensation programs. The largest is the Payments to Counties for National Grasslands (7 U.S.C. 1012), which provides 25% of net (rather than gross) receipts for roads and schools directly to the counties where the grasslands are located. In 1948, Congress enacted a payment for three counties in northern Minnesota of $^3/_4$ of 1% of the appraised value of the land, without restrictions on how to use the money (ch. 593, 62 Stat. 570). In 1988, Congress established the Quinault Special Management Area, and directed the FS to share 45% of timber sale receipts with the Quinault Indian Tribe and 45% with the State of Washington — 90% in total, with the remaining 10% to cover agency timber sale costs (P.L. 100-638, 102 Stat. 3327). Also in 1988, Congress directed the FS to sell quartz from the Ouachita NF as common variety mineral materials (rather than being available under the 1872 General Mining Law), with 50% of the receipts to the State of Arkansas for roads and schools in the counties with Ouachita NF lands (§423, Interior Appropriations Act for FY1989; P.L. 100-446, 102 Stat. 1774).

In 1993, President Clinton proposed a 10-year program to address regional economic problems resulting from efforts to protect northern spotted owls and other values that reduced federal timber harvests in the Pacific Northwest.[4] Congress enacted this program in §13982 of the 1993 Omnibus Budget Reconciliation Act (P.L. 103-66, 107 Stat. 681). These "spotted owl" payments began in 1994 at 85% of average FY1986-1990 payments, declining by 3 percentage points annually, to 58% in 2003; from FY1999-2003, however, the payment is the higher of either this formula or the standard 25% payment.

Congress created another program for compensating counties for the tax-exempt status of federal lands in the Payments in Lieu of Taxes (PILT) Act of 1976 (P.L. 94-565, 31 U.S.C. 6901-6907). PILT, administered by the Bureau of Land Management (BLM), provides a fixed payment per acre of "entitlement" lands, including national forests. PILT payments are to be reduced by receipt-sharing payments to counties, although there is a minimum payment per acre. However, some states pass their FS payment through to some other (non-county) local governmental entity (*e.g.*, a road maintenance district), and thus

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[2]These programs are described more fully in CRS Report 97-14 ENR, *The Forest Service Budget: Trust Funds and Special Accounts*, at pp. 29-31 and 40-41, respectively.

[3]*Ibid.*, pp. 22-23.

[4]See CRS Report 93-664 ENR, *The Clinton Administration's Forest Plan for the Pacific Northwest.*

avoid the PILT reduction for payments to *counties*. One other difference is that PILT requires annual appropriations from Congress (all the FS payments are permanently appropriated), and the appropriations for PILT have increased much more slowly than the authorized payments.[5]

BLM Payment Program

The BLM has numerous programs enacted to share receipts from various types of resource uses and from various classes of land. One program accounts for the majority of BLM receipt-sharing payments — counties in western Oregon containing the revested O&C lands (Oregon & California Railroad grant lands returned to federal ownership for failure to fulfill the terms of the grant) receive 50% of receipts from using the lands and resources. Concerns about FS receipt-sharing payments also generally apply to the O&C payments, because both are substantial payments derived from timber sale revenues. Proposals to alter FS payments also often include the O&C payments; for example, the O&C payments were temporarily set at a declining percentage of their average historic level in the Omnibus Budget Reconciliation Act of 1993, as was done with the FS "spotted owl" payments.

Payment Issues

Several concerns have been expressed about FS and O&C compensation. Three particular concerns have become manifest: the equity of the payments; the stability of the payments; and the incentives resulting from the current system.

Payment Equity. Various groups have expressed concerns about the fairness or adequacy of the revenue-sharing payments to local governments. In 1978, the Advisory Commission on Intergovernmental Relations examined the issue, particularly whether federal lands reduced the local tax base or imposed additional costs, and concluded that the pre-PILT "compensation, based on receipt sharing, was generally adequate to offset any adverse effect of federal land ownership ..."[6]

While average compensation may be adequate, other studies have suggested that FS payments differ from taxes on privately owned timberlands. A 1985 FS study compared 25% payments plus PILT with state and local tax rates for 40 counties in 8 states scattered across the country.[7] The report showed that a private landowner in Michigan would have paid much more than the federal government did, while in California, Louisiana, Oregon, and Washington the federal payments were higher than a private landowner would have paid. The payments in Colorado differed little, while Georgia and Idaho had some higher

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[5]PILT is a very complicated program. For a discussion of PILT operations and issues, see CRS Report 98-574 ENR, *PILT (Payments in Lieu of Taxes): Somewhat Simplified.*

[6]Advisory Commission on Intergovernmental Relations. *The Adequacy of Federal Compensation to Local Governments for Tax Exempt Federal Lands*. Report A-68. Washington, DC: U.S. Govt. Print. Off., July 1978. p. 5. (Hereafter referred to as *Adequacy of Compensation*.)

[7]Anne E. Huebner, Clifford A. Hickman, and H. Fred Kaiser. *A Tax Equivalency Study on National Forest System Lands in the United States.* FS-396. Washington, DC: USDA Forest Service, Dec. 1985. 50 pp.

private landowner payments and some higher federal payments. This report also noted that state yield taxes on timber (ranging from $2^1/_4$% to $6^1/_2$%) were also being paid on FS timber harvests in California, Louisiana, and Washington.

Payment Stability. More recently, the counties have expressed concerns about declining FS payments. The national forest receipts subject to sharing declined to $557 million in 1998 from the peak of $1.44 billion in 1989; O&C receipts declined to $51 million in 1998 from the peak of $235 million in 1989. These drops are due largely to the decline in timber sales volume and value. The decline in timber sales from the O&C lands and national forests in the Pacific Northwest prompted the special "owl" payment program, but the timber sale program has declined in all FS regions in the past decade.

Another concern has been the fluctuations in payments. As noted, timber has been the principal source of receipts. The FS determines the volume of timber offered for sale in any given year, but not all offered sales are bought (reflecting economic conditions), and purchasers adjust the rate and timing of their harvests to meet the economic situation. Thus, harvests (and receipts) fluctuate according to the condition of the economy. For example, in FY1982, FS receipts fell substantially (by $384 million, or 42%) from FY 1981, because of a recession. This decline led to a 42% decline in FY1983 FS receipt-sharing payments (because of the lag between receipts and payments) — a significant burden on counties that were already under stress from the general decline in markets for wood and other products.

In 1978, the Advisory Commission on Intergovernmental Relations concluded that the significant annual fluctuations in receipt-sharing payments "inhibits orderly budget planning" for the counties, and recommended that Congress alter the payment formula to use a "several-year moving average of the several factors in the National Forest receipt sharing formula."[8] A bill to effect such a change was introduced in the 103rd Congress, but was not enacted.

Perverse Incentives? Several authors have described the county incentives that result from FS receipt-sharing.[9] Because the timber programs account for the majority of FS receipts, critics argue that counties are rewarded for advocating timber sales and opposing management that reduces or prevents timber sales (*e.g.*, protecting sport and commercial fish harvests or designating wilderness areas).[10] Thus, counties have often allied themselves with the timber industry, and have opposed environmental groups, in debates over FS management and budget.

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[8]*Adequacy of Compensation*, p. 10.

[9]See: U.S. Congress, Office of Technology Assessment. *Forest Service Planning: Accommodating Uses, Producing Outputs, and Sustaining Ecosystems*. OTA-F-505. Washington, DC: U.S. Govt. Print. Off., Feb. 1992. pp. 26-27, 151. (Hereafter referred to as OTA, *FS Planning*.)

[10]V. Alaric Sample. *The Impact of the Federal Budget Process on National Forest Planning*. New York, NY: Greenwood Press, 1990. pp. 220-221.

Legislation to Change the System

Numerous proposals to alter the system for compensating the counties for the tax exempt status of the national forests have been suggested over the years. Agriculture Assistant Secretary John Crowell suggested tax equivalency (with a floor to "guarantee" payments) to replace receipt-sharing in 1984. The counties argued that the proposal was intended to reduce the payments, and the budget request included $40.5 million in savings from the change.[11] The FY1986 budget proposed to change the 25% sharing to *net* receipts (after deducting agency administrative costs), thereby saving $207.4 million.[12] A bill in the 103rd Congress would have allowed the counties to receive the higher of a 5-year moving average of payments or the current year's 25% for their payments. In 1992, the Office of Technology Assessment recognized the problems with the current system, and stated that: "Congress could replace the current program of returning 25 percent of gross Forest Service receipts with a system to compensate counties fairly for the tax exempt status of Federal lands and activities."[13]

The Administration, in its FY1999 budget request, announced that it would propose a bill "to stabilize the payments." The proposed bill would have directed annual payments either at the FY1997 payment or at 76% of the average payments for FY1986-FY1990, to be made from "any funds in the Treasury not otherwise appropriated," but the bill was not introduced. The FY2000 budget request also announced a legislative proposal to stabilize receipt-sharing payments.

The National Association of Counties (NACo) also has a proposal that would compensate the counties with the greater of the 25% payment or a "replacement" payment — based on the average of the three highest consecutive years' payments for FY1986-FY1995, indexed for inflation.[14] In addition, the proposal would provide "a long term solution ... to allow for the appropriate, sustainable, and environmentally sensitive removal of timber from the National Forests" by establishing local advisory councils.

H.R. 1185 (DeFazio). The Timber-Dependent County Stabilization Act of 1999. For FY2000-FY2004, states with FS lands and counties with O&C lands would receive a special payment of 76% of the average of the three highest payments between FY1986 and FY1995, indexed for inflation. For FY2005 and all subsequent years, each state or O&C county would choose between the special payment and the standard 25% or 50% receipt-sharing before the end of FY2004 (*i.e.*, a one-time choice). No source of funds is identified for the special payments.

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[11]U.S. Congress, House, Committee on Appropriations. *Department of the Interior and Related Agencies Appropriations for FY1985. Hearings: Part 2, Justification of Budget Estimates.* Washington, DC: U.S. Govt. Print. Off., 1984. p. 1453.

[12]U.S. Congress, House, Committee on Appropriations. *Department of the Interior and Related Agencies Appropriations for FY1986. Hearings: Part 2, Justification of Budget Estimates.* Washington, DC: U.S. Govt. Print. Off., 1985. p. 1379.

[13]OTA, *FS Planning*, p. 26.

[14]National Association of Counties. *NACo RESOLUTION in Support of a Forest Counties "Safety Net."* Washington, DC: April 21, 1999. The bill would provide a similar payment for certain counties in Oregon that currently receive 50% of BLM receipts.

H.R. 2389 (Deal, *et al.*). The County Schools Funding Revitalization Act of 1999. The bill was reported by the House Agriculture Committee on October 18 (H. Rept. 106-392), and passed by the House on November 3. Under the bill as passed, for FY2000-FY2006, full payment would be 100% of the average of the three highest payments between FY1984 and FY1999, indexed for inflation; states with FS lands and counties with O&C lands would receive the higher of the full payment or the standard 25% or 50% receipt-sharing. However, the additional funds needed to achieve the full payment would require annual appropriations by Congress. The FS payments to the states would be allocated to counties based on the average allocation for FY1984-FY1999. In addition, 20% of the payment (for counties receiving more than $100,000) would be required to be spent on projects on the federal lands; the projects would be nominated by the eligible counties, recommended by local advisory committees, in compliance with all applicable environmental laws and resource management plans, and approved by the appropriate Secretary. Finally, the bill would also create an advisory Forest Counties Payments Committee, composed of three Administration officials, two local elected officials, and two school officials, to make long-term recommendations to maximize payments from receipts and to ensure sustainable forest management.

H.R. 2868 (DeFazio, *et al.*). Beginning in FY2000, counties with O&C lands and states with FS lands would receive a guaranteed payment of 100% of either the average of the three highest payments between FY1986 and FY1999 or the FY1998 payment, with either indexed for inflation. No source of funds is identified for the guaranteed payments.

S. 1608 (Wyden, *et al.*). Secure Rural Schools and Community Self-Determination Act of 1999. The Senate Committee on Energy and Natural Resources reported the bill on April 25, 2000 (S.Rept. 106-275). Counties with FS or O&C lands could choose, every two years, to receive either the standard receipt-sharing payment or a "full payment" of 100% of the average of the three highest payments between FY1984 and FY1999, indexed for inflation. Additional funds to achieve the full payment would be permanently appropriated, and would come first from agency receipts (excluding deposits to trust funds and special accounts) and then from "any funds in the Treasury not otherwise appropriated," as determined by the Treasury Secretary (*i.e.*, from the General Fund of the Treasury). Except for counties receiving less than $100,000 annually, 15–20% must be spent on special projects on federal lands; the projects would be proposed by local resource advisory committees and approved by the appropriate Secretary if the proposal met the specified criteria (including compliance with all applicable laws and regulations and with resource management and other plans). The local advisory committees would be composed of 15 members representing three categories of local interests — users and development proponents; environmental and other protection advocates; and local governmental interests — with project approval requiring a majority from each of the three groups. Funding for the projects would come from the 15–20% of county payments reserved by each county or from a special account for each federal agency, funded from 15% of the county payments for counties choosing not to reserve funds themselves and from any revenues generated by the projects, and spent based on priorities established by the Secretaries.