

State urges dismissal of county's timber management lawsuit

Lawsuit says state's management has cost counties \$1.4 billion

By **MATEUSZ PERKOWSKI**
Capital Press

ALBANY, Ore. — The State of Oregon is urging the dismissal of a lawsuit that alleges state forest management prioritizes environmental concerns to the detriment of logging.

Earlier this year, Linn County filed a complaint against Oregon for allegedly depriving multiple counties of more than \$1.4 billion due to a forestry rule that emphasizes wildlife, water quality and recreation over timber harvest.

During oral arguments July 11 in Albany, attorneys for Oregon said the case should be thrown out because the forests are meant to be managed for the greatest permanent value

to the state, not to the counties.

This "greatest permanent value" is allowed to include many factors beyond timber production under laws that allowed counties to donate their burned and logged forests to the state government, said Sarah Weston, an attorney for the state.

"The statute does not require revenue maximization," she said. "The statutes have always provided for multiple values and multiple uses."

Counties acquired these forest lands by foreclosing on property tax liens during the Great Depression but turned them over to state ownership in exchange for a portion of future logging revenues.

Oregon's attorneys claim that Linn County cannot sue

the state to receive compensation for breach of contract, and that the county's challenge to the "greatest permanent value" rule can only be heard by the Oregon Court of Appeals, rather than in a county court.

Because the lawsuit seeks to recover damages for insufficient logging in the future, it clearly intends to alter the meaning of "greatest permanent value," said Scott Kaplan, another attorney for the state.

Either the state changes its definition or it's potentially liable for hundreds of millions of dollars, he said.

"This is absolutely a challenge of state policies of forest management," Kaplan said.

Linn County argued that contracts between the counties

and the state government are enforceable.

"The counties gave up assets in exchange for promises," said John DiLorenzo, attorney for Linn County.

Counties would not have donated vast tracts of land if they'd known the state would change the terms of the deal at will, he said.

"We believe that's precisely what the state has done in this case," DiLorenzo said. "Counties must have a way to enforce their bargains."

More than 650,000 acres in Benton, Clackamas, Clatsop, Columbia, Coos, Douglas, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Polk, Tillamook, and Washington counties were given to Oregon based on "promises and assurances" on which the state government has since fallen short, the lawsuit claims.

The law that lays out Oregon's forest management obligations was written when the United States was preparing to enter World War II and must be understood in that context, DiLorenzo said.

At the time, the greatest value of the land was to produce a large amount of timber for the war effort, rather than to preserve wildlife habitat or aesthetic beauty, DiLorenzo said.

Legal precedents also indicate that Oregon was obligated to maximize revenue from those lands, he said.

Several environmental and fishing organizations claim this interpretation is erroneous.

The optimum management of state forests was bound to be contentious and so that question was left to the discretion of the Oregon Department of Forestry, said Ralph Bloemers,

an attorney representing the groups.

"It's not up to the county, or the timber industry, or the conservation community, what that should be," he said.

There's also nothing in the law stating that revenues take priority over other uses, Bloemers said. "It continues to be a huge gaping hole in their complaint."

Linn County also argues the lawsuit should be certified as a class action, which would allow other counties to participate in the litigation.

There are numerous potential plaintiffs with common legal arguments that would be more efficiently resolved as part of a single case, Linn County claims.

The issue of class certification will be heard at another hearing that's scheduled for Aug. 17 in Albany.



Eric Mortenson/Capital Press

Falconer Kort Clayton holds Copper after a demonstration flight July 6 during the Blueberry Field Day at Oregon State University's North Willamette Research and Extension Center. Trained falcons scare pest birds out of berry fields, vineyards and orchards.

At OSU blueberry field day, a falcon steals the show

By **ERIC MORTENSON**
Capital Press

AURORA, Ore. — Blueberry Field Day at Oregon State University's North Willamette Research and Extension Center included the expected technical discussions of fertilizers, pesticides and cultivars, but then a bird swooped in and stole the show.

That would be Copper, a fierce-eyed falcon trained to scare the bejeebers out of pest birds that damage blueberries, wine grapes or orchard crops. Falconer Kort Clayton, owner of Integrated Avian Solutions, let Copper loose for a demonstration flight during a field day presentation on bird control options. Compared to Copper's buzz bomb performance, discussions of humic acid and boron applications barely stood a chance.

Copper, a 4-year-old Red-naped Shaheen, is one of Clayton's five falcons and usually accompanies him to field demonstrations. "He's super reliable," Clayton said. "He's a flashy flier, he's not really bothered by crowds."

There was more to Copper's appearance than show, because bird damage is a major problem for fruit and berry producers. Growers across the country use chemical repellents, netting, noisemakers

Bird damage in fruit production by state and crop, 2011*

(Damage per acre/U.S. dollars)

State	Blueberry	Winegrape	Honeycrisp apple	Sweet cherry	Tart cherry
California	\$835	100	—	457	—
Michigan	757	174	763	302	91
New York	651	93	1,575	2,103	174
Oregon	1,850	232	121	302	42
Washington	989	383	2,941	978	1,231

*Based on results of 2,353 respondents that represent 31.7 percent of all growers targeted in the survey.

Source: USDA APHIS

Capital Press graphic

and pulsating lasers to keep birds out of fields, with mixed results.

Cornell University estimated that 10 percent of the U.S. blueberry crop is lost to bird damage. In Oregon's blueberries, a crop worth \$102 million annually, the loss can be significant.

A 2013 USDA study estimated birds cause \$189 million damage annually to Honeycrisp apples, wine grapes, blueberries and tart and sweet cherries in just five states: Oregon, Washington, California, Michigan and New York.

The USDA study also said bird damage costs per hectare (2.47 acres) ranged from \$104 in Oregon tart cherries to \$7,267 in Washington Honeycrisp apples.

To scare or discourage birds, growers use such things

as propane cannons, flagging or netting. During the field day bird abatement presentation, company representative Rick Willis described the Bird Gard system, which is in place at the OSU research plots. The system's microprocessor, which can be powered by a solar panel, plays robin and starling distress calls, and the call of predatory red-tailed hawks — all of which unnerve pest birds.

Another presenter, Marc Gaffrey of Bird Control U.S., explained how the company's Agrilaser scares birds by shooting harmless laser beams across fields.

The system, mounted on a swiveling tripod, can be moved from place to place, and a hand-held model is available.

PLF's new president wants to extend reach

By **TIM HEARDEN**
Capital Press

SACRAMENTO — The incoming president of the Pacific Legal Foundation wants to expand the property-rights organization's national presence.

"I want PLF to be bold and brave and to be creative and innovative," Steven Anderson, who will take the reins on Sept. 1, told the Capital Press. "I'm optimistic about where we're headed and how we're going to get there."

The foundation's board last week announced the hiring of Anderson, currently the executive vice president and chief financial officer of the Arlington, Va.-based Institute for Justice, to succeed Robin L. Rivett, who retired in May after a decade as president and 41 years at the PLF.

Anderson comes aboard as the PLF's mission is gaining momentum, with the U.S. Supreme Court accepting two of its cases in the past year. In U.S. Army Corp of Engineers v. Hawkes, justices unanimously ruled in May that landowners can challenge a federal determination that their property is subject to Clean Water Act restrictions.

Another PLF case alleging an unconstitutional taking, *Marr v. State of Wisconsin*, is set to be heard by the high court in October. The Sacramento-based PLF has won its last eight cases before the Supreme Court.

Established by senior officials from then-Gov. Ronald Reagan's administration in 1973, the PLF also provides speakers for events and offers a Liberty Clinic program for law students at Chapman Uni-

versity in Orange, Calif.

Among Anderson's goals is to build on the organization's recent success before the high court and expand its fundraising efforts, he said.

"Generally speaking, if we want to do more, we'll have to call on more people to provide support for Pacific Legal Foundation," he said. "It's something I do in my current role. ... I think the product that PLF provides, a lot of people want to buy. I look forward to talking with those people who allow the great work of PLF to happen."

For the Institute of Justice, a similar free-enterprise legal organization, Anderson handled such day-to-day operations as litigation, activism and outreach, legislative affairs and financial management, according to a news release.

Giant steer looms large at Boise Airport

By **SEAN ELLIS**
Capital Press

BOISE — A 15-foot-tall, inflatable steer named "Bubba" will loom over Boise Airport visitors this summer.

The animal, part of a display that touts the benefits of beef and Idaho's cattle industry, commands a large presence in the airport's baggage claim area and is a head-turner.

"It automatically draws your attention, which is what we want to do," said Traci Bracco, executive director of the Idaho Beef Council, which created it. "You can't miss him."

Bracco said the council was "looking for a fun, innovative campaign to create some buzz" about Idaho beef and the state's ranching industry. "It's a fun, interactive way to connect with consumers and attract attention to Idaho's beef industry."

The display, which includes a backdrop picture of Idaho ranches to give the appearance that Bubba is roaming the range, made its appearance at the airport in late June and will



Sean Ellis/Capital Press

A visitor at the Boise Airport takes a picture of "Bubba," a 15-foot-tall, inflatable steer that looms over the baggage claim area on July 5. The Idaho Beef Council display will be at the airport through early September.

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Including friends and family members, about 3 million people pass through the Boise Airport each year.

IBC board member Morgan Evans, a Downey area rancher, said the council tries to use its producer checkoff funds as wisely as possible to achieve the greatest impact and the

Bubba display is an example of that.

Morgan said airports are a great way to share the council's message about the benefits of beef and ranching with consumers. The IBC has had beef-related banners in the Boise and Idaho Falls airports for several years and will include the Lewiston and Pocatello airports this year, he said.

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