County authority debated at Oregon Court of Appeals hearing over $1 billion timber judgment

By MATEUSZ PERKOWSKI
Capital Press

Mateusz Perkowski/Capital Press

The Oregon Court of Appeals has heard oral arguments in which the state government sought to overturn a $1 billion judgment won by 14 counties over its state forest policies.

The fate of a $1 billion judgment against Oregon's state government won by 14 counties may hinge on whether it needed their approval to make forest policy changes.

The state government tried to convince the Oregon Court of Appeals to throw out that award during oral arguments Feb. 22, claiming it's never needed permission to reduce logging on forestlands donated by the counties.

Lawmakers didn't intend to tie their hands in perpetuity in setting how state forests would be managed under a 1941 law that required they provide the "greatest permanent value," said Benjamin Gutman, the state's solicitor general.

"The legislature knew it would have to tweak various aspects of this. None of that exudes an immutable contract," he said. "That's just not reflected in the text or the legislative history of the statute."

The local governments countered that they must sign off on changes affecting the forestlands, which they donated to Oregon's government in the 1930s and 1940s, since they generated money for county coffers.

"Contracts can evolve but they require mutual assent. There is no evidence of mutual assent here," said John DiLorenzo, attorney for Linn County, the lead plaintiff, and the other affected counties and taxing districts.

The legal dispute was heard by the state's appeals court more than two years after a jury decided Oregon owes the counties $1 billion for contract breach — and roughly six years since they filed a lawsuit alleging state forest logging reductions had cost them money.

At its core, the case is about what it means to manage Oregon's state forests for the "greatest permanent value," as required by state law.

While the state government argues it necessarily encompasses environmental and recreational considerations, the 14 counties claim they donated nearly 700,000 acres with the contractual expectation that logging revenues would be maximized.

"This was a key provision and it was absolutely necessary to induce the transfer of the lands," DiLorenzo said. "The state has decided to unilaterally change that promise."

In 2019, the counties and nearly 150 taxing districts within them convinced the jury that Oregon had violated a contract to focus on cash-generating timber harvests.

However, the state government claims the lawsuit shouldn't have ever gone to a jury because the counties are subdivisions of Oregon and can't sue it for a breach of contract.

"It's a statutory obligation, not a contractual obligation," Gutman said.

Counties cannot seek financial compensation for "matters of statewide public concern," such as the management of state forestlands for compliance with federal environmental laws and public recreational needs, the state said.

It was entirely reasonable for the counties to convey their forestlands to the state, since the properties threatened to become a drain on their finances at the time, he said.

"We're talking about lands that were badly burned, that weren't generating revenue at all," Gutman said. "The counties didn't have the resources to rehabilitate them on their own."

This argument didn't sit right with the county governments, who argued they'd have no meaningful partnership with Oregon's government if they couldn't rely on contracts — such as those for public health services.

It wouldn't have made sense for the counties to convey their properties if the state government could only generate timber revenue if it wanted to, DiLorenzo said. "Who would have transferred all that valuable land for that reason?"

The question, then, wasn't only about the "greatest permanent value" gained from state forestlands, but who legally gets to decide that value, he said.

Once both sides had filed their written arguments in the case, the appeals court came back and asked them to clear up a further matter.

Have the counties historically agreed to changes in the Oregon law that governs state forestland management? And if so, what was the legal "mechanism" for those agreements?

Attorneys for Oregon and the 14 counties — Benton, Clackamas, Columbia, Coos, Douglas, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Washington — did not see eye-to-eye on this history.

The state government claimed the legislative history of bills that affect state forest management shows that counties never had to give their approval for policy changes.

"There's no reason to believe they had the individual authority to approve changes," Gutman said. "If you take the plaintiff's contractual claims seriously, that mechanism has to be fixed."

Oregon wine sales boom but depend on aging customers

By MATEUSZ PERKOWSKI
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Oregon wine producers are outpacing other wine regions in sales but face the same industry-wide problem of aging core consumers, experts say.

"It's pretty stunning how far ahead of the pack Oregon was in 2021," said Tom Danowski, president and CEO of the Oregon Wine Board.

With 24% sales growth last year, the state is "the best performing region out of all the majors" and continues to be the best positioned for more growth, said Rob McMillan, executive vice president and founder of Silicon Valley Bank.

"Oregon is rocking it. Oregon is the best thing going on in the wine industry, as far as I'm concerned," McMillan said Feb. 15 during the virtual Oregon Wine Symposium.

The industry's strong financial results don't mean it can afford to rest on its laurels, especially with worrying trends developing, he said.

Wine consumption has flattened after a long period of growth while consumption of spirits has been growing and taking market share, McMillan said.

The wine industry overall is too reliant on older consumers and Oregon shares the same problem, he said.

For example, when asked what they'd bring to a party, roughly half of consumers older than 65 said "wine" in a survey, he said.

For other age groups, the percentage who answered "wine" was 30% or less, McMillan said. "If we're not collecting mindshare for people under 65, that's a serious threat we need to address."

Higher wine prices at restaurants and reduced sales of economically priced wines at grocery stores don't bode well, as they often serve as "on-ramps" for new consumers, he said.

The wine industry is an "incredibly good steward of the land" but that environmental consciousness often "doesn't end up on the label," which is a missed opportunity, McMillan said.

One potential to create new "on-ramps" is the rising popularity of smaller wine containers with a lower price point, he said.

"We can't depend on 65-plus consumers but that's what we're doing and that's a mistake," McMillan said. "We've got to market to people younger than 65."

On the positive side, the wine industry has found ways to capitalize on changing consumer behaviors during the coronavirus pandemic, said Lesley Berglund, a coach with the Wine Industry Sales Education company.

"For most wineries, our direct-to-consumer business is better than ever," she said.

The robust sales seen by Oregon wineries led to a stellar year in mergers and acquisitions in 2021, with more on the way, experts said.

"Oregon has incredible value to price," both in terms of wine quality and real estate, said Erik McLaughlin, CEO of METIS, a merger consulting firm.

By all indications, 2022 is likely to be another major year for mergers and acquisitions, he said.

"We've never seen a pipeline like this," McLaughlin said. "We're definitely in a high-activity cycle. The highest we've seen."