

Timber: ‘It’s a complicated issue involving federal agencies’

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waterways and federally protected species, he said.

Determining how much timber could have been generated from each parcel would devolve into 183 mini-trials, he said.

“How can we decide if revenue has been maximized on a particular parcel unless you consider all of those issues?” Kaplan said.

Linn County is also an inadequate representative of the other counties for multiple reasons, he said.

The litigation costs are currently being paid for by timber groups and lumber companies — Oregon Forest & Industries Council, Sustainable Forests Fund, Stimson Lumber and Hampton Tree Farms.

Linn County is simply lending its name to a lawsuit that actually represents private interests, according to Oregon’s attorneys.

“It’s not a public interest case. It’s a case to benefit one particular group,” said Kaplan.

Unlike the counties, which appreciate tourism and other benefits from uses besides logging, the timber interests funding the lawsuit primarily want to change the state’s “greatest permanent value” rules for forest management to emphasize harvesting, he said.

Much of the alleged damages are for lost future timber revenues, which may force the state to change its logging policies, he said.

“That would directly challenge the interests of the other counties,” Kaplan said.

‘... This lawsuit is not seeking to change the management of the forests.’

Chris McCracken
attorney for Linn County

Lack of ‘commonality’

The case also doesn’t qualify as a class action because of the lack of “commonality” among the counties, which donated land to Oregon during different times and under specific terms, he said.

The presence of threatened and endangered species, which constrain logging, varies widely by county and affects the damages calculation, he said.

“It’s a complicated issue involving federal agencies,” Kaplan said.

Chris McCracken, an attorney for Linn County, rejected the argument that there’s a lack of commonality among the counties.

They all face the same issues, such as whether the state has violated its contract to maximize timber revenues, he said.

“We have common questions in droves,” McCracken said.

The Oregon Department of Forestry does not manage each parcel individually but instead

treats them according to regional forest plans, he said.

Deciding the counties’ contractual rights collectively is more efficient than trying separate cases with potentially conflicting verdicts, he said.

McCracken also disputed that the lawsuit’s funding mechanism should disqualify it as a class action.

‘No disabling conflicts’

The Davis Wright Tremaine law firm would be entitled to 15 percent of any financial award in the case.

Contingency fees aren’t unusual in class action lawsuits, particularly since the counties are strapped for cash and could not afford such litigation on their own, McCracken said.

“There are no disabling con-

flicts between Linn County and the class members,” he said.

It’s irrelevant whether some counties prefer the forests to be managed for ecological or recreational benefits, McCracken said.

The lawsuit’s outcome won’t affect these priorities, he said.

“All that is sought here is money damages,” he said.

“This lawsuit is not seeking to change the management of the forests.”

Linn County Circuit Court Judge Daniel Murphy said he would issue a ruling by Sept. 19 on the class certification issue as well as the state’s motions to dismiss.

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Lead: Most of the districts have either completed or are in the process of testing

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supplying bottled water, mitigation and testing individuals who might have been exposed to high levels of lead, according to the Oregon School Boards Association.

Portland Public Schools estimates that taking those steps will cost that district an estimated \$7 million, said Joe Crelier, the district’s director of risk management.

The cost of just testing lead in water for drinking and food preparation is estimated to cost \$10,000 for a small district and about \$1 million for a large district, according to district representatives who attended a July meeting on the proposed rules.

Legislative leadership has asked the Emergency Board to allocate money in September to pay for costs of testing but not mitigation, Nazarov of the Department of Education said. The Legislative Fiscal Office is working on a proposal to present to the Emergency Board in September, according to school advocates. Legislative Fiscal Officer Ken

Rocco was not immediately available Wednesday to provide that number.

Governor’s directive

Gov. Brown in April directed the Department of Education and Oregon Health Authority to review existing requirements for environmental testing and address the problem of lead in drinking water. During the review, health and education officials learned that neither the education department nor the health authority had rules to require schools test for lead.

The health authority has the power to require testing of public water systems, but schools are excluded from the agency’s jurisdiction. The proposed rule would require school districts, charter schools and education services districts to conduct lead and radon testing and to submit an environmental monitoring plan to the Department of Education for keeping water, air and physical spaces safe for students and staff.

The health authority already had authority to

require schools to test for radon, but the new rule will provide comprehensive guidance to schools on all of the testing required. Schools will be required to report their test results to the education department and to the community annually.

The agencies asked schools to test for lead during the summer. Most of the districts have either completed or are in the process of testing, Nazarov said. The agencies recommended that schools identify sources of lead, stop access, communicate results to staff, students, parents and the community and mitigate and repair the problem.

A survey of 104 schools earlier this month by the School Boards Association found that 88 percent of respondents were in the process of testing drinking water for lead. Most of the other 12 percent had either already tested water or had a plan in place to do so after classes resume in the fall.

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