



LINN COUNTY BOARD OF COMMISSIONERS

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Commissioner

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RALPH E. WYATT
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11/4/2015

To: Members of the Oregon Board of Forestry

RE: Current Forest Planning Process

Board Members,

Over the recent years, the Board has been actively pursuing a management strategy for the Tillamook State Forest. Through the years I have been part of, or seen various forms of proposals to manage that forest. Each one seemed to have its own special goals but the over arching theme has been always the same: set aside large tracts of land for whatever the currently perceived crisis is, be it global cooling, endangered species, parks, roads, open space or global warming.

Before the Board of Forestry is a current strategy that would go further than ever before and set aside more land, mirroring previous ballot measures rejected by voters. Neither Linn County nor the Santiam Forest is not represented on the CFTLC board, making it difficult to participate in the process. That still does not negate our interests in our financial holdings in the trust.

I would like to remind the board of the special relationship of the "county trust" and why the current management proposals are of great concern. I will address them in three parts but first I would like to go through a quick thumb nail history to set Linn County's interest;

In 1933 the state was desperate to try and solve the destroyed tax values of the Tillamook burn. The state said those lost state property taxes were a direct debt between the county and the state.

In 1936 (depression era), Governor Charles Martin reported that counties had 1,700,000 acres of foreclosed timber lands. [In spring 1939, Governor Charles Sprague placed that number at 2,000,000 acres.]

In 1936, the State Forester's Report requested that other counties place the lands in a "trust" for the counties and taxing districts to generate revenue under forest management. In 1939, the State Foresters Report once again requested that Oregon Counties place these lands in a "trust" to primarily benefit counties and give a way for the state to sell bonds to replant the Tillamook.

Some of this land was logged over and other land was of "...high quality and valuable virgin timber..." (much of which was in the Linn County inventory)

In spring 1939, the state amended legislation allowing counties to transfer land to the state to be managed in trust on behalf of counties and schools. Counties of course had two options: first was keep the land' or, second to sell it or the timber. After many public promises from Governors Sprague, Martin, Snell and McKay, Counties engaged the process starting in fall of 1939. Some Counties chose one or both of the previous options and sold or self managed their lands. Of the 2,000,000 acres, approximately 800,000 were prepared and placed in trust.

In 1950, voters passed a measure to aid forest rehabilitation to make these lands more commercially viable for future generations.

In 1965, the Legislature determined the forests were fully the property of the Counties, and therefore, Counties are not only to pay the bonds but also interest and to include interest on monies the Legislature determined they had been denied the ability to previously spend. After a deal was negotiated, Governor Tom McCall recommended that Counties have some sort of organization to protect their interests from further political intrusion.

In the 1979 Legislature, a scheme was cooked up to take trust land from Linn County and give it to State Parks and private interests. It was later determined, in court, to be a loss of \$23,000,000 in revenue to the citizens of Linn County. Though the Legislature rammed this legislation through, Governor Atiyeh did not sign the bill because the County did not approve of the deal. The bill became law without the Governors signature. Under direction of the Linn County District Attorney, Jack Frost, a litigation plan was implemented.

Linn County would continue to fight this "theft" of trust land through the following legislative sessions (4 years) while Counties formally formed the organization CFTLC. Litigation was filed in Marion County Court and all Forest Trust Land Counties at that time (except Marion) participated.

In April 1984, the court ruled that the land was, in fact held in "trust" on behalf of Counties as a "contract" and the legislature could not take land for other purposes without the consent of the County. The Court stated this would be a trust contract violation.

Since that time, other attempts have been made to take lands held in trust for other purposes. In 1998 and 2004, Oregon voters overwhelmingly rejected two statewide attempts to "take" County trust land and in recent years, Oregon counties sued and won a \$10,000,000 settlement against a legislative attempt to take money from the forest development fund; a key concept in the original trust legislation.

The first issue that has to be addressed by the Board of Forestry in considering management plans is the issue of **trust**. The Board has recently been provided with an opinion in the trust management of the Elliott state forest. A trust has inherent legal issues when being managed for financial return.

As stated in that opinion; Oregon law recognizes that "[a] trust is an equitable obligation; either express or implied, resting upon a person by reason of confidence reposed on him to apply or deal with property for the benefit of some other person, or for the benefit of himself and another or others, according to such confidence". In the Elliott State Forest trust it has been determined that the state cannot manage the lands and meet its obligations prescribed in the State Constitution. The state now seeks to liquidate these lands to meet its legal obligations. One can argue that just about every obstacle to managing the Elliott was brought onto the state itself through onerous regulations. The Elliott State Forest is also state property so they are free to liquidate it. This however is not the case with the County Forest Trust Lands.

Because the lands are in a “trust contract” as described by the Oregon Supreme Court, management has to take in those considerations. In Linn County’s original Crabtree Lawsuit [*Tillamook #1, 1979-1986*], the Court determined and agreed with the County on the precise fiscal loss to the county by transferring it from the intended commercial forest use to another non-revenue producing use. That parcel of land was then determined to be worth \$23,000,000 in 1979 values based on future and near future harvests. The question is now raised that if the Board of Forestry desires to manage trust lands for a different purpose other than the original trust designation, that would require approval by the Trust County in which those lands reside.

The trust lands are managed for the purpose of County revenues “*and the revenues of the represented taxing districts*”. Some of the conversations about financing new management schemes never seem to mention the other recipients of the trust lands. The generic face of the current plan sets aside up front 30% of Linn County forests which takes in no account of the original trust contract.

Given legal issues over the years, Linn County has little or no basis to trust changes in forest trust land management that comes out of Salem. Linn County’s job is to first protect the interest of Linn County citizens and the interest of its timber communities. [*It is interesting to note that in the “Crabtree Litigation” it was discovered that, of the original 8 forest counties that entered in to a trust with the state, Linn County never agreed through Resolution and Order to “share” revenues with anyone and was found only to be in agreement with the 1939 law.*]

The numerous legal issues that cloud massive forest management changes that otherwise would not apply to a private trust need to be addressed before any decisions are reached. This would allow Counties to respond to such issues in a proper legal forum.

The second issue to address by the Board is the issue of volume. Much like Commissioner Ben Boswell’s reply to Governor Kulungoski “If you have seen one Oregon County, you have seen one Oregon County”, the same could be said for trust counties. The board spends much of its time talking about the Tillamook forest. The Tillamook is just one forest. Each County entered into the trust differently. Each forest is different, producing differing financial benefits.

This is also the same for receipts. As a percentage, each county produces variable receipts and distributions. School moneys will vary as well as percentages to fire districts, libraries and cities, ect. This is what drives the GPV and the rates of investment return. We must remember that Counties footed the bill on interest to the state, capital outlay and debt payments to the state of Oregon. All these investments were made to maximize returns on our investments and were done in “good faith”. There is no “one size fits all”.

In Linn County we have had a very robust involvement in past years on how those investments would be returned. Attached exhibit A is a graph of current age classes vs. volume in the Linn County inventory. If the board was to institute the 70/30 scheme and then apply its 18% “other management objectives” we in Linn County will incur significant financial loses. When looking across “management objectives published by DOF, Linn County could see 68% to as high as 85% of volume denied to our economy and revenues [reference Exhibit A].

As a result, the Linn County Board of Commissioners finds the 70/30 plan unacceptable. The Linn County Board of Commissioners also finds the across the board 18% restricted management plans arbitrary and capricious. Together, these proposals can be considered a violation of trust by using the land for a third party purpose otherwise not required of other trusts and land owners.

The third issue the Board of Forestry has to consider is the fiduciary responsibility of a trustee. The Board of Forestry in its role has a primary obligation to protect the Counties interest in producing revenues including revenues to taxing districts.

The Supreme Court held in 1986 that the state admitted it, "*actively promoted the benefits of county participation in the program which included assurances that the lands would be used to produce revenues, and that the revenues would be distributed to the counties in a manner then provided in statute.*" The Supreme Court went on to state "*The state cannot avoid its obligation to Linn County.*"

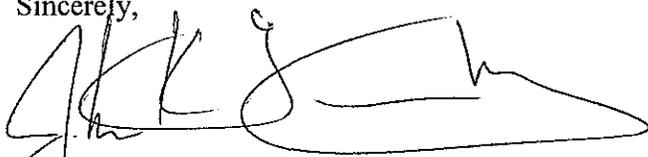
In the Supreme Court case brought forth by Linn County, the Court stated that Linn County could not seek protections against further future legislative intrusion. "*The role of the courts is not to interfere with the legislature from passing a statute.*" "*While we have the authority to declare an ordinance void when passed, there is no power in the court to restrain the council from passing any illegal ordinances.*" The Board of Forestry in its current role has made itself into the legislative body by considering alternative forest management plans. It is in the interest of Linn County and its taxing districts to ensure that those plans do not violate the "trust contract" The state entered into that contract when seeking help from Linn County, in pursuing an option to resolve its financial difficulties.

The state forester and Governor sought Linn County's help. Linn County was not seeking the state's help. Because it was by agreement, not every county participated as a result of distrust toward the state government. Some counties sold all their forests and chose not to be in the timber business. Some held on to land, the largest being Coos County. Coos in this case is an excellent example of management objectives and goals to follow.

Any plan that goes forward needs to reflect the desires of the Trust Recipient County in which the lands lay. In our original suit we were discussing the loss of one parcel of land. If we were to consider the 48% reduction of acreage in all the lands being proposed before the board [30% plus 18%], the effective financial damage to our taxing districts would be devastating. The Linn County Board of Commissioners finds any reductions in fiscal management objectives of the "trust" a violation of that trust.

I want to thank the Board of Forestry for their consideration on this matter.

Sincerely,



John K Lindsey
Commissioner

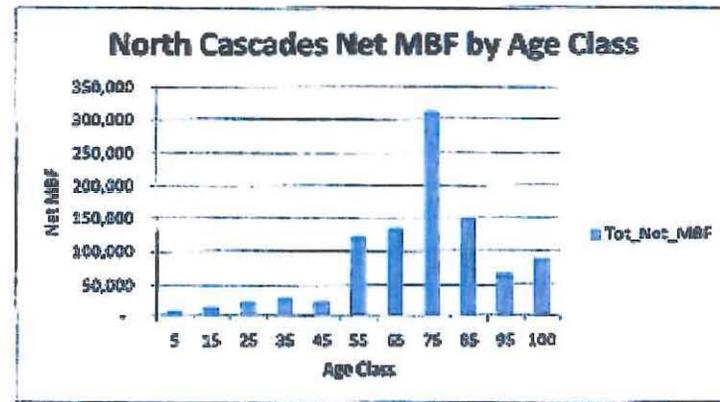
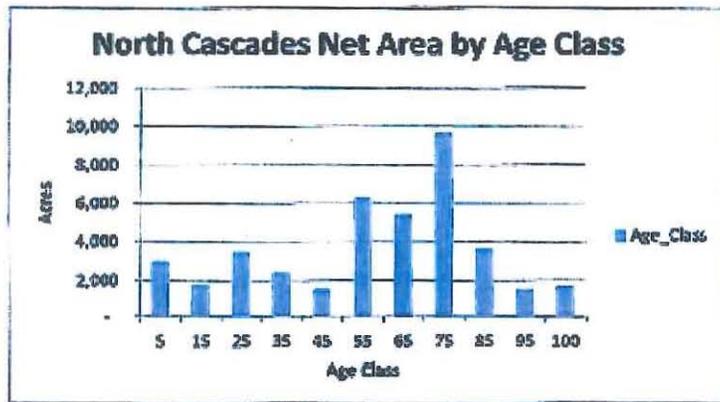


EXHIBIT A