# Forestry on State Lands in Oregon Takes Center Stage in Court

BY TAMARA CUSHING

I never thought I'd be willingly sitting in a courtroom for multiple days completely engrossed. Yet, I've found myself giddy with excitement and ready to get back in there! I moved to Oregon from South Carolina, and a forestry matter would not have made it to the courtroom in the south. This was a chance to witness an interpretation of forest policy. This is the trial that has been anticipated since shortly after I arrived in Corvallis in 2014. As it has been in the newspaper regularly since 2016, I've used this with my OSU forestry students as a current event because the results will matter. The results may change the way state forest lands are managed in Oregon. Some of you likely know pieces of the story. For those who don't, let me bring you up to speed about this high-stakes lawsuit pitting counties against the state forestry agency. Be aware, I am not a lawyer, and I have done my best to present this very complicated matter in a way that is digestible.

During the Depression, many private owners did not have the ability to pay the property tax on their land and so abandoned it. This resulted in the counties owning property, but still not receiving the much-needed tax money. In 1941, the Forest Acquisition Act provided an arrangement by which counties could deed tax-forfeited forestland to the Oregon Department of Forestry (ODF). The department would manage these lands and split revenues from these lands with the counties. Initially, only a few thousand acres were transferred, but ultimately over 700,000 acres were transferred to ODF.

Nobody is arguing any of that information about ownership. This is a class-action lawsuit involving 14 counties and over 100 taxing districts in Oregon (note that Clatsop County opted out of the class-action suit). The counties that receive revenues from harvests conducted on these lands contend that more timber could have been harvested and thus more revenue returned to them. One of the issues in this lawsuit is over three words: Greatest Permanent Value (GPV). The power of three little words in an agreement. So, let's return to when the land was deeded to the state in the 1930s, '40s and '50s. Within the Forest Acquisition Act (1941) is the following language: "manage the lands acquired pursuant to ORS 530.010 to 530.040 so as to secure the greatest permanent value of those lands to the state." While the agreement included the words "greatest permanent value," it did not define what value was based on. The counties are arguing that GPV, when the agreement was initiated, meant generating timber revenue as the primary goal. The state maintains that social, economic, and environmental goals must be balanced, and revenue from timber was never the primary focus of GPV.

So why has this just now come up if the land was deeded in the 1940s and 1950s? In the late 1990s, the Oregon Board of Forestry adopted a definition of GPV via an administrative rule that provided for a balance of social, economic, and environmental benefits to the people of Oregon across the landscape. A new forest management plan was adopted in 1998 that provided for multiple values to forest management. The counties contend that since 1998 the state was not producing an amount of revenue from timber that was at the level the forest could produce if timber was the primary objective. The counties are arguing that the Department of Forestry has breached the contract with them since they are not managing for GPV as defined by the original agreement. The period of the breach is from 1998 until current day.

Unfortunately, time has passed and organizational knowledge has been lost—nobody involved in the drafting of the 1941 document is still with us. This means we don't know what GPV meant in 1941 when the agreement commenced and are left to interpret that language today. Both parties are presenting their respective interpretations. The counties presented information to support a definition of primary goal of timber revenues. The state presented information to support a definition of a broad suite of forest resource values. For the counties to prevail, they will need to demonstrate that GPV meant timber revenue in 1941 and that the state deviated from that definition. The state needs to provide information to show that the definition of GPV meant multiple resource values, and possibly that the GPV rule written in

## Case Update: Jury Favors Counties

*Editor's note: While the* Western Forester *was in its proofing stage, the jury decision on this case was made. What follows is an update from author Tamara Cushing.*

After nearly a month of listening to testimony from experts on timber valuation, harvest scheduling, growth and yield, and wildlife habitat, as well as hearing from county commissioners and Oregon Department of Forestry leaders, a jury handed down a verdict for the counties.

Earlier the judge had ruled that one of the counties (Klamath) was to be excluded, leaving 13 counties and over a hundred taxing districts in the lawsuit. The jury awarded a total of $1.1 billion in past and future damages. The future damages assume that the state will continue to manage as they have been. The state will now determine how to approach next steps, which will most likely include an appeal.

While there has been much coverage by the press over this case, I recommend reading accounts from the *Albany Democrat Herald*. Their reporter sat in the courtroom every day and presented the most balanced accounts of what occurred in the courtroom.


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**A 1.4 billion class action lawsuit is being played out in Linn County Circuit Court.**

1998 was neither a deviation nor unacceptable to the counties.

The challenging part of this lawsuit for me is acknowledging what a forester or resource manager would view as good stewardship of the resource while judging compliance with a contract made many years ago with the counties. This is a jury trial. If the jury decides the state has not upheld the agreement, then a decision will be made about damages to be awarded to the counties. The counties have asked for $1.4 billion to compensate for past and future harvest levels that differ from the current management harvest levels.

At the time of this writing, the jury has heard about the history of state forestlands in Oregon, growth and yield models, harvest scheduling, clearcuts versus thinnings, timber sale logistics, economics of timber sales, and timber valuation, among other topics. From my standpoint, I see 14 jurors, two county commissioners, a reporter, and at least half a dozen legal staff plus one judge who are learning about forestry. On the first day of the trial a picture of Gifford Pinchot was shown on the screen as the expert testified about what conservation meant in the early part of the 1900s.

The educator in me is excited to have a room of voters who are learning just how complex forest management can be. They are hearing that forestry involves science and that foresters aren't just cutting all of the trees. However, this lawsuit is costing both parties a lot of money and time (expected to be a three-week trial and undoubtedly the outcome will be appealed). Regardless of the outcome, there will be potentially far-reaching implications. The management of our state forestlands will either continue on its current path of balancing all resource values or it will change to reflect a timber revenue priority. So, while there will be a verdict and one of the parties will be deemed the "winner" it may be years before we see the ultimate outcome of this trial. ◆

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