

County Trust Lands or Board of Forestry Lands?

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A Very Brief History

- 1929 – Great Depression
- 1933 – Tillamook Burn (244,000 acres)
- 1939 – Forest Acquisition Act
- 1939 – Another Tillamook Burn
- 1941 – Amended Forest Acquisition Act “greatest permanent value”
- 1945 – Another Tillamook Burn (total of over 355,000 acres)
- 1948 – Bond issued for reforestation



Oregon's State Forests

654,077 acres of county conveyed lands.

597,340 acres in NWFMP area.

364,000 acres in Tillamook alone.

As of 2010, about 17 billion board feet with a market value of well over \$5 billion.



- Lands owned by the Oregon Board of Forestry
- Common School Fund lands owned by the State Land Board and managed by the Oregon Department of Forestry

Statutory Setup

- “[T]he State Forester shall manage the lands acquired pursuant to ORS 530.010 so as to secure the greatest permanent value of those lands to the state.” ORS 530.010
- Revenue Sharing
 - 15% to state for management and fire protection
 - 85% remaining
 - 25% to state for operating funds (21.5%)
 - 75% to counties (63.75%)

County Share of Revenue from BOF

County	FY 2016
Benton	\$312,326
Clackamas	\$64
Clatsop	\$24,742,787
Columbia	\$1,695,005
Coos	\$0
Douglas	\$632,281
Josephine	\$2,315
Klamath	\$1,004,754
Lane	\$348,971
Lincoln	\$1,692,088
Linn	\$2,231,016
Marion	\$647,555
Polk	\$63
Tillamook	\$17,728,557
Washington	\$9,069,513
Totals	\$60,107,296

Tillamook I (Crabtree) (1986)

- “The state admits that it ‘actively promoted the benefits of county participation in the program’ which included assurances that the lands would be used to produce revenue, and that the revenue would be distributed to the counties in a manner then provided by statute, unless counties agreed to any changes in the distribution formula.’ Pursuant to the enactment of the statutory plan and to the assurances of the state, counties gave up control over their forest lands in consideration for a percentage of the revenue derived from such lands.”

Tillamook I (Crabtree) (1986)

- “We deem it unnecessary to describe the arrangement in contract or trust terms. Rather, we look to the statutes to determine what flows from them.”
- “Under ORS chapter 530, Linn County has a protected, recognizable interest that can be asserted against the defendants. Linn County transferred forest land, land that it could have kept and administered for its own benefit, to the state, “in consideration of the payment to [Linn County] of the percentage of revenue derived from such lands.” ORS [302 Or. 417] 530.030(1). It is entitled to enforce that claim for its percentage of revenue, and the state cannot avoid its obligation to Linn County by conveying the property to a third person.”

1998 Greatest Permanent Value Rule

OAR 629-035-0020

- “As provided in ORS 530.050, ‘greatest permanent value’ means healthy, productive, and sustainable forest ecosystems that over time and across the landscape provide a full range of social, economic, and environmental benefits to the people of Oregon.”
- Catalogs benefits, including recreation, habitat, soil and water conservation

Tillamook II (2005)

- “From the legislative history set forth in *Tillamook County*, the statutory scheme embodied in ORS 530.010 to 530.170, the “used exclusively” language of ORS 530.110, the importance of which was recognized in *Eckles v. State, supra*, and the 1945 opinion of the Attorney General,⁶ it is clear and unambiguous that the revenues going to the State under ORS 530.110(1)(c) cannot be transferred to the General Fund by the state without the consent of the Counties.”

Tillamook II (2005)

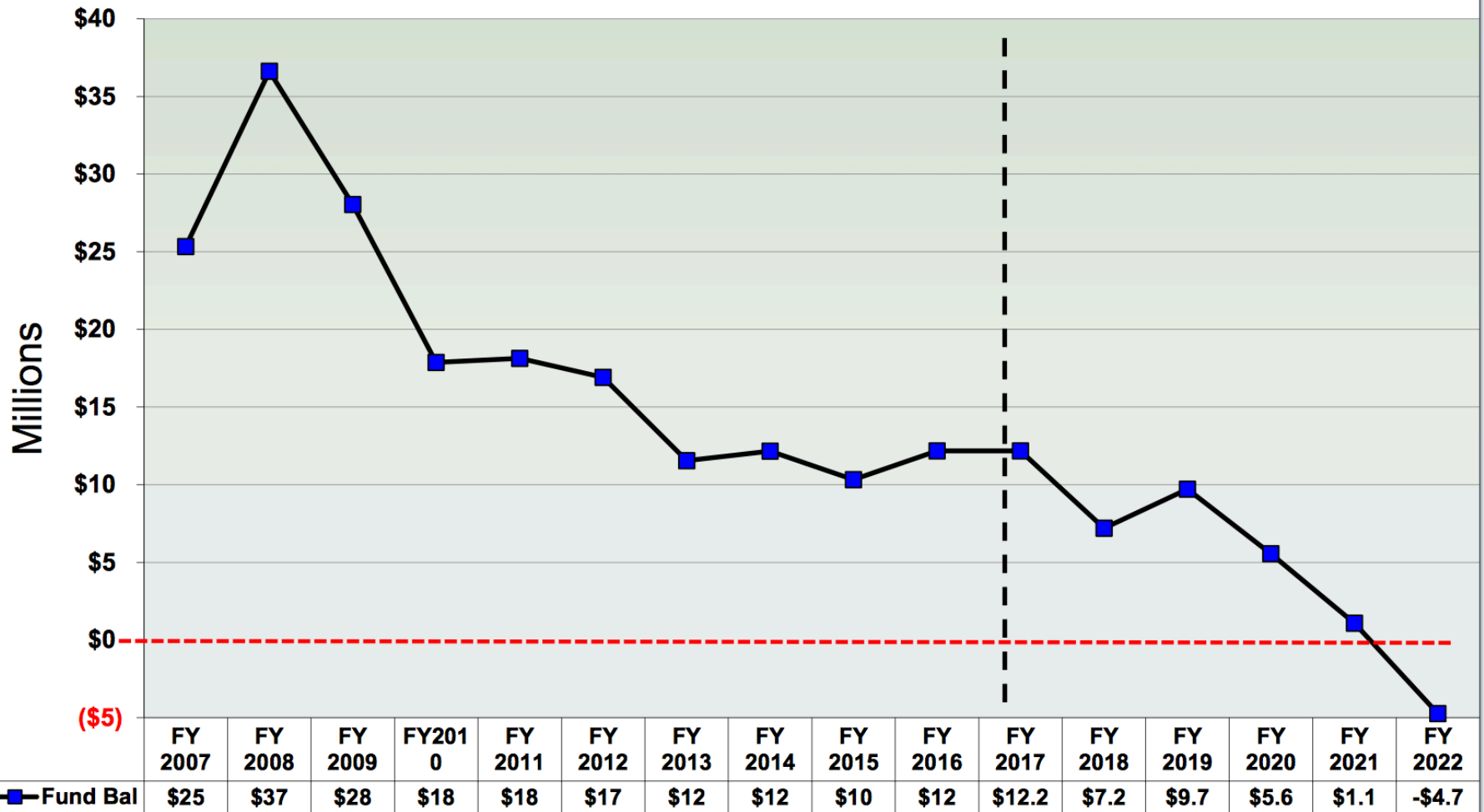
“The court finds that the State is contractually bound not only because of what comes from the statutory scheme, which has been a consensual arrangement for more than 70 years, but also from the deeds entered into by the Counties pursuant to the statutory scheme and which the State ‘sought and bargained for’ and gave ‘assurances that the lands would be used to produce revenue.’ No other conclusion can be reached and even if the court was to ‘deem it unnecessary to describe the arrangement in contract or trust terms’ and only look to the statutory scheme, no other conclusion can be reached that the arrangement binds the State.”

2011 Financial Viability Workgroup

2012 Workgroup Report

- Between 2007 and 2011, FDF lost half of its value to \$17 million. State Forests Division laid off 56 positions in state forests.
- “The group concluded that it is not possible to meet long-term revenue needs from timber under the current Northwest and Southwest Oregon Forest Management Plans, the dominant management plans for BOF lands that generate over 90% of the total revenue for the division.”

Historic and Projected Forest Development Fund Balance



Projected numbers are the starting fund balance for the fiscal year

Linn County Lawsuit (2016)

Class Action on behalf of 15 forest trust land counties and ~150 taxing districts as third party beneficiaries

Alleging breach of contract in adoption of the GPV rule in 2001.

Requesting money damages in the amount of \$1.4 billion.



Denies Motion to Intervene(July 2016)

- “This action is limited to a breach of contract action seeking damages. The rule is a contributing factor in the alleged breach. However this is not a challenge to the rule. In fact plaintiffs argue that the rule may well stay in place as written as long as the state is willing to pay for the alleged damages caused thereby.”
- “The court is aware that the applicants hold passionate views about timber land management including its impact on wildlife and other environmental concerns as do many others on both sides of the issue. Passionate concern about something does not qualify an applicant for intervenor status.”

Order on Rule 21 Motions (Sept., 2016)

- Court confirms that the relationship is, in fact, one in contract.
- Terms of contract to be decided by a jury.
- Rules that *Stovall* doesn't preclude enforcement of bilateral contracts.
- Strikes pre-judgment interest claim.
- Class satisfies numerosity requirement, and includes the third party beneficiary taxing districts.
- Elects to wait to certify class until after summary judgment

Class Certification (October, 2016)

- Judge Murphy changes his mind. Given discovery vis-à-vis the class members, elects to certify class immediately.
- Class notices sent out in November, with opt-outs due in January
- Clatsop County and a small handful of taxing districts opt out.

Sovereign Immunity

- Plaintiffs file motion to strike State's Eleventh Defense (sovereign immunity) given September ruling.
- June – Judge Murphy explicitly reverses October ruling and, rather than deny motion to strike, and orders plaintiff to make claim more definite and certain.
 - ORS 30.320 doesn't apply to statutory contracts.
 - “It is not an action in contract however. As in Tillamook the only remedy available to the plaintiff may well be equitable.”
- July - plaintiffs withdraw motions to strike and Murphy withdraws his letter opinion.
- Summary judgment motions submitted September 11.

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Presentation available at:
<https://goo.gl/Fmz2BA>



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