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2
3 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
4 FOR THE COUNTY OF LINN

5 COUNTY OF LINN, on behalf of itself and
6 others similarly situated,

7 Plaintiff,

8 v.

9 STATE OF OREGON; and STATE
10 FORESTRY DEPARTMENT, an Oregon
administrative agency,

11 Defendants.

Case No.

COMPLAINT – CLASS ACTION

Breach Of Contract

**Claim Not Subject to Mandatory
Arbitration**

**Statute Setting Filing Fee: ORS 21.160
(Amount in Controversy exceeds \$1.4
Billion)**

Jury Trial Demanded

12
13
14 Plaintiff, the County of Linn (“Linn County” or “Plaintiff”) alleges as follows:

15 **THE PARTIES**

16 1.

17 Linn County is a county in the State of Oregon.

18 2.

19 Linn County and other Oregon counties have transferred forestlands to the State of
20 Oregon (“Forest Trust Lands”) pursuant to the Forest Acquisition Act, Oregon Laws, 1939, Ch.
21 478; Oregon Laws, 1941, Ch. 236; ORS 530.010 to ORS 530.181 (the “Act”). By this
22 complaint Linn County seeks relief for itself and, pursuant to Oregon Rule of Civil
23 Procedure (“ORCP”) 32, Linn County also seeks relief for a class consisting of all other counties
24 that have transferred Forest Trust Lands to the State pursuant to the Act (the “Forest Trust Land
25 Counties”) and all other government entities that share or receive revenue the State is required
26 under the Act to return from the Forest Trust Lands.

1 3.

2 Defendant State of Oregon (the “State”) received Forest Trust Lands from Linn County
3 and from the other Forest Trust Land Counties pursuant to the Act.

4 4.

5 Defendant Oregon Department of Forestry (the “Department”) is an agency of the State
6 of Oregon. The Department administers and manages the Forest Trust Lands.

7 **VENUE**

8 5.

9 Venue in Linn County is appropriate because the cause of this suit, or some part thereof,
10 arose in Linn County. ORS 14.060; 14.080(1). Linn County conveyed in excess of 21,000 acres
11 of Forest Trust Lands located in Linn County to the State pursuant to the Act. Defendants have
12 managed and administered those lands within Linn County. The representative plaintiff for this
13 class action is located in Linn County.

14 **BACKGROUND**

15 6.

16 Beginning in the 1930s, the Forest Trust Land Counties acquired hundreds of thousands
17 of acres of forestlands by tax foreclosure, in many cases because the owners had abandoned the
18 land during the Great Depression and as a result of forest fires in the 1930s and 1940s.

19 7.

20 The removal of these forestlands from the tax rolls of the Forest Trust Land Counties
21 created substantial revenue loss to the counties. The lost utility of these forestlands also
22 imperiled the economic welfare of the counties and the State.

23 8.

24 To address these problems, the State, in cooperation with the Forest Trust Land Counties,
25 enacted legislation authorizing the counties to convey their forestlands to the State and for the
26 State to manage the lands for the benefit of the Forest Trust Land Counties and local districts

1 within the borders of the Forest Trust Lands. The State and Forest Trust Land Counties agreed
2 that the State would be entitled to keep a set portion of the revenues derived from the Forest
3 Trust Lands as a management fee, and would be obligated to return the remaining revenues to
4 the Forest Trust Land Counties and other local governments within the Forest Trust Lands.

5 9.

6 This agreement was the consideration expressed in the deeds whereby the counties
7 conveyed the Forest Trust Lands and was and remains embodied in the Act, and constitutes a
8 contract between the State and the Forest Trust Land Counties.

9 **THE FOREST ACQUISITION ACT**

10 10.

11 The Act authorizes the State Board of Forestry to acquire forestlands in the name of the
12 State. Oregon Laws, 1939, Ch. 478, § 1; Oregon Laws, 1941, Ch. 236, § 1; ORS 530.030(1).

13 11.

14 The Act further authorizes counties to convey forestlands to the State pursuant to the Act.
15 Oregon Laws, 1939, Ch. 478, § 2; Oregon Laws, 1941, Ch. 236, § 3; ORS 530.010(1).

16 12.

17 The Act also identifies the consideration for the counties' conveyances: the Forest Trust
18 Land Counties' conveyances were "in consideration of the payment to such counties of the
19 percentage of revenue" specified in the Act. Oregon Laws, 1941, Ch. 236, § 3; ORS 530.030(1).

20 13.

21 The Act requires the State to return to the Forest Trust Land Counties a specified portion
22 of the revenues derived from management of the Forest Trust Lands. Oregon Laws, 1939, Ch.
23 478, §6; Oregon Laws, 1941, Ch. 236, §§ 3, 9; ORS 530.030(1); ORS 530.110. At all material
24 times, the Act required the state to pay the Forest Trust Land Counties on a quarterly basis, on or
25 before the last day of each month following the end of the calendar quarters ending on March 31,
26 June 30, September 30 and December 31. ORS 530.115(1).

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14.

The State and the Forest Trust Land Counties intended to benefit other, local government entities within the Forest Land Counties. The Act provides that those local government entities will share or receive a portion of the revenue the State is required to return from the Forest Trust Lands to the Forest Trust Land Counties. Oregon Laws, 1941, Ch. 236, § 9; ORS 530.110; ORS 530.115.

15.

The Act, from 1941 to the present, mandates that the Defendants “shall manage” the Forest Trust Lands “so as to secure the greatest permanent value” of the lands. Oregon Laws, 1941, Ch. 236; ORS 530.050.

16.

The State sought and bargained for the counties’ forestlands and actively promoted the benefits of county participation in the program, which included assurances that the Forest Trust Land revenues would be distributed in the manner provided for by statute, unless the Forest Trust Land Counties agreed to any changes.

17.

Under the Act, and in reliance on the Act and on the State’s promises and assurances, the Forest Trust Lands Counties have conveyed, or authorized the conveyance of, over 654,077 acres of Forest Trust Lands to the State.

18.

When the Forest Trust Land Counties deeded Forest Trust Lands to the State as an acceptance of the State’s offer and for good and valuable consideration, a contractual obligation arose between the parties. Included as consideration for the conveyance, the Forest Trust Land Counties retained a beneficial or proprietary interest in the Forest Trust Lands and certain control over the management of those lands.

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19.

The rights and responsibilities of the State and the Forest Trust Land Counties with respect to the Forest Trust Lands is established in the Act, in the recorded deeds and documents of conveyance, the course of dealing and conduct among the State and the counties, and by the parties' subsequent acts.

THE DECISIONS IN *TILLAMOOK I* AND *TILLAMOOK II*

20.

In 1986 the Supreme Court of Oregon decided *Tillamook County v. State Board of Forestry*, 302 Or 404, 730 P2d 1214 (1986) ("*Tillamook I*"), an action brought by Linn County and other Forest Trust Land Counties against the State. The Court in *Tillamook I* held that: (1) counties possess interests that may be asserted against the State; (2) the Act authorized a statutory land exchange and revenue distribution scheme which gave Linn County (and other Forest Trust Land Counties) the option of transferring forestlands to the State to manage; and (3) the Act contemplates consensual dealings between the counties and the State, dealings that would create enforceable rights insofar as the State's management of formerly county owned forest land is concerned.

21.

The Court in *Tillamook I* further held that: (1) pursuant to the Act and the assurances of the State, Linn County and other Forest Trust Land Counties gave up control over their forest lands in consideration for a percentage of the revenue derived from such lands; (2) the Forest Trust Land Counties have a protected, recognizable interest that can be asserted against the State; (3) the Forest Trust Land Counties transferred forest land, land that they could have kept and administered for their own benefit, to the State, "in consideration of the payment to [the counties] of the percentage of revenue derived from such lands"; and (4) the Forest Trust Land Counties are entitled to enforce those claims for their percentage of revenue.

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22.

In 2005, in *Tillamook County, et al. v. State of Oregon*, Tillamook County Circuit Court Case No. 04-2118 (“*Tillamook I*”), the Forest Trust Land Counties and the State actually and actively litigated the question of whether a contract existed between the State and the Forest Trust Land Counties with respect to forestlands conveyed under the Act.

23.

The State was a named defendant in *Tillamook II*.

24.

Tillamook II was a civil action commenced in the Circuit Court of the State Oregon for the County of Tillamook. The complaint in *Tillamook II* asserted, among other claims, a claim of breach of contract against the State and other defendants alleging the defendants had breached contractual duties under the Act.

25.

The Forest Trust Land Counties and the State in *Tillamook II* had a full and fair opportunity to be heard on the issue of whether a contract existed between the Forest Trust Land Counties and the State under the Act.

26.

The trial court in *Tillamook II*, by a letter opinion dated July 5, 2005, found that the State is contractually bound to Counties based on the statutory scheme of the Act, “which [had] been a consensual arrangement for more than 70 years, [and] 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.’”

27.

The finding that the State was contractually bound was essential to the final decision in *Tillamook II* because the trial court in *Tillamook II* also found that the State breached its contract with the Forest Trust Land Counties.

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28.

The trial court in *Tillamook II* entered a General Judgment in that case which incorporated the prior letter opinion.

29.

Tillamook II, a civil action alleging breach of contract, is the type of proceeding to which the courts of Oregon apply preclusive effect.

THE ADOPTION OF THE GREATEST PERMANENT VALUE RULE

30.

In 1998, the State promulgated OAR 629-035-020 (the “GPV Rule”) which provides:

Greatest Permanent Value

(1) 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. These benefits include, but are not limited to:

- (a) Sustainable and predictable production of forest products that generate revenues for the benefit of the state, counties, and local taxing districts;
- (b) Properly functioning aquatic habitats for salmonids, and other native fish and aquatic life;
- (c) Habitats for native wildlife;
- (d) Productive soil, and clean air and water;
- (e) Protection against floods and erosion; and
- (f) Recreation.

(2) To secure the greatest permanent value of these lands to the state, the State Forester shall maintain these lands as forest lands and actively manage them in a sound environmental manner to provide sustainable timber harvest and revenues to the state, counties, and local taxing districts. This management focus is not exclusive of other forest resources, but must be pursued within a broader management context that:

- (a) Results in a high probability of maintaining and restoring properly functioning aquatic habitats for salmonids, and other

1 native fish and aquatic life;

2 (b) Protects, maintains, and enhances native wildlife habitats;

3 (c) Protects soil, air, and water; and

4 (d) Provides outdoor recreation opportunities.

5 (3) Management practices must:

6 (a) Pursue compatibility of forest uses over time;

7 (b) Integrate and achieve a variety of forest resource management goals;

8 (c) Achieve, over time, site-specific goals for forest resources,
9 using the process as set forth in OAR 629-035-0030 through 629-035-0070;

10 (d) Consider the landscape context;

11 (e) Be based on the best science available; and

12 (f) Incorporate an adaptive management approach that applies new
13 management practices and techniques as new scientific information and results of monitoring become available.

14 (4) The State Forester shall manage forest lands as provided in this
15 section by developing and implementing management plans for a given planning area as provided in OAR 629-035-0030 to 629-035-0100.

16 (5) The Board shall review 629-035-0020(2) (management focus)
17 no less than every ten years in light of current social, economic, scientific, and silvicultural considerations.

18 31.

19 The GPV Rule defined “greatest permanent value” in a way that does not emphasize
20 maximization of revenues to the Forest Trust Land Counties and their intended beneficiaries.

21 32.

22 Neither Linn County, nor the other class members consented to the GPV Rule.

23 33.

24 Defendants have implemented management plans in reliance upon the GPV Rule that
25 fail to maximize the potential revenue that should be generated from the Forest Trust Lands for
26

1 the Forest Trust Land Counties and the other government entities that share or receive revenue
2 from the Forest Trust Lands and have thereby failed to secure the greatest permanent value of the
3 lands as that phrase was understood when the contract was made.

4 5 **CLASS ACTION ALLEGATIONS**

6 34.

7 Linn County brings this action on its own behalf and on behalf of a class comprised of all
8 Forest Trust Land Counties together with all other government entities that share or receive
9 revenue the State is required under the Act to return from the Forest Trust Lands to the Forest
10 Trust Land Counties (the “Class”).

11 35.

12 The Class is so numerous that joinder of all class members is impracticable. ORCP 32
13 A(1). The Class consists of 15 Forest Trust Land Counties and at least 130 other government
14 entities that share or receive revenue from the Forest Trust Lands (the “Class Members”). The
15 Class Members are geographically dispersed throughout western Oregon. Therefore, all Class
16 members cannot practicably be joined in Linn County, or any other single venue, as full parties
17 to this action. One class action in Linn County, led by Linn County as a representative, will save
18 judicial resources compared to either a collection of individual suits or a single suit in which all
19 interested parties are joined, because the class action, led by a single representative, will
20 streamline discovery and motion practice, if any, and will reduce the costs of litigation.

21 36.

22 There are questions of law or fact common to the class. ORCP 32 A(2). For example:
23 each Class Member either conveyed valuable land to the State in consideration of the
24 Defendants’ promises, or is a beneficiary of those promises; each Class Member’s claims asserts
25 the existence of a contract between the Forest Trust Land Counties and Defendants; and each
26 Class Members’ claims asserts that Defendants breached that contract through the adoption and

1 implementation of the GPV Rule.

2 37.

3 Linn County's claims are typical of the claims of the Class Members. ORCP 32 A(3).
4 Each claim relies on the same basic law and facts as are alleged above.

5 38.

6 Linn County will fairly and adequately protect the interests of the Class. ORCP 32 A(4).
7 Linn County possesses the claim asserted on behalf of the Class, and Linn County's interests in
8 pursuing increased revenue from the Forest Trust Lands aligns with the interests of the other
9 Class Members.

10 39.

11 On January 13, 2016, pursuant to ORCP 32 H, Linn County provided Defendants, by
12 certified mail, return receipt requested, the notice attached as Exhibit 1 notifying Defendants of
13 the alleged cause of action and demanding correction. Defendants failed to correct their breach
14 and failed to respond on the merits of either Linn County's claims, or the claims of any Class
15 Member.

16 40.

17 Under ORCP 32 B, a class action is superior to other available methods for the fair and
18 efficient adjudication of this controversy because:

19 (a) Prosecution of separate actions by the Class Members would likely occur in different
20 circuit courts across western Oregon and would create the risk of inconsistent or varying
21 adjudications with respect to the Class Members' rights under the contracts embodied in the Act,
22 or regarding Defendants' contractual duties towards the Class Members under the Act. ORCP
23 32 B(1)(a).

24 (b) Adjudications with respect to a limited set of Class Members could, as practical
25 matter, be dispositive of other Class Members' interests or substantially impair or impede their
26 ability to protect their interests. ORCP 32 B(1)(b).

1 (c) Common questions of law and fact predominate over any questions affecting only
2 individual class members. ORCP 32 B(3). For example, Defendants have acted in a common
3 manner towards the Class Members in Defendants' adoption and implementation of the GPV
4 Rule. In addition, each Class Member's claim rests on the same basic law and facts as alleged
5 above, and each Class Member's claim seeks the same type and measure of damages.

6 (d) Other Class Members have not demonstrated individual interest in controlling the
7 prosecution of separate actions on the claims asserted in this complaint. ORCP 32 B(4).

8 (e) No other Class Member has already asserted litigation against Defendants for the
9 claims asserted in this complaint, ORCP 32 B(5), and, instead, the Class Members rely on Linn
10 County to move forward on their behalf as representative of the Class.

11 (f) It is desirable to concentrate litigation of the Class Members' claim in the Circuit
12 Court for Linn County because doing so avoids the waste of unnecessary, duplicative litigation
13 that could arise if Class Members brought individual actions in other courts. ORCP 32 B(6).
14 Linn County is also a desirable location to concentrate the claims because Linn County is
15 geographically centered in relation to the other Forest Trust Land Counties. Linn County is
16 centrally located if, and to the extent, representatives from the Class Members wish to observe
17 court proceedings or provide evidence.

18 (g) Prosecution of the Class Member's claims as a single class action will not create
19 significant case management difficulties, and will be more efficient than the prosecution of
20 multiple individual actions by Class Members. ORCP 32 B(7). Prosecution of the Class
21 Members' claims as a single class action will eliminate the waste of the duplicative trial court
22 cases, discovery, motion practice, trials, and appeals that would arise in the event Class Members
23 bring individual actions.

1 **CLAIM FOR RELIEF**

2 (Breach of Contract)

3 41.

4 Linn County restates and incorporates by reference paragraphs 1 through 40 above.

5 42.

6 The Forest Trust Land Counties have fully performed their obligations under the contract
7 embodied in the Act by voluntarily deeding their lands to the State. The Class Members are not
8 in breach of the contract.

9 43.

10 Defendants materially breached the contract with the Forest Trust Land Counties by
11 adopting the GPV Rule, by managing the Forest Trust Lands in accordance with that rule and by
12 failing to manage the Forest Trust Lands in a manner consistent with the parties' understanding
13 when they contracted.

14 44.

15 As a result of Defendants' breach Class Members have been damaged in the approximate
16 amount of One Billion Four Hundred Thirty-Five Million One Hundred Sixty-Four Thousand
17 dollars (\$1,435,164,000.00), or such amount as may be proven at trial, consisting of:

18 (a) The difference between the amount of revenues that should have been distributed to
19 the Class Members if the forestlands were managed in accordance with best management
20 practices required of private landowners (while honoring all federal regulatory requirements) and
21 the amount of revenues that have actually been distributed under the GPV management regime,
22 which amount is as at least \$35.24 million per year from 2001 (the year the management regime
23 pursuant to the GPV rule was fully implemented) to the present, for a total of at least
24 \$528,600,000;

25 (b) Pre-judgment interest at the legal rate on that amount approximating \$25,564,000.00;
26 and

1 (c) Future damages in an amount sufficient to yield a revenue stream of \$35.24 million
2 per year in perpetuity. The net present value of such revenue stream, based on a discount rate of
3 4%, is approximately \$881,000,000.

4 45.

5 Class Members request attorney fees, costs and disbursements under ORCP 32 M.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays, on its own behalf and on behalf of the Class Members,
8 for judgment as follows:

- 9 1. A money judgment against Defendants, and in favor of Plaintiff and the Class
10 Members, in the amount of One Billion Four Hundred Thirty-Five Million One Hundred Sixty-
11 Four Thousand dollars (\$1,435,164,000.00), or such other amount as may be proven at trial
12 together with post-judgment interest at the legal rate;
- 13 2. An award of plaintiff's reasonable attorney fees, costs, and disbursements; and
14 3. Any other relief that the Court deems just and equitable.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a trial by jury as to all issues triable by jury.

17 DATED this 10th day of March, 2016.

18 DAVIS WRIGHT TREMAINE LLP

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