

# Josephine County is suing the Federal Government

Josephine County , OR. –Josephine County, through the County Commissioners who are its governing body, has filed to join two lawsuits that are currently pending in the U.S. District Court for Washington D.C. Both lawsuits allege that federal officials have failed to follow federal laws.

## Background:

The United States Bureau of Land Management (BLM) maintains 2,557,800 acres of federal forest land in western Oregon, including 2,151,200 acres that are commonly called the “O&C Lands”. The property is so named because at one point it was briefly owned by the Oregon and California Railroad. Congress passed an act in 1916 that reclaimed the property for public ownership. Congress then passed the “O&C Act” in 1937. The O&C act (43 U.S.C. §1181a) specifies how the federal government is supposed to manage the property.

The O&C Act directs that a portion of revenue from timber sales must be returned to the 18 western Oregon counties in which the O&C lands are located. Josephine County is one of those counties. The O&C Act also directs that, “[O&C lands]...shall be managed...for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal [sic] of sustained yield.” Sustained yield basically means harvesting the amount of timber that grows each year, and leaving the rest. For many decades after Congress passed the O&C Act, the BLM achieved an annual sustained yield production of 1.176 billion board feet of timber.

Many family owned forest-products businesses such as sawmills and plywood plants relied on timber sales from O&C lands for

their supply of raw materials. These businesses employed large numbers of citizens who in turn paid taxes to fund their local governments and districts. Additionally, the governments of the O&C Counties enjoyed direct revenue from federal timber sales, which offset the taxpayers' burden.

### Swanson III Case

One of the cases that Josephine County has moved to join is the third in a series of related cases that began in 2010. The cases were brought by a coalition of local timber companies. Swanson Manufacturing Group, LLC from Glendale was one of the original plaintiffs, and thus the case is called "Swanson III" despite the fact that the only original plaintiff that the court continues to recognize is Rough and Ready Lumber. Josephine County moved to join the case in September of 2016. The BLM has opposed Josephine County's presence in the case, and the court will decide the case's fate in the coming months.

Swanson III is an important case because the court has previously issued a favorable ruling on the merits. The case is still pending while lawyers argue about technicalities, but in 2013 the court ordered the BLM to abide the legally required target for timber sales. In response to the court's order, the BLM significantly increased its timber sale program for Fiscal Years 2014 and 2015 on the portion of the O&C property that was addressed by the ruling. The increased sales meant greater activity within the local timber processing industry, and greater revenue for county governments.

Through Swanson III, Josephine County is asking the court to apply its earlier ruling to all of the O&C property, and to order the BLM to temporarily offer even greater increased sales to make up for the years (2004-13) when the agency was out of compliance with federal law.

AFRC v. Jewell

The second case that Josephine County has joined is known as The American Forest Resource Council (AFRC) et al. v. Jewell. Like the plaintiffs in Swanson III, the plaintiffs in AFRC are asking the court to order the BLM to follow federal laws. However, while Swanson III challenges the BLM's execution of an existing forest management plan, AFRC challenges the BLM's adoption of a new resource management plan.

Getting favorable rulings on both cases is important not only because Swanson III addresses shortages that occurred in the past, but also because the AFRC court could order the BLM to continue with its current plan while the agency crafts its next proposal.

The Bureau of Land Management's 2016 plan sets the sustained yield harvest level at 205 million board feet annually. That target is almost a billion board feet lower than the historical average for the O&C property. Thus, Josephine County and its co-plaintiffs are asking the court to order the BLM to abide the sustained yield requirements of the O&C Act. The Act also requires that until such time as the BLM becomes compliant, it must sell at least 500 million board feet of timber every year.

## Conclusion

Josephine County is asking a court to order federal officials to follow existing laws. This is a common request which is very different from asking a court to strike down a law for unconstitutionality. The O&C Act directly benefits the citizens and taxpayers of Josephine County, and the Act should be applied in a straightforward manner.

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# Know more about your county government

Josephine County , OR. –Democracy only functions when citizens have sufficient information about their government. Yet knowing what is going on in the government is far easier said than done. Even informed citizens who try hard to get an accurate picture might only manage to get a fraction of the whole story. Plus, many information sources such as television, newspapers, radio, the internet, social media and word of mouth are pushing a political agenda.

When it comes to your county government, there is far more to the story than just politics. Here are a few examples of things that your county government has done in the last few months. Whether or not you feel this information is important, chances are after reading it you will know more about your county government than someone who only pays attention to controversial topics.

## Animal Protection:

Your county government runs the Animal Protection program. This includes officers who enforce laws regarding animal safety. The county also administers the animal shelter which cares for and adopts out stray, neglected or abused animals. In 2014 the voters approved a levy to pay for the program. A short video about how your county government is spending that money is located here.

Animal Control Officers are not limited to working on cases that will lead to prosecution. The November 18, 2015 edition of The Daily Courier reported on how a black lab became dangerously tangled in blackberries next to a 15-foot vertical drop above an irrigation canal. The distraught owner called Animal Protection, which quickly sent an officer. The officer

assembled a harness and helped pull the dog to safety. Due to the officer's action, the dog was unharmed.

Also, last month (December, 2015) the County cut adoption fees in half for cats and dogs aged seven years or more in an effort to encourage people to adopt older animals. And military veterans now get a 50% discount when they adopt animals who need a home.

#### Stepping Up Initiative:

America's criminal justice system is poorly equipped to handle offenders with acute mental illnesses. Many people wind up in jail not because they knowingly set out to commit a crime, but rather because something in their brain is physically imbalanced and they have sincerely lost touch with reality. Of course, the government needs to protect the community from all violent offenders. But most of the non-violent mental illness sufferers are dangerous principally to themselves. They are also dangerous to the public treasury. Let there be no doubt: inmates with acute mental illnesses such as schizophrenia are the most expensive kind. Even worse, you get the least return for your tax dollars because they are beyond traditional rehabilitation.

In December, 2015, your county joined hundreds of other counties across the state and nation in the Stepping Up Initiative. The project is designed to coordinate governmental efforts with those of private citizens and organizations who work on treating persons who suffer from acute mental illness. The specific aim is to keep such affected citizens on their meds and out of county jails. Locally the program is being led by the Circuit Court judge who oversees the Mental Health Court. The cost to the county is zero, but the savings over time could potentially be great, and the project could free up some needed jail beds.

#### Fire Suppression:

When the forest catches on fire – which happens often these days – your county is essential to the fire suppression effort. Interestingly, Josephine County is the only county in Oregon which owns and operates two airports. Firefighting helicopters use the Grants Pass and Illinois Valley Airports as a base for their operations. Your county has been providing this service to firefighters for many decades.

Currently, the county is negotiating with the U.S. Forest Service about building better helipads at each airport. The newer helipads would improve the Forest Service's ability to fight dangerous wildfires. To stay updated on the latest developments surrounding this project, go to an Airport Advisory Board meeting. They occur monthly in the evenings and are open to the public.

Scandal sells, but responsible citizenship requires learning about the “rest of the story.” Feel good that you have done some of that today.

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## **Update on Josephine County GMO Laws**

Grants Pass, OR. –First, I wish to thank NewsWithViews for allowing me to submit occasional articles regarding important legal issues that impact our community. I won't have enough material for monthly submissions, but from time to time I intend to discuss matters that I think will be of interest. Additionally, I welcome questions at [feedback@newswithviews.com](mailto:feedback@newswithviews.com) if you are wondering about something in particular.

Lately there has been a lot of renewed discussion in the local and national media about the laws regarding Genetically Modified Organisms (GMOs). Therefore, it is worth taking a look at the legal landscape surrounding this topic.

On March 26, 2013, President Barak Obama signed H.R. 933. The bill contained a contentious provision, Section 735 that allowed cultivators of GMOs to continue operating while legal challenges regarding the safety of those crops were being decided. This was probably done in response to a 2010 case in which a federal judge in San Francisco effectively banned the future planting of GMO sugar beets. The bill expired on September 30, 2013, but the debate about GMOs endured.

In the wake H.R. 933, some states, counties and citizens quickly set about creating laws that pertained to GMOs. In October, 2013, Oregon's legislature and governor passed a bill that designated the state government as the level at which GMO seeds and crops could be regulated. At the time of the Oregon bill's passage, a citizen's group in Jackson County was known to have initiated a petition to pass an ordinance that prohibited GMOs there. Jackson County was therefore carved out of the Oregon bill.

Also in 2013, a group of Josephine County citizens initiated a petition to ban GMOs. Like the Jackson County petition, the Josephine County petition received enough signatures to appear before the voters in the May 20, 2014 election. The GMO ordinance received 16,137 votes (58.25%) out of 27,701 cast and went into effect upon passage.

Josephine County's GMO ordinance declares that it is unlawful to propagate, cultivate, raise, or grow GMOs here, or to knowingly or negligently allow such activities to occur on one's land, except for purposes of research. The ordinance also says that the Board of County Commissioners may designate a Code Enforcement Officer to administer and enforce its provisions. To date, the county has not opted to appoint a

person to that specific post.

The ordinance states that the Code Enforcement Officer may take necessary actions required by law (such as obtaining a search warrant) to obtain access to private property. In accordance with due process, the official can collect samples of materials that are suspected to be GMO. Any GMOs the official finds may be confiscated, quarantined, and destroyed in accordance with due process. The cost of doing so may be imposed on the responsible parties.

On April 29, 2015, the Board of County Commissioners assigned ordinance number 2014-007 to the measure that was passed by the voters. The measure requires the county to make reasonable efforts to provide initial notification of the ordinance to farming operations within Josephine County. The Board therefore sent this notification ([hyperlink to the notification](#)) to the Grants Pass Daily Courier, the Illinois Valley News, and to the granges. The notice requires anyone who is currently growing GMOs to report their activities to the Sheriff before September 4, 2015.

Currently, Congress is considering H.R. 1599. The official bill summary states in part, "This bill preempts state and local restrictions on GMOs or GMO food and labeling requirements for GMOs, GMO food, non-GMO food, or "natural" food." Preempt means "prevent". The bill passed the U.S. House of Representatives on July 23, 2015, and is now in the U.S. Senate Committee on Agriculture, Nutrition, and Forestry.

As your county legal counsel I will continue to stay on top of the laws surrounding GMO. Contact me any time at the courthouse if you wish to discuss this issue further.

Related Article:

1 – Making Deception the Law of the Land

[Dear Jo-Co Readers. If you like what you read, please forward



this article to others from this county and encourage them to sign up for Jo-Co E-mail alerts. Only an enlightened person can make a difference. God bless and thank you.]

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# **Why having a good legal counsel is critical to the success of Josephine County**

Grants Pass, OR. –Josephine County, like most medium and large sized cities and counties in Oregon, employs a Legal Counsel. The Legal Counsel is the attorney for the county. On one hand, the job is highly specialized in that very few members of the bar have the training or experience to do this kind of work. On the other hand, legal counsels have been called the ultimate general practitioners because they must know, or be able to quickly learn, something about nearly every area of the law.

The mission of the Josephine County Legal Counsel is to provide representation and legal guidance to the County regarding matters that pertain to the community as a whole. The general goals of the office include:

1. Protect the county from liability.
2. Effectively and efficiently handle routine legal matters (public contracts, leases, lawsuits, questions, research, etc) for Josephine County.
3. Provide as many viable legal options to decision-makers as possible. The Legal Counsel does not decide policy, but rather facilitates the goals of policy makers and the electorate as a

whole.

4. Provide guidance that conforms at all times to the letter and spirit of the law.

5. Appropriately prioritize the work to satisfy realistic deadlines.

6. Be available, approachable, and accurate. We do not promise to achieve perfection, but we pledge to pursue it.

7. Administer an effective law library for the benefit of the citizens and the local legal community.

My staff and I work very hard to achieve these goals. Besides myself, my office includes one other practicing attorney, a Legal Administrator who does paralegal work, a half-time Legal Secretary and the part-time availability of the County Law Librarian. Our typical duties and responsibilities include:

- Prepare pleadings, briefs, motions and other court documents.
- Provide verbal or written legal opinions upon appropriate request.
- Give legal advice, analysis and recommendations.
- Perform complex legal research as necessary.
- Interpret proposed and current legislation and administrative rules.
- Prepare, review, and analyze proposed and current leases and public contracts.
- Represent the county in selected trial and appellate courts and before administrative bodies.
- Prepare and review drafts of proposed ordinances, referrals, orders, resolutions and amendments.
- Advise on questions regarding the county's legal liabilities.
- Attend meetings of various groups when appropriate or as requested.
- Prepare ballot titles for county measures before elections.
- Coordinate responsibilities and duties of Josephine County regarding service districts and special district formation and

annexation.

- Communicate with attorneys representing other parties who are dealing with the county.
- Provide other related functions as an attorney regarding matters that pertain to the community as a whole.

One of our current projects involves publishing, and subsequently reviewing, a codebook of County ordinances. For decades the county ordinances have been almost inaccessible to public research because they are not systematically codified. In the summer of 2014, Legal Counsel reopened the codification project to produce an easily accessible and searchable code of county ordinances. The project is well underway and the finished product is scheduled to be available online later this year.

Additionally, the Legal Counsel is now successfully working with the County Planning Department and the Oregon Land Use Board of Appeals to provide searchable, electronic files of planning cases that have been appealed. Though this requires extra staff effort, the practice has been well received by the parties and court. It also potentially saves paper.

The office of Legal Counsel is, and should be, the primary source of information on legal issues for the County government. My office provides support to the commissioners and all the governmental departments, ranging from simple requests for information to detailed legal opinions on a wide variety of topics. Legal Counsel provides information directly to the public on occasion, but typically the office connects with the public indirectly.

If a citizen or group raises a legal question with the commissioners or a County department, the question will probably be passed to Legal Counsel. The answer will then be relayed back to the citizen or group. In this way the Legal Counsel serves the public through the County government.

Good government requires informed input from citizens and informed decisions by government officials. Consequently, the Legal Counsel frequently provides advice regarding public meetings and public records. The Legal Counsel staff devotes a substantial amount of time and effort to satisfying public records requests and ensuring that the County government adheres to the letter and the spirit of the applicable laws. The Legal Counsel does not take positions on questions of public policy, but rather provides an impartial legal vetting of the options available to policy makers or the electorate as a whole. On occasion the Legal Counsel fields questions from the press or the public to clarify the background of certain issues.

Clearly, the elected Legal Counsel is an extremely important position for Josephine County. It is my enormous honor and privilege to serve our community in this role. Thank you for your support.

[NOTE: NWV is launching "News Radio with your host Roger Fredinburg." For daily News updates [click here.](#)]

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