



CLALLAM COUNTY REVENUE ADVISORY COMMITTEE MINUTES OF December 16, 2024

MEETING OF THE REVENUE ADVISORY COMMITTEE (RAC)

Chair Connie Beauvais called the meeting to order at 1 p.m., December 16, 2024. Also present were Commissioner Johnson, Ben Pacheco, Gregory Bellamy, David Bingham, Sandra Lyons, Diana Reaume, Scott Horton, Steve Hopf and Mary Brewer and Drew Rosanbalm. John Nutter, Janine Ledford, Regan Nickels, Noah Glaude, Steve Burke, Dave Gedlund, Nerissa Davis, Dan Huff, Michael Mingee were absent.

APPROVAL OF AGENDA

Commissioner Johnson requested to add a discussion item regarding encumbered lands.

ACTION TAKEN: Brewer moved to adopt the agenda as modified, Bingham seconded, mc

APPROVAL OF MINUTES

- November 18, 2024

ACTION TAKEN: Johnson moved to approve, Hopf seconded, mc

PUBLIC COMMENT

- Ed Bowen, Clallam Bay, commented on Cape Flattery School District attendance, Alley Cat timber sale postponement

BUSINESS ITEMS

a. Letter to the BNR regarding timber sales

Beauvais provided an update on letter to the BNR regarding timber sales. She read the letter into the record and requested to send the letter once the bank spots filled updated. RAC Members held discussion.

ACTION TAKEN: Hopf moved to issue the letter, Horton second, mc

b. Legal discussion regarding trust lands

Beauvais provided an update on legal discussion regarding trust lands. She read a letter from Jim Buck to the Clallam County Commissioners into the record (see attached). Commissioner Ozias noted that the letter will need to be reviewed by the Clallam County Prosecuting Attorney's Office. RAC Members held discussion.

c. Update on November and December sales

Rosanbalm, Department of Natural Resources provided an updated on November and December sales. RAC Members held discussion.

d. Encumbered Lands Update

Commissioner Johnson provided an updated on encumbered lands. RAC Members held discussion.

PUBLIC COMMENT

- Jim McEntire, Sequim, commented on Department of Natural Resources, County revenue, Jim Buck letter
- Ed Bowen, Clallam Bay, commented on encumbered lands, Hoko River lands, Elwha Valley lands, Charter Review

NEXT MEETING

- January 13, 2025 @ 3 p.m.

ADJOURNMENT - The meeting concluded at 4:01 p.m.

Gores, Loni

From: buckdj@olypen.com
Sent: Monday, December 16, 2024 8:34 AM
To: Gores, Loni
Cc: BEAUVAIS Connie
Subject: Commissioner Letter
Attachments: LETTER COUNTY COMMISSIONERS 12 13 2024.docx; TRUST STATUS OF CLALLAM CFBLT.docx

Hi Loni,

Please see that this gets to the commissioners.

Thanks,

Jim

December 14, 2024

From: Jim Buck
PO Box 170
Joyce, WA 98343

To: Board of Clallam County Commissioners
223 E 4th Street
Suite 4
Port Angeles, WA 98362

Subject: Clallam County Forest Board Land Trust

Dear Commissioners,

On May 8, 1936, Clallam County deeded 26,117.28 acres of fee simple county owned timberland IN TRUST to the State of Washington. This deed created an irrevocable express trust between the county and the State. The Tucker v Brown court decision says *“express trusts may be created by an act of the parties” where one party accepts “property with the express or implied understanding that he is not to hold it as his own absolute property, but to hold and apply it for certain specified purposes.”* The state agreed to hold the property in trust for Clallam County for purpose of developing, growing and logging timber.

Between 1936 and the mid-1940s the county added 52,000 acres, bringing the total acres held in trust to about 88,000 acres. According to DNR figures, Clallam County, it's county junior taxing districts and all of the taxpayers of Clallam County are the beneficiaries of this \$2.2 billion trust.

Under the terms of the 1936 trust, Clallam County is the settlor, the legislature is the trustee and the State Forestry Board (now DNR) is the trust administrator. No explicit language defines the terms of the trust. It is a basic principle of trust law that the settlor's intent is what controls the terms of a trust (See, United States v. 111.2 Acres of Land). *“In the absence of explicit trust language, evidence of a settlor's “intention to impose enforceable duties” weighs in favor of finding that a trust exists.* Clallam County's settlor intent is recorded in the May 8 deed, where section 3b, Session Laws of 1935 Chapter 126, amending section 3b of chapter 288 of the Laws of 1927 is printed verbatim.

In the Skamania County v. State court case, the Washington Supreme Court confirmed that DNR *“must act prudently and with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests no matter how laudable.”*

The trustee legislature treats county trust property as its own state forestland, public land and/or state land to the detriment of the Clallam County, its junior taxing districts and taxpayers. The trustee legislature, over the last 89 years, increasingly failed to recognize the difference between state owned land and land held in trust for Clallam County. Clallam County beneficiaries, have been, and continue to be, harmed by the state's actions.

Washington State's failure to act prudently includes, but is not limited to, failure to reimburse the county for easements, rights of way, damages to resources on easements and rights of way, and multiple public uses of county trust lands. Other problems include failure to prosecute vandalism, delays/cancellation of timber sales, divided loyalty to “interests no matter how laudable” such as the Legacy Forest program, dubious City of Port Angeles water quality protection schemes and scenic buffer zones along the Olympic Discovery Trail.

Jim Buck

The Clallam County trust is not some exotic pastry to be divvied up for every special interest group that shows up demanding a piece of the pie. The trust is an underperforming \$2.2 billion financial asset intended to benefit Clallam County taxpayers.

RCW 36.32.120 (6) requires you to, "*Have the care of the county property and the management of the county funds and business and in the name of the county prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law ...*" The attached analysis shows that Clallam County's multi-billion trust asset is being mismanaged. I urge you to consider legal action to protect Clallam County's trust beneficiaries and taxpayers.

Thank you for your kind consideration.

Jim Buck

TRUST STATUS OF CLALLAM COUNTY CFBLT

EXECUTIVE SUMMARY

On May 8, 1936, Clallam County deeded 26,117.28 acres of timberland in trust to the State of Washington. This act created an irrevocable express trust between the county and the State. Tucker v Brown says *“express trusts may be created by an “act of the parties” where one party accepts “property with the express or implied understanding that he is not to hold it as his own absolute property, but to hold and apply it for certain specified purposes.”*

Under the terms of the trust, Clallam County is the settlor, the legislature is trustee and the State Forestry Board is the trust administrator. It is a basic principle of trust law that the settlor's intent is what controls the terms of a trust (See, United States v. 111.2 Acres of Land). *“In the absence of explicit trust language, evidence of a settlor's “intention to impose enforceable duties” weighs in favor of finding that a trust exists.* The settlor's intent is recorded in the deed where section 3b, Session Laws of 1935 Chapter 126, amending section 3b of chapter 288 of the Laws of 1927 is printed verbatim. County forest board land trust is abbreviated to CFBLT throughout this document.

The trustee legislature failed to recognize and carry out its common law trust responsibilities to Clallam County. The state treats county trust as state forestland, public land and/or state land to the detriment of the Clallam County beneficiaries.

The trustee legislature's failures to Clallam County are listed here.

1. By law, CFBLTs are not state forest lands (Details in Chapter 1).
2. By law, CFBLTs are not state forest lands (see Chapter 1), therefore, by law, they cannot be state lands or public lands. CFBLTs are lands held in trust by the state for the Clallam County trust beneficiary (Details in Chapter 2).
3. Clallam county held fee simple title to the lands deeded to the state via RCW 76. Session laws of 1925 c130 s129 amended RCW 84.64.200 for a county to, **“... where no bidder appears, acquire title thereto as absolutely as if purchased by an individual under the provisions of this act.”** ***“Therefore, the county beneficiary and the junior taxing district beneficiaries of the trust are “the equitable owners of the property held by the trustee (state)” and have “proprietary rights in the trust property.”*** John H. Langbein, The Yale Law Journal [Vol. 105: 625] (Details in Chapter 3).
4. Clallam County entered an irrevocable express trust with the state when it deeded property to the state in compliance with 1935 session laws, chapter 126. Amending section 3b (Details in Chapter 4).
5. Deeds in trust transferring forest land from Callam County to the state in compliance with the session laws of 1935 showed intent of the county to develop and harvest timber. The terms of the trust listed above are contained in the session laws of 1923, 1927 and 1935 (Details in Chapter 5).
6. The state trustee acts imprudently and with a divided loyalty to the Clallam County trust beneficiaries when it changes the terms of the trust through legislation without regard to its common law trust responsibilities (Details in Chapter 6).
7. The trustee legislature failed to provide legislation to define and protect the Clallam County trust. This forced divided loyalties upon the trust administrator resulting in failure to harvest

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timber, lawsuits, delays/cancellations of timber harvests resulting in damages to the Clallam County trust beneficiary, its junior taxing districts and taxpayers (Details in Chapter 7).

8. The trustee legislature treats Clallam County trust land as state /public land and fails to protect the Clallam County trust. This forced divided loyalties upon the trust administrator resulting in failure to collect reimbursement for easements, rights-of- way and multiple use activities resulting in damages to the Clallam County trust beneficiary, its junior taxing districts and taxpayers (Details in Chapter 8).
9. The trustee legislature routinely changed the terms of the trust for the benefit of the state instead of the county. This forced the trust administrator to disregard its duties of prudence and undivided loyalty resulting in damages to the Clallam County trust beneficiary, its junior taxing districts and taxpayers (Details in Chapter 9).
10. Possible solutions (Details in Chapter 10).

Additional details are contained in the following which are available on request:

Trust Table Timeline – Trust Table Timeline traces the development of federal grant lands, public lands, state forestlands and County Forest Board Trust from statehood to present (WORD, 23 pages).

RCW 79 Analysis – RCW 79 Analysis provides a section-by-section analysis of how current law relates to the terms of the 1935 trust (EXCEL, 14 pages)

History of State Forest Lands – Provides the history of State Forest lands from statehood to 1957.

Sustainable Side-by-Side – This a POWERPOINT analysis of DNR's Policy for Sustainable Forests - Background and Context. The presentation permits the viewer to see a critique of how DNR must follow the trustee legislature's direction even if it violates common law trust doctrine (30 slides).

TRUST STATUS OF CLALLAM COUNTY CFBLT

CHAPTER 1

DEFINITION OF STATE FORESTLANDS VERSUS COUNTY FOREST BOARD TRUST LANDS WHEN THE CLALLAM COUNTY TRUST WAS FORMED

STATE FORESTLANDS – The term “State forestlands” appears in the 1923 Session Laws, Chapter 154, **Section 3, AND SUBSECTION 3a IN LATER AMENDMENTS. THIS BECOMES RCW 79.22.010. IT ONLY APPLIES TO STATE OWNED LANDS.** The “*State forestland*” term is a phrase in part of the description of the powers given to the newly formed the State Forest Board. It says:

Sec. 3. “The Board shall have the power to acquire in the name of the State, by purchase or gift, any lands which by reason of their location, topography or geological formation, are chiefly valuable for purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the State as State Forestlands and shall furnish such care and fire protection for such lands as it shall deem advisable.”

- **THE STATUTE DOES NOT DEFINE STATE FOREST LANDS.**
- **A POSSIBLE WORKING DEFINITION FROM SECTION 3 MAY BE** “*State forestlands are lands owned by the State which by reason of their location, topography or geological formation, are chiefly valuable for purpose of developing and growing timber*” and have been designated as such by the SFB.
- **NO DEFINITION APPEARS IN RCW UNTIL 2003 WHEN STATE FOREST LANDS ARE DEFINED AS LANDS ACQUIRED TO BE STATE FOREST LANDS (SEE LAWS OF 2003).**

Section 3 and subsection 3a are limited to creation of the “***State forestlands***” program and provide strict legislative direction to the SFB about how to do it. SFB is:

- Limited to acquiring land except “... by purchase or gift ...”
- Limited to acquiring certain lands for “the purpose of developing and growing timber...”
- Limited to designating State forestlands to lands “belonging to the State.” **THIS DESIGNATION MAY INCLUDE FEDERAL GRANT LANDS AND OTHER LANDS OWNED BY THE STATE. STATE FOREST LANDS MUST BELONG TO THE STATE.**
- Required to designate State forestland by a name or number, i.e., Capital State Forest.

COUNTY FOREST BOARD TRUST LANDS - SUBSECTION 3b BECOMES RCW 79.22.040. IT ONLY APPLIES TO COUNTY OWNED LANDS. The term “county forest board trust lands” does not appear in the 1923 Session Laws, Chapter 154, sec. 3, the 1927 Session laws, Chapter 288, sec. 3b or any session Laws prior to creation of the Clallam CFBLT in 1935.

The closest reference is the 1927 c 288 s 3b phrase “... classification of lands described...” below:
New Section 3-b, “Any lands heretofore acquired, or which may hereafter be acquired, by any county through foreclosure of tax liens, or otherwise, **may** be offered by such county to the State of Washington for forest lands, and if such lands come within the classification of lands described in section 3 of chapter 154, Laws of 1923, the State forest board may select any or all of the lands so offered to become a part of State forest lands;

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- **NO DEFINITION APPEARS IN RCW. A POSSIBLE WORKING CFBLT DEFINITION BASED ON THE 1923 SESSION LAWS CHAPTER 154 SEC. 3 MAY BE** *"county forest board trust lands are county lands acquired through tax liens or otherwise, which by reason of their location, topography or geological formation, are chiefly valuable for purpose of developing and growing timber, that are deeded to and held in trust by the State."*

Section 3b is limited to creation of what becomes the **"forest board transfer lands"** program and provides strict legislative direction to the SFB about how it is to be done.

- Counties **may offer** forest lands acquired by any means to SFB (**THIS IS A VOLUNTARY PROGRAM**).
- SFB **may** accept **SUITABLE** lands described in section 3 of chapter 154, Laws of 1923."
- Counties **may** deed lands to the State of Washington for State forest lands. **HOWEVER, CFBLT CANNOT BE STATE FOREST LANDS BECAUSE STATE FOREST LANDS, BY LAW, MUST BELONG TO THE STATE.**
- **SFB IS REQUIRED BY LAW TO DESIGNATE STATE FORESTLANDS BY A NAME OR NUMBER, i.e., CAPITAL STATE FOREST. SFB HAS NOT DESIGNATED ANY CLALLAM CFBLT AS A STATE FOREST.**
- *"Such lands shall be held in trust" BY THE STATE "and administered and protected by the said board under the provisions of chapter 154, Laws of 1923, or any amendments thereto. NOTE: THE PHRASE "amendments thereto" IS DELETED FROM THE SECTION BY SESSION LAWS OF 1935 c 126. amends s 3b.*
- **STATE SHALL PAY PROCEEDS** *"to the county in which the lands are located to be paid, distributed and prorated to the various funds (JUNIOR TAXING DISTRICTS) in the same manner as general taxes are paid and distributed during the year of such payment."*

There is a serious ambiguity here. CFBLTs are not owned by the State and cannot be designated as State forests. They cannot legally be State forest lands.

This exposes several oddities in the Session Laws between 1927 and 1951.

- **1927 CHAPTER 288 SECTION 3b**, *"If any lands ... can be used as State forest lands ... said lands shall become a part of the State forest lands...."* **CFBLT CAN'T JUST BE "STATE FOREST LANDS" BECAUSE THE STATE DOESN'T OWN THEM, BUT THEY CAN BE "A PART" OF STATE FOREST LANDS.**
- **1929 SESSION LAWS CHAPTER 117, SECTION 4**, *"shall have power to seed, plant and develop forests on any lands, purchased, acquired or designated by it as State forestlands."* **(MUST BE OWNED BY THE STATE. THERE ARE NO CLALLAM CFBLTs UNTIL 1936.)**
- **1935 SESSION LAWS CHAPTER 126, SECTION 3b**, WORDING IS UNCHANGED FROM 1927.
- **1936, MAY 8 - CLALLAM DEEDS FIRST LAND IN TRUST TO STATE FOR CFBLT.**
- **1937 SESSION LAWS CHAPTER 172, SECTION 3, CHAPTER 154, LAWS OF 1923 IS AMENDED**, *"such lands and any lands of the same character belonging to the State as State Forest lands ... shall be held in trust," THIS IS THE FIRST MENTION OF STATE FORESTLANDS BEING HELD IN TRUST.*

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- **1951 SESSION LAWS, RCW 76.12.030, AS DERIVED FROM LAWS OF 1935, CHAPTER 126, SEC. 1 IS AMENDED TO READ, “... Such land shall be held in trust and administered, treated as and protected by the board as other State forest lands ...”**

IF FOREST BOARD TRUST LANDS ARE “STATE FOREST LANDS” OR “PART OF THE STATE FORESTLANDS,” WHY DID THE LEGISLATURE ENACT LEGISLATION SO THEY ARE ADMINISTERED AND PROTECTED IN THE SAME MANNER AS OTHER STATE FOREST LANDS? WHAT ARE OTHER STATE FOREST LANDS?

- 1. STATE FOREST LANDS ARE HELD IN TRUST FOR THE STATE BENEFICIARY.**
- 2. CFBLTs ARE HELD IN TRUST BY THE STATE FOR THE COUNTY AND JUNIOR TAXING DISTRICT BENEFICIARIES.**
- 3. THE INTERESTS OF THE STATE BENEFICIARY ARE NOT NECESSARILY THE INTERESTS OF A COUNTY BENEFICIARY.**
- 4. IF THEY ARE THE SAME, WHY ARE STATE FOREST LANDS LEGISLATED IN SECTION 3a SEPARATE FROM CFBLTs IN SECTION 3b?**

CONCLUSION – BY LAW, CFBLTs ARE NOT STATE FOREST LANDS.

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CHAPTER 2

DEFINITION OF STATE LANDS, FEDERAL (STATE) GRANT LANDS, PUBLIC LANDS, STATE FORESTLANDS, AND COUNTY FOREST BOARD TRUST LANDS WHEN THE CLALLAM COUNTY TRUST WAS FORMED

State forestlands (working definition until 2003) - *"State forest lands are lands owned by the State which by reason of their location, topography or geological formation, are chiefly valuable for purpose of developing and growing timber" and have been designated as such by the SFB.*

County forest board trust lands (working definition) - *"county forest board trust lands are lands acquired by a county through tax lien foreclosure or otherwise, which by reason of their location, topography or geological formation, are chiefly valuable for the purpose of developing and growing timber, that are deeded to and held in trust by the State."*

Public lands (legal definition until 2003)- Session Laws of 1927 - CHAPTER 255. (Page 468) SB 85 - SECTION 1. Public lands of the State of Washington are lands belonging to or held in trust by the State, which are not devoted to or reserved for a particular use by law, and include State lands, tide and shore lands ..."

- **THIS IS THE LEGAL DEFINITION OF PUBLIC LANDS IN LAW AT THE TIME THE CLALLAM TRUST WAS ESTABLISHED IN 1936. IT IS UNCHANGED UNTIL 2003.**
- **CLALLAM CFBLTs ARE "devoted and reserved for a particular use" (THE PARTICULAR USE IS THE PURPOSE OF DEVELOPING AND GROWING TIMBER FOR THE TRUST BENEFICIARY) "by law" (THE "by law" IS THE SESSION LAWS OF 1935 c 126. AS amended s 3b CITED IN THE DEEDS OF TRUST FROM THE COUNTY TO THE STATE).**
- **BY LAW, CLALLAM CFBLTs ARE NOT PUBLIC LANDS.**

State lands - Session Laws of 1927 - CHAPTER 255. (Page 468) SB 85 - SECTION 1. – "Whenever used in this act the term "State lands" shall mean and include:

- a) School lands, that is, lands held in trust for the support of the common schools;*
 - b) University lands, that is, lands held in trust for lands... university purposes;*
 - c) Agricultural college lands, that is, lands held trust for the use and support of agricultural colleges;*
 - d) Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;*
 - e) Normal school lands, that is, lands held in trust for State normal schools;*
 - f) Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the State capital for legislative, executive and judicial purposes;*
 - g) Institutional lands, that is, lands held in trust for Institutional State charitable, educational, penal and reformatory institutions; and*
 - h) **All public lands of the State**, except tide lands, shore lands, harbor areas and the beds of navigable waters."*
- **THIS IS THE LEGAL DEFINITION OF STATE LANDS IN PLACE AT THE TIME THE CLALLAM TRUST WAS ESTABLISHED IN 1936. IT IS THE LEGAL DEFINITION OF STATE LANDS UNTIL 2003.**

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- **AMENDMENT RECOGNIZES GRANT LANDS ARE HELD IN TRUST FOR FIRST TIME.**
- **THIS DEFINITION DOES NOT INCLUDE STATE FORESTLANDS BECAUSE STATE FORESTLANDS ARE NOT ESTABLISHED UNTIL JULY 1, 1927.**
- **MOVES SESSION LAWS OF 1897 SECTION 4 TO SECTION 1. AMENDS SESSION LAWS OF 1895 WORDING TO INCLUDE TRUST CONSIDERATIONS.**
- **DELETES 1895 SECTION 5 - "PUBLIC LANDS" AND "STATE LANDS" SHALL BE DEFINED AND DEEMED TO BE SYNONYMOUS."**

CONCLUSION - BY LAW, CFBLTs ARE NOT STATE FOREST LANDS (SEE CHAPTER 1). BY LAW, THEY CANNOT BE STATE LANDS OR PUBLIC LANDS. CFBLTs ARE LANDS HELD IN TRUST BY THE STATE FOR THE CLALLAM COUNTY TRUST BENEFICIARY.

NOTE: Session laws of 1927 Chapter 255 Section 125 illustrates a serious example of the trustee legislature's failure to recognize its duties to the trust. *"Any applicant to purchase, or lease, any public lands of the state, or any valuable materials thereon, and any person whose property rights or interests will be affected by such sale or lease, feeling himself aggrieved by any order or decision of the board of state land commissioners, or the commissioner of public lands, concerning the same, may appeal therefrom to the superior court of the county... ."* **STATE'S FAILURE TO RECOGNIZE CFBLTs SUBJECTS THOSE LANDS TO LEGAL ACTION NOT PERMITTED BY RCW. THIS IS A FAILURE OF PRUDENCE AND UNDIVIDED LOYALTY.**

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CHAPTER 3

CLALLAM COUNTY OWNERSHIP OF FORECLOSED LANDS

Clallam county experienced catastrophic economic problems between 1900 and 1935. Timber companies logged tens of thousands of acres and defaulted on property taxes. Many homesteaders failed to “prove up” homesteads and abandoned their lands. Clallam county foreclosed on thousands of acres of land when owners failed to pay their taxes. These lands totaled more than 88,000 acres and were dispersed in a checkerboard pattern across the entire county.

Attorney General Opinions in 1968 and 1987 addressed the role of counties in the RCW 76 forest lands transfers. Both opinions cite case law and the wording of RCW 76 at the time the opinion was written. Both fail to examine the details of the session laws that created CFBLTs between 1923 and 1937.

Attorney General Opinion 1968-10 addressed the issue of title to lands which counties acquire through tax foreclosures. The opinion cites the 1914 *Gustavson v Dwyer* supreme court decision which found:

THE COUNTY LANDS ACQUIRED THROUGH TAX SALE “are held title in trust for the State, county, and other taxing districts entitled to tax revenue from the land. As such the county held proceeds arising from the sale or rental of these lands in trust for the various taxing districts and distributed the proceeds... .”

Attorney General Opinion 1987-10 also addresses title to county tax foreclosed lands:

“As previously noted, the lands about which you inquire were obtained by the various counties through the foreclosure of tax liens as part of the statutory tax collection process. See RCW 84.64.200. Our courts have recognized on numerous occasions that: The title acquired by the county in property at a general tax foreclosure sale becomes vested in the county, not in its proprietary capacity, but in trust for the State and for the other taxing municipalities within which the land is situated, with power and obligation on the part of the county to sell the land and fairly apportion the proceeds to the State, municipal, and other funds entitled thereto.”

HOWEVER, THE SESSION LAWS OF 1893 C124 S 135 SET UP RCW 84.64.200 AS FOLLOWS:

“... the county may, by its agent, attend such sale for taxes and buy said lands and acquire the same rights that individuals now have under the law; and

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acquire, hold, sell and dispose of said title thereto the same as and in the same manner as individuals may do under the laws of this State, in case of sale for taxes."

- **THIS BODY OF LAW WAS IN PLACE FROM 1893 TO 1936 WHEN CLALLAM COUNTY FORECLOSED ON THE LANDS IT DEEDED TO THE STATE.**

SESSION LAWS OF 1925 C130 S129 AMENDED RCW 84.64.200 TO SAY,

"At all sales of property for which certificates of delinquency are held by the county, if no other bids are received, the county shall be considered a bidder for the full area of each tract or lot to the amount of all taxes, interest and costs due thereon, and where no bidder appears, acquire title thereto as absolutely as if purchased by an individual under the provisions of this act."

- **STATE LAW SAYS CLALLAM COUNTY ACQUIRED THE TITLE TO THE FORECLOSED LAND** "... as absolutely as if purchased by an individual under the provisions of this act ..."
- **THEREFORE, THE COUNTY HOLDS TITLE TO THE LAND AS WELL AS A LEGAL DUTY TO APPORTION THE PROCEEDS TO THE TRUST BENEFICIARIES. (IN THE SAME MANNER AS GRAYS HARBOR COUNTY DOES TO THEIS DAY):**

"... in trust for the State and for the other taxing municipalities within which the land is situated, with power and obligation on the part of the county to ... fairly apportion the proceeds to the State, municipal, and other funds entitled thereto."
- **RCW DOES NOT MENTION FORECLOSED LAND HELD IN TRUST BY A COUNTY UNTIL SESSION LAWS OF 2007 c297 AMENDED RCW 84.64.200 TO SAY:**

"If no other bids are received, the county shall be considered a bidder for the full area of each tract or lot to the amount of all taxes, interest and costs due thereon, and where no bidder appears, acquire title ((~~thereto~~)) in trust for the taxing districts as absolutely as if purchased by an individual under the provisions of this chapter." **THEREFORE, THE COUNTY HOLDS TITLE TO THE LAND AS WELL AS A STATUTORY DUTY TO APPORTION THE PROCEEDS TO THE TRUST BENEFICIARIES. (IN THE SAME MANNER AS GRAYS HARBOR COUNTY)**

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IN 1953, THE LEGISLATURE ENACTED RCW 39.33.010, SALE, EXCHANGE, TRANSFER, LEASE OF PUBLIC PROPERTY AUTHORIZED—SECTION DEEMED ALTERNATIVE. SESSION LAWS OF 1953 C 133 S1 SAYS:

“Notwithstanding any provision of law to the contrary, the State or any municipality or any political subdivision thereof may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or, including but not limited to the title to real property, to the State or any municipality or any political subdivision thereof on such terms and conditions as may be mutually agreed ...”

- **THE COUNTY MUST HAVE FEE SIMPLE OWNERSHIP OF TAX TITLE LANDS OR IT WOULD NOT BE ABLE TO:**
“... sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or, including but not limited to the title to real property, to the State...”
- **THIS CODIFIES THE ABILITY OF COUNTIES TO ENTER INDIVIDUAL AGREEMENTS WITH THE STATE, SIMILAR TO THE 1936 CLALLAM TRUST, ON MUTUALLY AGREEABLE TERMS WITHOUT HAVING TO RELY ON LANGUAGE IN 1935 SESSION LAWS CHAPTER 126, SECTION 3b.**

IN 1971, THE LEGISLATURE AMENDED RCW 39.33.010 WITH SESSION LAWS OF 1971 C 95 s 1 BY ADDING SUBSECTION 3:

“No intergovernmental transfer, lease, other disposition of property made pursuant to any other provision of law prior to the effective date of this 1972 amendatory act shall be construed to be invalid solely because the parties thereto did not comply with the procedures of this section.”

- **IN OTHER WORDS, THIS LAW DOES NOT AFFECT THE 1936 TRUST AGREEMENT BETWEEN CLALLAM COUNTY AND THE STATE.**

IN 1972, THE LEGISLATURE IN THE SESSION LAWS OF 1972, c 150 s1 AND s9 RCW 36.35.020 CREATED THE DEFINITION OF “TAX TITLE LANDS” IN NEW SECTION 2 AND, IN NEW SECTION 9, DISAVOWED ANY CONNECTION OF THIS ACT WITH RCW 76.

“NEW SECTION Sec (2) The term “tax title lands” as used in this chapter shall mean any tract of land acquired by the county for lack of other bidders at a tax foreclosure sale. Tax title lands are held in trust for the taxing districts.”

...

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“NEW SECTION. Sec. (9) Nothing in this act shall affect any land deeded in trust to the State forest board or its successors pursuant to the provisions of title 76 RCW.”

- **THE 1972 LEGISLATURE CODIFIES LAW REQUIRING COUNTIES TO HOLD TAX TITLE LANDS IN TRUST FOR THE TAXING DISTRICTS.**

CONCLUSION - CLALLAM COUNTY HELD FEE SIMPLE TITLE TO THE LANDS DEEDED TO THE STATE VIA RCW 76. SESSION LAWS OF 1925 C130 S129 AMENDED RCW 84.64.200 FOR A COUNTY TO, “... where no bidder appears, acquire title thereto as absolutely as if purchased by an individual under the provisions of this act.” THEREFORE, THE COUNTY BENEFICIARY AND THE JUNIOR TAXING DISTRICT BENEFICIARIES OF THE TRUST ARE "THE EQUITABLE OWNERS OF THE PROPERTY HELD BY THE TRUSTEE (STATE)" AND HAVE "PROPRIETARY RIGHTS IN THE TRUST PROPERTY.” John H. Langbein, The Yale Law Journal [Vol. 105: 625]

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CHAPTER 4

CLALLAM COUNTY TRUST AGREEMENT

LAWFUL ESTABLISHMENT OF THE CLALLAM COUNTY FOREST BOARD LAND TRUST

In accordance with the provisions of 1935 Session Laws, Chapter 126, amending section 3b of chapter 288 of the Laws of 1927 and Section 1 of Chapter 117 of the Laws of 1933, Clallam County deeded approximately 88,000 acres of county fee-simple owned land, in AN IRREVOCABLE EXPRESS trust, to the State.

- Clallam County is the settlor and grantor of the LAND.
- The Legislature is the grantee and fiduciary trustee of the LAND.
- The State Forest Board (now DNR) is the State designated trust administrator for the TRUSTEE.

AGO VIEW

Attorney General Opinions regarding RCW 76 (**NOW 79**) were rendered in 1968 and 1987. Both draw on court case law and RCW 76 language in effect at the time each opinion was written. Both fail to consider the history of the statute between 1923 and 1935.

AGO 1968 – 10 correctly addresses distribution of general taxes and excess tax levy proceeds to beneficiaries. It fails to recognize the trust referred to in RCW 76.12.030 did not exist in 1935 when Clallam County deeded the land to the State. Therefore, opinions about the trust in this AGO are invalid.

AGO 1968 – 10(1)

“When the legislature, by enactment of RCW 76.12.030, directed that tax title lands chiefly valuable for timber should be taken over and administered by the State forest board (now the department of natural resources), the transfer was not intended as a device to revise the trust under which such lands were held.”

- **THERE WAS NO TRUST TO REVISE. THE STATE FORESTLANDS REFERRED TO ABOVE DID NOT BECOME TRUST LANDS UNTIL Session laws of 1937, Chapter 172. H B 508. That section 3, chapter 154, Laws of 1923, as amended by section 1, chapter 117, Laws of 1929 WHICH BECAME LAW ON JULY 1, 1937.**
- **CLALLAM COUNTY TRUST LANDS WERE DEEDED TO THE STATE BETWEEN MAY 6, 1936 AND THE 1940s IN ACCORDANCE WITH 1935 Session Laws, Chapter 126, amending section 3b of chapter 288 of the**

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Laws of 1927 and Section 1 of Chapter 117 of the Laws of 1933 WHICH BECAME LAW ON JULY 1, 1935.

AGO 1968 – 10(2)

“... the transfer was intended as a management plan under which the existing trusts would be better served through utilization of the State's professional forestry resources and services. Indeed, revision of the trust, if intended, would have introduced unnecessary and undesirable complexity in the administration of the tax statutes. Avoidance of such complexity is alone reason for interpreting "general taxes" (as used in RCW 76.12.030 and 76.12.120)5/ so as to include excess levies within the distribution formula for State forest land revenues.”

- **THE “existing trusts” IN THE CONTEXT OF THIS AGO CAN ONLY BE THE STATE, DONATING COUNTIES AND THEIR JUNIOR TAXING DISTRICT BENEFICIARIES BECAUSE THE STATE FOREST LAND TRUST WAS YET TO BE ESTABLISHED.**
- **THE GRANT LAND TRUSTS WERE FEE SIMPLE OWNED BY THE STATE AND DEDICATED BY THE FEDERAL GOVERNMENT TO SPECIFIC BENEFICIARIES. ANY ATTEMPT TO COMBINE THEM WITH CFBLT CREATES A DIVIDED LOYALTY TO THE COUNTY TRUST BENEFICIARIES.**
- **“... revision of the trust (OF THE YET TO BE ESTABLISHED FOREST LAND TRUST), if intended, would have introduced unnecessary and undesirable complexity in the administration of the tax statutes.” THIS STATEMENT SUGGESTS A DIVIDED LOYALTY FOR THE CONVENIENCE OF THE STATE AT THE EXPENSE OF THE COUNTIES.**

AGO 1987 – 10 fails to recognize the trust referred to in RCW 76.12.030 did not exist in 1935 when Clallam County deeded the land to the State. It confuses State forestlands with CFBLTs. It ignores the possibility of an express trust formed between Clallam County and the State in the deeds conveying the land to the State. It also fails to consider how common law trust doctrine fits into the 1935 deed transfers. Therefore, opinions about the trust in this AGO are at best questionable.

AGO 1987 – 10(1)

“Your first question concerns the nature of the trust referred to in RCW 76.12.030. This section States in part: "Such land shall be held in trust and administered and protected by the board as other State forest lands.”

- **THIS IS AN IMMEDIATE PROBLEM BECAUSE THE SENTENCE "Such land shall be held in trust and administered and protected by the board as other State forest lands" DOES NOT APPEAR IN THE 1935 LAWS GOVERNING THE TERMS**

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OF THE CLALLAM COUNTY TRUST. THE SENTENCE FIRST APPEARS IN THE SESSION LAWS OF 1951 SESSION LAWS, RCW 76.12.030, AS DERIVED FROM SECTION 1, CHAPTER 126, LAWS OF 1935.

- THERE IS A SECONDARY PROBLEM BECAUSE THE SENTENCE COMES FROM Section 3 1937, CHAPTER 172 WHICH REFERENCES “SECTION 3, CHAPTER 154, LAWS OF 1923, AS AMENDED BY SECTION 1, CHAPTER 117, LAWS OF 1929.” SECTION 3 DOES NOT APPLY TO SUBSECTION 3b GOVERNING FOREST BOARD TRANSFER LANDS.

AGO 1987 – 10(2)

THE CORRECT OPERATIVE READING OF SUBSECTION 3b OF THE 1935 LAW APPLYING TO CFBLTs IS:

“Such lands shall be held in trust and administered and protected by the said board under the provisions of chapter 154, Laws of 1923.”

- **CONFUSION BEGINS HERE BECAUSE SECTION 3, CHAPTER 154, LAWS OF 1923 ONLY APPLIES TO STATE FORESTLANDS. IT SAYS** *“... the board... shall furnish such care and fire protection for such lands as it shall deem advisable.”*
- **CONFUSION CONTINUES BECAUSE CFBLTs DO NOT APPEAR IN LAW UNTIL 1927.** *“Such lands shall be held in trust and administered and protected by the said board under the provisions of chapter 154, Laws of 1923, or any amendments thereto.”*

AGO 1987 – 10(3)

“Your first question concerns the nature of the trust referred to in RCW 76.12.030. This section States in part: “Such land shall be held in trust and administered and protected by the board as other State forest lands.” We do not read RCW 76.12.030 as establishing a separate trust of DNR transfer lands for the benefit of each transferring county.”

- **THIS IGNORES THE EXPRESS TRUST RECOGNIZED IN THE CHUCKANUTT CASE.**

SUPREME COURT VIEW

The four supreme court decisions involving trust lands have not ruled on the issue of individual county trusts. All four confuse State forest lands with CFBLTs and several fail to recognize the laws in place when Clallam County entered the trust. They do suggest the possibility of individual trusts.

SKAMANIA 1984 –

*“The remaining lands were deeded by various counties to the State after tax foreclosures, pursuant to RCW 76.12.030 (**NOW 79.22.040**). That statute provides that these forest*

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board transfer lands are to be "held in trust" by the State and that proceeds from the management of these lands go to the grantor counties, after deducting administrative expenses."

- **THE COURT RECOGNIZES THAT FOREST BOARD TRANSFER LANDS ARE DIFFERENT THAN STATE FORESTLANDS.**

CHUCKANUTT 2010 ¶ 30 –

"Forest board transfer lands also are "held in trust," administered and protected in the same manner as other State forest lands.³⁰(NOT THE LANGUAGE IN THE 1935 LAW) The tax districts where the lands are located receive the proceeds from the State's management of these lands.³¹"

- **THE COURT RECOGNIZES THAT FOREST BOARD TRANSFER LANDS ARE DIFFERENT THAN STATE FORESTLANDS.**

CHUCKANUTT 2010 ¶ 34 –

"DNR's duties as to trust lands are unambiguous and unavoidable. In Skamania County v. State,⁴⁰ the Washington Supreme Court confirmed that DNR must act prudently and with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests no matter how laudable."

- **THE COURT RECOGNIZES DNR'S DUTIES TO THE TRUST LANDS BUT DOES NOT RECOGNIZE DNR IS DEALING WITH THREE SEPARATE TRUSTS, EACH WITH DIFFERENT INTERESTS REQUIRING UNDIVIDED LOYALTY.**

FRANZ 2022(1) –

"Individual counties have also granted land to the State pursuant to RCW 79.22.040 with the explicit understanding that they are held in trust for the benefit of those counties (county beneficiaries). RCW 79.64.110(1) (certain percentage of revenue generated from leasing or selling resources from these lands must be distributed to county that granted land in question)."

- **THE COURT RECOGNIZES THAT FOREST BOARD TRANSFER LANDS ARE DIFFERENT THAN STATE FORESTLANDS.**

FRANZ 2022(2) –

"Of note, DNR is expressly required by statute to harvest timber from forest board lands ..."

- **THE COURT RECOGNIZES THAT FOREST BOARD TRANSFER LANDS ARE DIFFERENT THAN STATE FORESTLANDS. DNR IS NOT REQUIRED TO HARVEST TIMBER FROM FEDERAL GRANT LANDS OR STATE FOREST LANDS.**

FRANZ 2022(3) –

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THE LAWS OF 1923 DO NOT MENTION A TRUST. ACCORDING TO 1939 BROWN V TUCKER SUPREME COURT CASE, THE 1935 LAW LEGISLATED THE CREATION AN EXPRESS TRUST BETWEEN THE STATE AND THE DONATING COUNTY WHEN IT SAYS:

“... express trusts may be created by an “act of the parties” where one party accepts “property with the express or implied understanding that he is not to hold it as his own absolute property, but to hold and apply it for certain specified purposes.” Tucker v. Brown, 199 Wash. 320, 330-31, 92 P.2d 221 (1939)

- **NO TRUST TERMS ARE INCLUDED IN THE LAWS OF 1923 THROUGH 1935. HOWEVER, THE STATE ACCEPTED PROPERTY WITH THE EXPRESS UNDERSTANDING THAT IT IS NOT TO HOLD IT AS ABSOLUTE PROPERTY, BUT TO HOLD AND APPLY IT FOR THE SPECIFIED PURPOSES IN THE DEED. CLALLAM COUNTY LANDS ARE A SEPARATE TRUST FOR CLALLAM COUNTY BENEFICIARIES.**

FRANZ-WAHKIAKUM 2022 –

“CNW seeks to disrupt over 120 years of settled law concerning the trust status of the lands managed by DNR. They view the financing of public services, including schools, rural county governments, and their junior taxing districts through the harvest and sale of forest products as “outmoded.” But the meaning of the constitution and the statutes and cases governing the management of those lands is not a matter of shifting fashion. They have no basis to wrest a critical source of funding for rural governments and schools from the named beneficiaries.”

- **THE COURT RECOGNIZES THERE IS A TRUST BETWEEN THE STATE AND COUNTIES BUT DOES NOT RECOGNIZE THAT STATE FOREST LANDS TRUST IS A SEPARATE TRUST FROM CFBLTs. DNR MUST ACT PRUDENTLY AND WITH UNDIVIDED LOYALTY TO STATE FORESTLANDS TRUST BENEFICIARIES. DNR MUST ACT PRUDENTLY AND WITH UNDIVIDED LOYALTY TO CFBLT TRUST BENEFICIARIES. THE BEST INTERESTS OF THE STATE FOREST LANDS MAY NOT ALWAYS BE THE SAME AS THE BEST INTERESTS OF CLALLAM COUNTY.**

CONCLUSION: CLALLAM COUNTY AND THE STATE ENTERED AN EXPRESS TRUST WITH THE STATE WHEN IT DEEDED PROPERTY TO THE STATE IN COMPLIANCE WITH 1935 SESSION LAWS, CHAPTER 126. AMENDING SECTION 3b.

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CHAPTER 5

LEGISLATIVE INTENT FOR COUNTY FOREST BOARD TRUST LANDS

Enacted legislation established the State Forest Board in in 1921 Session Laws Chapter 169. That law was repealed by Session Laws of 1923, Chapter 154, sections 1 through 10. This new chapter in law (RCW?) establishes the legislative intent and instructions for setting up the State Forest Board and *“providing for the acquiring, seeding, reforestation and administering of lands for State Forests.”*

Sections 3, 4 and 7 provide specific direction for what lands are to be acquired and how the lands are to be managed. This law went into effect on July 1, 1923.

- Limited to acquiring land except *“... by purchase or gift ...”* (Section 3)
- Limited to acquiring certain lands for *“the purpose of developing and growing timber...”* (Section 3)
- Limited to designating State forestlands to lands *“**belonging to the State.**”* (section 3)
- *“... shall have power to seed, plant and develop forests on any lands, purchased, acquired or designated by it as State Forest Lands.”* (Section 3 – **REQUIRES STATE OWNERSHIP**)
- *“... shall furnish such care and fire protection for such lands as it shall deem advisable.”* (Section 3)
- *“No forest lands shall be designated, purchased, or acquired...” **UNLESS** “...of sufficient acreage and so located that it can be economically administered for forest development purposes.”* (Section 4 – **Dungeons and Dragons Sale?**)
- Required to designate State forestland by a name or number, i.e., Capital State Forest. (Section 4)
- *“All lands acquired or designated by said Board as state forest lands shall be forever reserved from sale ...”* (Section 7)
- *“... the timber and other products thereon may be sold or the said lands may be leased in the same manner and for the same purposes as is authorized for the state granted lands.”* (Section 7)

In the Session Laws of 1927 Chapter 288, the legislature added Subsection 3a to the management requirements already in place from 1923.

- *“Section 3a. Any lands acquired by the state under the provisions of chapter 154, Laws of 1923, or any amendments thereto, shall be logged, protected and cared for in such manner as to insure natural reforestation.”* (**LAWS OF 1923 CHAPTER 154 REQUIRES STATE OWNERSHIP**)

In the Session Laws of 1927 Chapter 288, the legislature added Subsection 3b added the CFBLT class of land to SFB's management regime. The amendment added the following to the law:

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- IT **INVITED** counties to offer “Any lands heretofore acquired, or which may hereafter be acquired, by any county through foreclosure of tax liens, or otherwise” to the State of Washington for forest lands. **(NOT STATE FORESTLANDS)**
- “... if such lands come within ‘the classification of lands described in section 3 of chapter 154, Laws of 1923...”
- “... state forest board may select any or all of the lands so offered to become a part of state forest lands;” **(NOT STATE FORESTLANDS, “A PART OF STATE FORESTLANDS”)**
- “... upon such selection by the state forest board the board of county commissioners is authorized to deed such lands to the State of Washington for state forest lands. **(STATE FORESTS, PART OF STATE FORESTLANDS OR STATE FORESTLANDS? REGARDLESS, STATE FOREST LANDS HAVE TO BE OWNED BY THE STATE)**
- “Such lands shall be held in trust...” **LAND IS CONVEYED VIA DEED OF TRUST. STATE DOES NOT OWN LAND. CALLAM CFBLT IS NOT STATE FORESTLAND.**
- After expenses and fee “... balance remaining shall be paid to the county in which the lands are located to be paid, distributed and prorated to the various funds in the same manner as general taxes are paid and distributed during the year of such payment.”
- “... and administered and protected by the said board under the provisions of chapter 154, Laws of 1923, or any amendments thereto. **LAND IS ADMINISTERED UNDER SESSION LAWS OF 1923 CHAPTER 154 UNTIL JULY 1, 1951.**
- **CLALLAM COUNTY TRUST LAND IS NOT** “... administered, treated as and protected by the board as other state forest forest lands.”

SESSION LAWS OF 1929 AND 1933 DID NOT AMEND SECTIONS DEALING WITH ADMINISTRATION OF STATE FORESTLANDS OR CFBLTS.

In the Session Laws of 1935 Chapter 126, the legislature amended Subsection 3b by replacing the voluntary program for county land transfers to a mandatory program.:

- “... the counties shall, upon **DEMAND** by the state forest board, deed such lands to the said board and said lands shall become a part of the state forest lands” **(NOT STATE FORESTLANDS)**

THIS CONSTITUTES THE BODY OF LAW IN PLACE WHEN CLALLAM COUNTY DEEDED CFBLT LAND TO THE STATE ON MAY 8,1936.

The legislature never codified the terms of the Session Laws of 1935 forest board trust. Legislative intent for the Clallam County trust terms is provided above. It must be interpreted from session laws enacted between 1923 and 1935 and interpreted in the context of common law trust doctrine. The

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state has duty to *"act prudently and with undivided loyalty to the (county) trust beneficiaries, to the exclusion of all other interests no matter how laudable."*

CONCLUSION: DEEDS IN TRUST TRANSFERRING FOREST LAND FROM CALLAM COUNTY TO THE STATE IN COMPLIANCE WITH THE SESSION LAWS OF 1935 SHOWED INTENT OF THE COUNTY DEVELOP AND HARVEST TIMBER. THE TERMS OF THE TRUST LISTED ABOVE ARE CONTAINED IN THE SESSION LAWS OF 1923, 1927 AND 1935.

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CHAPTER 6

ADMINISTRATION AND DUTY TO “**ACT PRUDENTLY AND WITH UNDIVIDED LOYALTY TO THE (COUNTY) TRUST BENEFICIARIES**”

Session Laws of 1923 chapter 154 as amended by the laws of 1927, 1929, 1933 and 1935 provides for the administration of state-owned “State forestlands.” “State forestlands” are not held in trust until July 1, 1937. The trustee legislature routinely amends RCW 79 (was RCW 76) at the whim of the house/senate majority without consideration of its common law trust duties to CFBLTs.

Directions for the sale of products and lease of both categories of land are detailed in the Constitution via “... *the timber and other products thereon may be sold or the said lands may be leased in the same manner and for the same purposes as is authorized for the state granted lands.*”

Subsection 3b attempts to duplicate administration of CFBLTs in the same manner as state forestlands saying, “*Such lands shall be held in trust and administered and protected by the said board under the provisions of chapter 154, Laws of 1923.*” This fails to recognize the trust relationship between the state and county. Administration of staff, office procedures, payroll and forest practices could be the same as long as it is done “... *prudently and with undivided loyalty to the (county) trust beneficiaries.*”

RCW 79 contains approximately one hundred forty-eight sections referring to state lands, public lands and state forest lands. CFBLTs are not state lands or public lands. State forestlands are state-owned trust lands held in trust for the state beneficiary. Clallam CFBLT is held in trust for the county trust beneficiaries. What is prudent for the state beneficiary may not always be prudent for the county beneficiaries. The law legislates a divided loyalty between the state trustee and the county beneficiary by treating county trust land as state land.

Examples are:

- **RCW 79.10.100** – “*The legislature hereby directs that a multiple use concept be utilized by the department in the administration of public lands where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable provisions of the various lands involved.*” **THIS IS NOT CONSISTANT WITH THE PROVISIONS OF THE 1935 TRUST. THIS PUTS THE BEST INTERESTS OF THE STATE AND GENERAL PUBLIC AHEAD OF THE BEST INTERESTS OF CLALLAM COUNTY.**
- **RCW 79.10.210** “*For the purpose of providing increased continuity in the management of public lands and of facilitating long range planning by interested agencies, the department is authorized to identify and to withdraw from all conflicting uses at such times and for such periods as it shall determine appropriate, limited acreages of public lands under its jurisdiction. Acreages so withdrawn shall be maintained for the benefit of the public and, in particular, of the public schools, colleges, and universities, as areas in which may be observed, studied, enjoyed, or otherwise utilized the natural ecological systems thereon, whether such*

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systems be unique or typical to the state of Washington. Nothing herein is intended to or shall modify the department's obligation to manage the land under its jurisdiction in the best interests of the beneficiaries of granted trust lands. **THIS IS NOT CONSISTANT WITH THE TERMS OF THE 1935 TRUST. THIS TREATS COUNTY LAND AS PUBLIC LAND AND SETS UP A DIVIDED LOYALTY TO “INTERESTED AGENCIES” AND “THE BENEFIT OF THE PUBLIC.” THE SECTION DOESN’T CHANGE THE STATE’S TRUST OBLIGATION TO FEDERAL GRANT LAND TRUSTS BUT IGNORES STATE FORESTLAND TRUST AND CFBLTS. THIS IGNORES THE BEST INTERESTS OF CLALLAM COUNTY.**

- **RCW 76.12.120** – “All lands, acquired or designated by the said board as state forest lands shall be forever reserved from sale, but the timber and other products thereon may be sold or the said lands may be leased ... if the board finds such sale or lease to be in the best interests of the state ...” **THIS IGNORES THE BEST INTERESTS OF CLALLAM COUNTY AND SETS UP A DIVIDED LOYALTY.**
- “In the management of public lands (**NOT CLALLAM COUNTY TRUST LANDS**) lying within the limits of any watershed over and through which is derived the water supply of any city or town (**PORT ANGELES/ELWHA**), the department **MAY** alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the department of ecology. However, if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands, the city or town requesting such alterations shall fully compensate the department.”
- **RCW 79.15.010 (1)** “Valuable materials situated upon state lands and state forestlands may be sold separate from the land, when in the judgment of the department, it is for the best interest of the state so to sell the same.” **THIS IGNORES THE BEST INTERESTS OF CLALLAM COUNTY AND SETS UP A DIVIDED LOYALTY. RCW 79.10.070 PROVIDES A WAY FOR THE CITY TO REQUEST WATERSHED PROTECTION. IT SAYS,**
- “In the management of public lands (**NOT CLALLAM COUNTY TRUST LANDS**) lying within the limits of any watershed over and through which is derived the water supply of any city or town (**PORT ANGELES/ELWHA**), the department **MAY** alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the department of ecology. However, if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands, the city or town requesting such alterations shall fully compensate the department.”
- **SESSION LAWS OF 1939 CHAPTER 130, SUSTAINED YIELD UNITS. SEC. 5.** – “The sale of timber upon state forest board (**CLALLAM COUNTY LANDS?**) land and state granted land within such sustained price yield unit or units shall be made for not less than the appraised value thereof as heretofore provided for the sale of timber on state lands:

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Provided, That, if in the judgment of the State Forest Board or the Commissioner of Public Lands, it is to the best interests of the state. **THIS IGNORES THE BEST INTERESTS OF CLALLAM COUNTY AND SETS UP A DIVIDED LOYALTY. THERE ARE APPROXIMATELY 144 MORE EXAMPLES IN RCW 79.**

CONCLUSION: THE STATE TRUSTEE ACTs IMPRUDENTLY AND WITH A DIVIDED LOYALTY TO THE CLALLAM COUNTY TRUST BENEFICIARIES WHEN IT CHANGES THE TERMS OF THE TRUST THROUGH LEGISLATION WITHOUT REGARD TO ITS COMMON LAW TRUST RESPONSIBILITIES.

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CHAPTER 7

ALL OTHER INTERESTS NO MATTER HOW LAUDABLE

"The Washington Supreme Court confirmed that DNR must act prudently and with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests no matter how laudable." However, DNR is a creature of the executive branch. It is by law required to do whatever the legislature tells it to do, even if it violates common law trust doctrine. Legislative amendments to RCW 79 are at the whim of the house/senate majority in power and the environmental lobby that elected them. The trustee legislature ignores the trust and treats county land as if it owns it.

"ALL THE PEOPLE" - Over the years, environmental organizations sued the state trustee over Article XVI, section 1 of the Constitution means "all the public lands granted to the state are held in trust for all the people . . ."

In 1992, this legal argument was refuted by Attorney General Opinion 1992 – 3. The AG said the phrase only applied to federal lands granted to the state by the Enabling Act. Further, the supreme court rejected the argument in 2010 Chuckanutt, 2022 Franz and 2022 Franz – Wahkiakum.

Failure of the trustee legislature to defend Clallam County trust status since then resulted in frivolous legal challenges to timber sales from Conservation Northwest, Legacy Forest Coalition, City of Port Angeles and other unqualified interveners. Trust lands granted by Clallam County to the state in accordance with the laws of 1935 do not belong to the state. They are held in trust for the Clallam County trust beneficiaries. **CLALLAM COUNTY FOREST BOARD TRUST LAND ARE NOT HELD FOR ALL THE PEOPLE.**

Legacy Forest – Environmental organizations challenged timber sales in Clallam County. This led DNR to cancel or curtail numerous timber harvests that benefits the trust beneficiaries. DNR owes Clallam County an *"undivided loyalty to the trust beneficiaries, to the exclusion of all other interests no matter how laudable."* While the Legacy Forest concept may be a laudable interest, it is specifically excluded from DNR's dealings with the Clallam County trust.

THE FRANZ WAHAKIYAKUM 99183-9 (NOVEMBER 30, 2020) IV CONCLUSION STATES – *"CNW (now LFDC) seeks to disrupt over 120 years of settled law concerning the trust status of the lands managed by DNR. They view the financing of public services, including schools, rural county governments, and their junior taxing districts through the harvest and sale of forest products as 'outmoded.' But the meaning of the constitution and the statutes and cases governing the management of those lands is not a matter of shifting fashion. They have no basis to wrest a critical source of funding for rural governments and schools from the named beneficiaries."* **THE TRUSTEE LEGISLATURE FAILED TO PROVIDE LEGISLATION TO DEFINE AND PROTECT THE CLALLAM COUNTY TRUST RESULTING REGULATIONS IMPOSING DIVIDED LOYALTIES, FAILURE TO HARVEST TIMBER, UNNECESARY LAWSUITS, DELAYS/CANCELLATIONS OF TIMBER HARVESTS RESULTING IN**

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DAMAGES TO THE CLALLAM COUNTY TRUST BENEFICIARY, ITS JUNIOR TAXING DISTRICTS AND TAXPAYERS. DNR'S ACTIONS SHOWCASE THE TRUSTEE LEGISLATURE'S DIVIDED LOYALTY TO THE TRUST BENEFICIARIES. THE SALES MUST BE REINSTATED.

PORT ANGELES WATERSHED – On September 30, 2023, the City of Port Angeles filed an application to transfer 3,089 acres of state forest lands in the Elwha River Watershed (including Power Plant, TCB23 and Alley Cat timber sales) away from WA Department of Natural Resources industrial forest management and into protected status. While watershed protection may be a laudable interest, it is specifically excluded from DNR's dealings with the Clallam County trust.

There are number of issues with the city's request. **RCW 79.10.070 PROVIDES A WAY FOR THE CITY TO REQUEST WATERSHED PROTECTION. IT SAYS,**

*"In the management of public lands (NOT CLALLAM COUNTY TRUST LANDS) lying within the limits of any watershed over and through which is derived the water supply of any city or town (PORT ANGELES/ELWHA), the department **MAY** alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the Department of Ecology. However, if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands, the city or town requesting such alterations shall fully compensate the department."* **IF WATER QUALITY FAILS TO MEET DOE STANDARDS, DNR MAY CHANGE ITS PRACTICES BUT THE CITY MUST FULLY COMPENSATE THE DEPARTMENT (WHERE IS COMPENSATION FOR THE COUNTY TRUST?).**

THIS REQUEST HIGHLIGHTS MULTIPLE ISSUES BETWEEN THE TRUSTEE LEGISLATURE AND CLALLAM COUNTY. THEY ARE:

- **THE LANDS REQUESTED ARE NOT STATE FORESTLANDS OR PUBLIC LANDS. THESE ARE CLALLAM COUNTY FOREST BOARD TRUST LANDS.**
- **THE CITY OF PORT ANGELES HAS NO LAND IN THE CLALLAM COUNTY TRUST, IS NOT A JUNIOR TAXING DISTRICT BENEFICAIRY AND HAS NO CLAIM ON TRUST LANDS.**
- **THERE IS NO PROOF WATER QUALITY FAILS TO MEET "... standards established for intrastate and interstate waters by the department of ecology."**
- **DNR ACTIVITIES IN THE WATERSHED MEET THE REQUIREMENTS OF THE FOREST AND FISH PLAN BUFFER ZONES AND MEASURES TO PROTECT WATER QUALITY. WATER QUALITY IS CONSIDERED IN THE HABITAT CONSERVATION PLANS, FOREST PRACTICES APPLICATION AND SEPA ANALYSIS AND IS NOT AN ISSUE IN THE ELWHA WATERSHED.**

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- **RCW 76.12.072 PERMITS COUNTY COMMISSIONERS TO REQUEST RETURN OF STATE FOREST LAND FOR PUBLIC PARK USE AS PART OF THE COUNTY AND STATE PARK PLAN. THE COUNTY DOES NOT QUALIFY TO MAKE SUCH A REQUEST BECAUSE THE LAND IS NOT STATE FORESTLAND AND THERE IS NO PARK PLAN.**

CONCLUSION: THE TRUSTEE LEGISLATURE FAILED TO PROVIDE LEGISLATION TO DEFINE AND PROTECT THE CLALLAM COUNTY TRUST. THIS FORCED DIVIDED LOYALTIES UPON THE TRUST ADMINISTRATOR RESULTING IN FAILURE TO HARVEST TIMBER, UNNECESSARY LAWSUITS, DELAYS/CANCELLATIONS OF TIMBER HARVESTS RESULTING IN DAMAGES TO THE CLALLAM COUNTY TRUST BENEFICIARY, ITS JUNIOR TAXING DISTRICTS AND TAXPAYERS.

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CHAPTER 8 DAMAGES

Consideration of seeking damages from the trustee legislature must be left to Clallam County Commissioners and elected members of the junior taxing districts. These stem from the trustee legislatures failure to codify the difference between the state forest lands, public lands, state lands and CFBLTs over the past 89 years. The legislature via RCW79(76) has treated Clallam County trust land as its own. Statutes directed DNR to “act prudently and with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests no matter how laudable.” The state failed to recognize that the best interests of state trusts beneficiaries may not be the best interests of Clallam County.

In general, determining if the county has been damaged entails examining DNR actions that were not prudent for the trust and/or required DNR to act with a divided loyalty when following the trustee legislatures direction. Clallam County must also examine the legislative record to see where the trustee changed the terms of the trust.

- A glaring example is the **SESSION LAWS OF 1951 WHEN RCW 76.12.030, WAS CHANGED FROM** “... and administered and protected by the said board under the provisions of chapter 154, Laws of 1923.” **TO** “... Such land shall be held in trust and administered, treated as and protected by the board as other State forest State Forest lands ...” **THIS PERMITS THE TRUSTEE AND DNR TO CHANGE THE TERMS OF THE TRUST IN THE 1936 DEED AT WILL.**
- Another example is from the Session Laws of 1939 Chapter 130 where the legislature says, “Wherever applicable in this act, it shall be understood that the State Forest Board shall have complete authority over State Forest Board lands and the Commissioner of Public Lands complete authority over state granted land.” **THE LAW DIRECTED SFB TO SET UP COOPERATIVE MANAGEMENT OF STATE FOREST BOARD LANDS AND STATE GRANTED LANDS WITH NATIONAL FOREST AND PRIVATE TIMBER LANDS IN A SUSTAINED YIELD MANAGEMENT UNIT WITHOUT CONSIDERATION OF THE TRUST.**

In 1967, the Supreme Court in the Lassen v. Arizona case held that Arizona could not transfer easements across trust lands without compensation to the trust. RCW 79 contains a number of sections where the trustee legislature permitted easements and rights of way across Clallam CFBLT without reimbursement. The county may be able to recover compensation for state failure to collect reimbursement.

- Session Laws of 1941 Chapter 123, “Section 3-A. The private contracting party or Contracting parties shall enjoy the right of easement over State Forest Board lands and state granted lands included under said cooperative agreement for railway, road and other uses

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necessary to the carrying out of the agreement. This easement shall be only for the of the cooperative agreement and shall be granted without charge with the provision that payment shall be made for all merchantable timber cut, removed or damaged in the use of such easement, payment to be based on the contract stumpage price for timber of like value and species and to be made within thirty (30) days from date of cutting, removal and/or damage of such timber and appraisal thereof by the Commissioner of Public Lands and the State Forest Board. **THE SECTION OMITS STATE FORESTLANDS OR MISTAKENLY**

INCLUDES THEM WITH STATE FOREST BOARD LANDS. THE TERMS OF THIS SECTION 3a MAY BE BENEFICIAL WHEN APPLIED TO HARVEST ON CLALLAM CFBLT. EASEMENT ACROSS CALLAM CFBLT TO ACCESS STATE FORESTLANDS OR STATE GRANTED LANDS MUST BE REIMBURSED. PAYMENT FOR CUT, REMOVED, DAMAGED SHOULD GO TO THE COUNTY.

- **IN 1971 RCW 79.10.010** *"The legislature hereby directs that a multiple use concept be utilized by the department in the administration of public lands where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable provisions of the various lands involved.* **AUTHORIZES MULTIPLE USE IN ADMINISTRATION OF PUBLIC LANDS. PUBLIC LANDS DOES NOT INCLUDE CLALLAM CFBLT BUT THE STATE IMPOSED THE POLICY ANYWAY. SETS UP A DIVIDED LOYALTY BETWEEN THE BEST INTERETS OF THE STATE/GENERAL WELFARE OF THE CITIZENS AND THE COUNTY TRUST. DOES NOT INCLUDE REIMBURSEMENT FOR THE COUNTY FOR ORV PARK OR TRAILS ON CFBLT.**
- **RCW 79.01.01 REFERENCE ADMINISTRATION OF PUBLIC LANDS CONFLICTS WITH RCW 79.10.110 WHICH DEFINES** *"Multiple use" as used in RCW 79.10.070, 79.44.03 and this chapter shall mean the management and administration of state-owned lands under the jurisdiction of the department* **CLALLAM CFBLT IS NOT PUBLIC LAND OR STATE-OWNED LAND COVERED BY RCW 79.10.**
- **In 1961, the legislative trustee added RCW 79.36.355** *"The department may grant to any person such easements and rights in public lands, not otherwise provided in law, as the applicant applying therefor may acquire in privately owned lands. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state.* **THIS IGNORES THE CLALLAM CFBLT, CONFUSES THE TRUST WITH PUBLIC LANDS AND CHANGES THE TERMS OF THE TRUST. FULL MARKET VALUE FOR PROPERTY OF THE STATE (NOT CLALLAM CFBLT) IS SECURED.**

TRUST STATUS OF CLALLAM COUNTY CFBLT

CONCLUSION:

- 1. THE TRUSTEE LEGISLATURE FAILED TO PROVIDE LEGISLATION TO DEFINE AND PROTECT THE CLALLAM COUNTY TRUST. THIS FORCED DIVIDED LOYALTIES UPON THE TRUST ADMINISTRATOR RESULTING IN FAILURE TO COLLECT REIMBURSEMENT FOR EASEMENTS, RIGHTS-OF-WAY AND MULTIPLE USE ACTIVITIES RESULTING IN DAMAGES TO THE CLALLAM COUNTY TRUST BENEFICIARY, ITS JUNIOR TAXING DISTRICTS AND TAXPAYERS.**
- 2. THE TRUSTEE LEGISLATURE ROUTINELY CHANGED THE TERMS OF THE TRUST WITHOUT REGARD ITS DUTIES OF PRUDENCE AND UNDIVIDED LOYALTY RESULTING IN DAMAGES TO THE CLALLAM COUNTY TRUST BENEFICIARY, ITS JUNIOR TAXING DISTRICTS AND TAXPAYERS.**

TRUST STATUS OF CLALLAM COUNTY CFBLT

CHAPTER 9

PATH FORWARD - Possible discussion points.

Demands

- Recognize terms of 1935 CFLBT
- Not state forestland, state land or public land
- Evaluation of all legislative actions effecting trust since 1935
 - Did action effect the trust?
 - Was the effect detrimental?
 - Was the action prudent?
 - Did the action help/hinder the trust
 - Reimburse for easements?
 - Reimburse for rights of way?
 - Reimburse for vandalism?
 - Reimburse for watershed?
 - Reimburse for multiple use?

Did the action violate divided loyalty?

- Does sustainable harvest penalize county?
- Cancellation/delay of timber sales?
- Failure to prosecute vandals.
- Failure to defend sales that meet law
- Address arrearage

Concessions

- Forest practices that don't discriminate against the trust.
- Policies that support federal HCP and ESA programs.
- SEPA that doesn't discriminate.

Bargaining points

- Limited multiple use permitted
- Discuss free access contracts across county land

TRUST STATUS OF CLALLAM COUNTY CFBLT

- Discuss payment for salvage
- Discuss efficacy of trust land transfer
- Discuss efficacy of encumbrances

Damages

- Reimburse for easements?
- Reimburse for rights of way?
- Reimburse for vandalism?
- Reimburse for watershed?
- Reimburse for multiple use?
- Reimburse for cancelation/delay?
- Reimburse for lost revenue?