

SETTLEMENT AGREEMENT
BETWEEN
SEATTLE AND KITTITAS AUDUBON SOCIETIES
AND
DOUG SUTHERLAND AND VICKI CHRISTIANSEN
AND
WASHINGTON FOREST PROTECTION ASSOCIATION AND
AMERICAN FOREST & PAPER ASSOCIATION

Plaintiffs Seattle Audubon Society and Kittitas Audubon Society (“Audubon”), Defendants Doug Sutherland and Vicki Christiansen (“State Defendants”) and Intervenor-Defendants Washington Forest Protection Association and American Forest & Paper Association (“Intervenors”), referred to collectively as the “Parties” hereby agree as follows:

1. Participation in Policy Working Group. In an effort to avoid further litigation, the Parties agree to participate in good faith in a Policy Working Group (Working Group) established by the Washington Forest Practices Board (the Board). The Parties will propose Exhibit A as the charter for the Working Group, subject to the Board’s input and approval. As provided in Exhibit A, the Working Group will include the Parties and other designated entities with interests in the conservation of spotted owls and forest management. The Working Group will be presented with the Draft Ground Rules attached as Exhibit B and will be asked to produce final ground rules at the first scheduled meeting. The Parties will make best efforts to ensure that the Working Group develops initial, consensus recommendations relating to spotted owl conservation on lands subject to the Washington Forest Practices Act no later than November 1, 2008. The State Defendants commit to make participation grants available for Audubon on the same terms and conditions as grants previously made to the conservation caucus for participation in the Board Upland Wildlife Landscape Level Assessment Process.

2. Sensitive Wildlife Information Needed by the Working Group. State Defendants will prepare data summaries and other information products requested by the Working Group in order for the group to fulfill its responsibilities as described in the group's charter. Audubon recognizes that any data analyses requested by the Working Group will be carried out by State Defendants; State Defendants will not transmit data to individual working group participants so that individual participants can conduct their own analyses. State Defendants will honor any reasonable requests for data analysis made by Working Group participants even if there is not consensus within the Working Group that the analysis is needed. The Parties agree to safeguard and to not publicly display sensitive wildlife information shared with the Working Group.

3. Return of Sensitive Wildlife Information and Discovery Documents.

a. Sensitive Wildlife Information. Except as provided in paragraph c below, within 30 days of the date of this Agreement, Audubon and WFPA, their attorneys, and any expert witnesses retained by them, will return to counsel for the State Defendants or destroy all documents containing information subject to the Court's December 20, 2006 Order Regarding Owl Data (Docket # 47), including any copies or summaries thereof, or any documents containing information taken therefrom. This includes paper and electronic copies of any document that includes information subject to the Court's December 20, 2006, Order, including but not limited to any maps, figures, tables, computer files, GIS data layers, PowerPoint slides, and other documents containing sensitive wildlife information as defined by RCW 42.56.430, regardless of the source of the information.

b. WFPA Documents. Audubon, its attorneys and any expert witnesses retained by Audubon or its attorneys will return or destroy all WFPA documents provided during the course of discovery within 60 days of the date of this agreement. This includes paper and electronic

copies of any document, including but not limited to any maps, figures, tables, computer files, email messages, power point slides and other documents.

c. Retention of Discovery Related to Weyerhaeuser Settlement Implementation. The provisions of paragraph 3(a) shall not apply to the information attached as Exhibit A-C to the Settlement Agreement between Audubon and Weyerhaeuser, and any survey or telemetry data provided by Weyerhaeuser to Audubon pursuant to the Audubon-Weyerhaeuser Settlement Agreement. However, such information shall not be publicly disseminated, may be used only in proceedings to resolve disputes or enforce the Audubon-Weyerhaeuser Settlement Agreement, and shall be either destroyed or returned to Weyerhaeuser upon expiration of that Settlement Agreement.

4. Forest Practices permit specific issue involving northern spotted owls. If Audubon is concerned about a specific forest practices application or approval involving northern spotted owls, Audubon may raise this concern with DNR, and also the Washington Forest Protection Association (WFPA) if the landowner is a WFPA member. The parties agree to work collaboratively to raise concerns with the applicant about application specific northern spotted owl issues that may interfere with the working group. This commitment does not limit State Defendants' implementation and enforcement authority under RCW 76.09.

5. Public Disclosure Requests. Until the Working Group completes its work or is disbanded, Audubon and WFPA agree not to file any Public Disclosure Requests with DNR or Washington Department of Fish and Wildlife (WDFW) pertaining to spotted owls, provided that any Party may file a Freedom of Information Act request with any federal government agency relating to the Federal spotted owl recovery plan.

6. Support for Consensus Recommendations. The Parties agree to affirmatively support before all relevant legislative and/or administrative forums the approval or adoption of consensus recommendations by the relevant decision makers.

7. Joint Statements. For three years after the Effective Date of the Dismissal, the Parties agree as follows:

a. Upon execution of this Agreement, the Parties agree to issue a joint statement in the form attached as Exhibit C. Any statements about the settlement by the Parties and their attorneys will be consistent with the joint statement. No Party shall publicly “claim victory.” Rather, the Parties should simply and without embellishment state that the Parties settled this lawsuit and are looking forward to working together in a collaborative process to develop a win-win solution for spotted owls and forest landowners.

b. The Parties and their attorneys agree not to make any statements about this litigation that would be detrimental to the working group process or the Board’s consideration of the Working Group’s recommendations. Parties and their attorneys should not disparage Parties’ actions, tactics, or motivations leading up to or surrounding the litigation or settlement. However, the Parties and their attorneys may refer to the public record in this litigation, but may not refer to sealed documents.

c. The Parties may agree to make joint presentations and representations that further the Working Group’s objectives, such as requests for funding or legislation to implement the Working Group’s recommendations.

d. The Parties and their attorneys will conform web site information and whatever other communication tools they use to inform the public and their members about the owl litigation to this agreement within ten (10) days of the Effective Date of the Dismissal.

8. Other Documents. Attached as Exhibit D is a Partnership Agreement between WFPA and Audubon. Attached as Exhibit E is a letter of intent between WFPA and the Washington Forest Law Center.

9. Covenant Not to Sue. For three years after the Effective Date of the Dismissal, Audubon and Intervenors covenant not to file in any judicial or administrative forum any actions that relate exclusively to the northern spotted owl in Washington State. Nor will Audubon or the Intervenors provide support or encouragement to other Parties who file such actions.

a. This covenant not to sue does not include a covenant not to defend. If another Party or any third Party initiates a judicial or administrative proceeding relating to the northern spotted owl, Audubon and Intervenors retain their right to intervene as defendants.

b. Audubon and Intervenors may file appeals with the Washington Forest Practices Appeals Board (FPAB) of decisions by the Washington Department of Natural Resources (DNR) on site-specific Forest Practices Applications on issues not involving northern spotted owls. Audubon and Intervenors may seek judicial review of such decisions of the FPAB under the Washington Administrative Procedures Act, Ch. 34.05 RCW, but will not raise any issues involving northern spotted owls.

c. Audubon and Intervenors agree that this covenant binds the signatory organizations, not the individual members of the organizations.

10. Dispute Resolution. The Parties agree to seek dispute resolution if matters arise that relate to implementation of this Agreement, affect one or more of the Parties' commitment to collaboration, or disrupt the collaborative environment in which the Working Group is progressing. If needed, dispute resolution will be initiated by one or more of the Parties contacting King County Superior Court Judge Robert Alsdorf (Ret.) if available. If he is not

available, the Parties will mutually select a replacement. Any fees and costs incurred in the process of dispute resolution will be shared equally among the Parties.

11. Modification. This Agreement may be modified only by agreement and signature of all Parties.

12. Governing Law. This Agreement is being entered into and will be construed and interpreted in accordance with the applicable laws of the State of Washington.

13. Confidentiality of Agreement. Pursuant to Federal Rules of Evidence 408, Local Rules of Civil Practice for the Western District of Washington 39.1(a)(6), and the Uniform Mediation Act, Chapter 7.07 RCW, this Agreement shall not be interpreted as an admission of liability. The Agreement shall not be admissible in evidence against any Party in any future controversy, except to prove the existence of the Agreement.

14. Parties Conferred with Their Attorneys. By signing this Agreement, the Parties acknowledge that the terms of this Agreement were reached through serious and extended negotiations and have been reviewed by and discussed with respective counsel for each of the Parties. The Parties warrant and represent that they are fully authorized to enter into and legally bind their Party to the terms and conditions of this Agreement.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall be considered one and the same instrument.

[Remainder of page intentionally blank. Signature page follows.]

Respectfully agreed to this ____ day of July, 2008.

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