

Washington Environmental Council et al v Sutherland et al
SETTLEMENT AGREEMENT

Executive Summary
March 21, 2006

Introduction

This settlement agreement resolves *Washington Environmental Council, et al v. Sutherland, et al*, litigation brought in King County Superior Court in October 2004. Prior to the judge's opinion being reduced to a final judgment, the parties agreed to enter into settlement discussions. Those negotiations occurred from November 2005 through March 2006. The parties believe they have reached an agreement that meets the core objectives of all parties. The agreement lays out a number of important tasks, which the parties will work cooperatively to accomplish.

Parties to the Agreement

Conservation groups—Washington Environmental Council, National Audubon Society, Conservation Northwest, Olympic Forest Coalition

State government—Commissioner of Public Lands Doug Sutherland, the Board of Natural Resources (BNR), the Department of Natural Resources (DNR)

Intervenors—American Forest Resource Council; Pacific, Skamania, Snohomish and Skagit Counties; City of Forks; Quillayute Valley, Toutle Lake, Willapa Valley and Castle Rock School Districts; and Willapa Harbor Hospital.

Key Components of the Agreement (with reference to Agreement Sections)

I. *Northern Spotted Owl Conservation Measures*

The agreement provides additional short-term protection for existing northern spotted owl habitat.

- In areas set aside for spotted owl management under DNR's Habitat Conservation Plan (HCP), No timber harvest will occur in the highest quality habitat. In lower quality habitat, any harvest must maintain habitat conditions and/or improve its development. The next best stands will be identified and enhanced, to meet the HCP's targets of 50% of each designated owl management area being habitat. DNR intends to actively pursue habitat enhancement, generally in amounts on a par with traditional timber harvest. The agreement sets sideboards on enhancement forestry to ensure that it maintains or improves the habitat and to focus enhancement in areas where it will have the greatest habitat benefit. The other 50% of these management areas are available for the full range of management activities allowed by the HCP. All previous "owl circles" are lifted.
- In Owl Areas (formerly "owl circles") outside of the HCP's owl management areas, DNR will not harvest the highest quality habitat. Any logging activities in other habitat will maintain the function of that habitat. DNR will avoid or minimize thinning activities in owl habitat where a nesting pair of owls has been observed by DNR or the Washington Department of Fish and Wildlife in the previous year. Because of potentially severe fiscal impacts, an exception is made for the State Forest lands in Owl Areas that are managed on behalf of Pacific and Wahkiakum Counties, where all harvest activities allowed under the HCP can proceed. As mitigation, DNR will complete an acre of habitat enhancement in spotted owl management areas elsewhere in western Washington for each acre of habitat harvested in these areas.

Olympic Experimental State Forest (OESF)

The Olympic Experimental State Forest (OESF) comprises 264,000 acres of DNR-managed lands in western Clallam and western Jefferson Counties. Under the HCP, the goal of the OESF Conservation Strategy is to learn how to integrate timber production and conservation across the landscape.

- DNR will not conduct any logging in mapped "old forest" stands.
- DNR will conduct a landscape plan for the OESF, next in line after the South Puget Sound region plan, and the parties will be invited to participate.
- Prior to adoption of the plan, only harvests that sustain or improve habitat quality will occur in stands with defined habitat structure features. DNR will impose a planning goal of maintaining all areas of

defined habitat structure, along with other planning goals, for the full term of the agreement. The completed plan, along with the HCP, will guide subsequent activities in the OESF.

- In habitat and non-habitat, enhancement activities will be performed to meet OESF landscape level habitat targets. DNR agrees to perform at least the same number of acres of enhancement activities as regeneration harvests, and to concentrate them where they will have the greatest habitat benefit.
- All previous “owl circles” are lifted.

II. *Innovative Silviculture*

DNR will set up scientifically designed demonstration projects in the OESF testing Dr. Andrew Carey’s “biodiversity pathways” principles, which aim to integrate timber production and conservation. In the next year, DNR will also initiate a 100-year modeling exercise to examine alternative innovative silvicultural techniques, including those proposed by Dr. Carey, across the OESF. The parties will reach consensus on the model design before the project proceeds. The project will be peer-reviewed, and DNR will also seek to publish the work in a peer-reviewed journal. This exercise will likely provide information useful to the design of research projects in the OESF.

III. & IV. *Other Land Management & Implementation*

DNR will proceed with other land management decisions, including lifting certain prior procedures as directed by the Board, implementing the Riparian Forest Restoration Strategy, bringing the Policy for Sustainable Forests to the Board for adoption, and beginning analysis of old growth in eastern Washington. DNR will continue its forest land planning process, develop timber harvest schedules, record silvicultural activities in its data base, and share HCP monitoring reports with all parties. DNR will re-run the sustainable harvest model to reflect the commitments of the agreement and the Riparian Forest Restoration Strategy and bring the results to the BNR for decision before the end of 2007.

V. *Legal Issues Resolved*

- Within 5 days of the effective date of this Agreement, *WEC v. Sutherland* will be dismissed voluntarily with prejudice or by stipulation of the parties.
- Plaintiffs waive any challenge to the new harvest calculation and accompanying SEPA documents that comply with the agreement, as well as to the Riparian Forest Restoration Strategy and accompanying SEPA document, and to the EIS for the forthcoming Policy for Sustainable Forests, based on its reliance on the Sustainable Harvest EIS challenged in *WEC v Sutherland*.
- Plaintiffs will not challenge DNR timber sales that comply with the agreement on the basis of impacts to the northern spotted owl, nor will they challenge the landscape plan for the OESF to the extent it protects all owl habitat for the duration of the agreement

VI. *Management Fee for the Resource Management Cost Account*

Plaintiffs will actively support legislative re-authorization of the 30% RMCA management fee, needed to fund management of the trust lands subject to this agreement.

VII. *Increased Communication and Dispute Resolution Process*

Parties expect enhanced communication and collaboration to be one of the positive outcomes of this settlement agreement. The parties are committed to building relationships of greater trust and collaboration.

- The parties will hold annual meetings in the fall of each year to discuss implementation of the agreement including projected harvest activities in spotted owl habitat; parties will attempt to resolve any disagreements over proposed harvest and enhancement in owl habitat.
- The agreement lays out a dispute resolution process for use when a party believes that another is out of compliance with the terms of the agreement. The process calls for parties to discuss issues of agreement compliance before taking their concerns to outside parties, and DNR will not allow forestry activities until the process is complete.

VIII. *Term*

The Agreement terminates when the BNR approves a sustainable harvest calculation extending beyond fiscal year 2014, but no earlier than June 30, 2014.