

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA**

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THE CHEAT LAKE ENVIRONMENT)
AND RECREATION ASSOCIATION;)
FRIENDS OF BLACKWATER; and THE)
WEST VIRGINIA CHAPTER OF THE)
SIERRA CLUB,)

Plaintiffs,)

v.)

ALLEGHENY WOOD PRODUCTS, INC.,)

Defendant.)
_____))

No. 1:05-CV-61 FPS

THIRD JOINT STATUS REPORT

Pursuant to the Court’s order dated September 25, 2009 (Dkt. 84), Plaintiffs The Cheat Lake Environment and Recreation Association, Friends of Blackwater, and the West Virginia Chapter of the Sierra Club and Defendant Allegheny Wood Products (“AWP”) (collectively “Parties”) jointly submit this report apprising the Court of the status of this case. This is a cumulative report and includes new activities as well as activities reported to the Court in the Parties’ two previous status reports (Sept. 7, 2007, Dkt. 78; Mar. 10, 2008, Dkt. 83), with updates as necessary.

This report also responds to the Court’s directive that the parties address Paragraphs 32 and 39 of the Settlement Agreement, which concern termination of the Agreement and dismissal of this action.

Since the Court’s entry of the order on February 5, 2007, which granted the Parties’ joint motion for ratification of the Agreement, the Parties have cooperated in implementing the terms

of the Agreement. In a transaction that closed on March 27, 2009, AWP sold the Cheat Canyon property covered by the Agreement to Heartwood Forestland Fund VI Limited Partnership, a North Carolina limited partnership (“HFF VI”). As a result of that conveyance, HFF VI became AWP’s successor under Paragraph 34 of the Agreement. Through subsequent conveyances, the surface estate of the Cheat Canyon property is now owned by Allegheny Forestlands, LLC, a West Virginia limited liability company and an affiliate of HFF VI.

Thus, the numbered paragraphs below will update the Court on implementation of the Agreement through the closing date of AWP’s conveyance of the property, March 27, 2009. Future periodic status reports, as proposed at the conclusion of this status report, will address subsequent implementation of the Agreement.

1. Pursuant to Paragraphs 2-5 of the Agreement (terms that took effect upon the Court’s entry of the order ratifying the Settlement Agreement), AWP has set aside Cheat Snail Preserves and associated Preserve Adjunct Areas, and has completed the timber harvesting that it planned to do in Area 2.

2. The Parties have implemented Paragraphs 7-11 of the Agreement (with certain schedule adjustments from time to time as permitted by Paragraph 6). The Parties designated coordinators and selected a team of experts to determine the criteria to apply to identify potential snail habitat in AWP property in Area 3 and on the south side of the Cheat Canyon. After circulating draft reports for review, the team of experts submitted its final report on September 4, 2007.

3. With respect to Paragraphs 12-13 of the Agreement, the Parties conferred and selected a delineation team to delineate known and occupied snail habitat and potential snail habitat and identify buffers for such habitat in Area 3. The habitat delineation team issued its

final report on Area 3 in December 2008. AWP completed selective harvesting on approximately 245 Acres of Area 3 that the delineation team identified as not being actual or potential snail habitat.

4. Pursuant to Paragraph 19 of the Agreement, AWP on March 4, 2009, requested a meeting with Plaintiffs to discuss the final designation of the Preserve and/or Preserve Adjunct Areas upon completion of the delineation of snail habitat around Cornwall Cave. The Parties (and/or their successors) will make their best efforts to implement Paragraph 19 in full.

5. Pursuant to Paragraph 25 of the Agreement, AWP provided Plaintiffs with informal status reports regarding AWP's implementation of the Agreement by letters dated March 3, 2008, August 28, 2008, and March 4, 2009.

6. Pursuant to Paragraph 25 of the Agreement, Plaintiffs intend to confer with Allegheny Forestlands, LLC, concerning a site visit in accordance with that Paragraph 25.

7. With respect to Paragraph 36 of the Agreement, as previously reported, the Parties have reached agreement on attorneys' fees and/or costs and thus do not anticipate having to make application to the Court.

8. Plaintiffs and AWP intend to confer with Allegheny Forestlands, LLC, about possible amendment of the Agreement pursuant to Paragraph 31 of the Agreement to reflect the sale of the Cheat Canyon property and formally substitute the current property owner, Allegheny Forestlands, LLC, as AWP's successor under Paragraph 34 of the Agreement. In addition, AWP intends to confer with Allegheny Forestlands, LLC, and with Plaintiffs as appropriate, about substituting and/or adding Allegheny Forestlands, LLC, as Defendant in this action.

9. With respect to Paragraphs 32 and 39, certain provisions of the Agreement remain to be implemented, including habitat delineation and any timber harvesting on the south side of

the Cheat Canyon pursuant to Paragraph 14. Thus, termination of the Settlement Agreement under Paragraph 32 and dismissal of this action under Paragraph 39 would be premature at this time.

In the interest of keeping the Court timely apprised of further implementation of the Agreement, the Parties (and/or their successors) propose to file another report within six months to apprise the Court of any outstanding items.

Respectfully submitted,

/s/ J. Michael Klise

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