

## **JACKSON STATE DEMONSTRATION FOREST SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT (Agreement) is entered into by and between the California Department of Forestry and Fire Protection (CAL FIRE), the Board of Forestry and Fire Protection (Board), The Dharma Cloud Charitable Foundation Trust, Campaign to Restore Jackson State Redwood Forest, Forests Forever Foundation, Mendocino Redwood Company, and Willits Redwood Company (collectively referred to as the Parties) concerning the settlement of all current and pending actions between the parties.

WHEREAS, all parties to this Agreement desire to settle and finally resolve the actions, and wish to enter into a settlement agreement which provides for the dismissal of all of the current actions and the avoidance of future actions;

WHEREAS, all timber harvesting on Jackson Demonstration State Forest (JDSF) has been halted under court order since 2003, including in particular harvesting activity on the Brandon Gulch and Camp Three timber sales;

NOW, THEREFORE, in consideration of the following covenants and agreements, the Parties agree as follows:

- Vince Taylor, the Dharma Cloud Charitable Foundation, Campaign to Restore Jackson State Redwood Forest, and Forests Forever Foundation shall waive any and all right to file a) objections to the return to the writ currently on file with the Mendocino Superior Court in case No. 0289022; b) any new lawsuit challenging the EIR and Management Plan certified and adopted by the Board of Forestry and Fire Protection on January 9, 2008; and c) any further challenge to the two timber sale contracts and timber harvesting plans (THPs) known as Brandon Gulch [THP MEN 01-99-483 ] and Camp Three [THP MEN 01-99-484 ]; and d) to challenge any THP designated to supply replacement timber for Brandon Gulch or Camp Three; but parties do not give up the right to challenge any other THPs or timber contracts.
- CAL FIRE and Contractors may proceed with operation on Brandon Gulch and Camp Three timber sales and THPs as modified under this agreement.
- To the terms of this Agreement to amend the current Camp Three and Brandon Gulch THPs and timber sale contracts as stated below.
- To neither actively nor passively encourage or assist third parties to instigate litigation on the return to the writ, the EIR and Management Plan adoption, and the two presently enjoined THPs. The parties further agree not to disclose any information discussed during the settlement negotiations that have taken place concerning these matters including but not limited to disclosure of documents, emails or other communications, written or oral.

- CAL FIRE will use its best efforts to find replacement timber from other THPs currently in review or which will be submitted for review in the future solely for the purpose of settling the dispute between the parties and no party will unreasonably interfere with the THP review and approval process. The THPs providing replacement timber are limited to those itemized below in section I(A)(1).
- Should the representative of the Willits Redwood Company decline to sign this agreement, Section II(A) (Camp Three Contract Modifications) shall have no legal validity and shall be unenforceable as to all parties. CAL FIRE agrees that if any timber harvesting occurs in Camp Three under THP MEN 01-99-484, it will conform to all of the conditions of Section I(A) and I(C), including modifications described in the attached map (Final Exhibit A 5/29/08).

The parties agree that the stipulated injunction preventing operation of the THPs known as Brandon Gulch THP and the Camp Three THP shall be dissolved upon the following terms and conditions:

## **I. THP Modifications**

### **A. Brandon Gulch and Camp Three.**

1. Parties shall not impede the preparation, review, approval, or operation of timber harvesting plans that CAL FIRE shall make available to Willits Redwood Company and Mendocino Redwood Company to provide said companies with replacement timber for currently marked timber that shall no longer be available in the Brandon Gulch and Camp Three timber sales. Timber Harvesting Plans available for provision of replacement timber are the Plans referred to in the Management Plan as 14 Gulch, Upper Parlin, Hare Creek GHIJK, Dunlap South, Dunlap North, South Whiskey Springs, and Pleiades #4. Additional THPs may be added by the Director of the Department of Forestry and Fire Protection (the Director) by mutual agreement with Vince Taylor and the contractor(s).
2. There shall be appointed a subcommittee of the Jackson Demonstration State Forest Advisory Group (JAG) which shall work in combination with CAL FIRE staff. Meetings of the JAG subcommittee shall be open to the public. The subcommittee of the JAG shall be appointed by the Chair of the JAG in consultation with the Director, and shall cease to exist on November 1, 2008
3. The JAG subcommittee shall keep the JAG informed of its work. JAG members may comment on the subcommittee's work to the JAG subcommittee or to the Director.
4. Up to three outside experts from areas such as older forest management, silviculture, botany, forest ecology, or wildlife biology shall be consulted for the development of ALSF prescriptions and be available for in-the-field consultation with CAL FIRE staff in marking ALSF prescriptions. The three experts shall be mutually acceptable to CAL FIRE and the JAG subcommittee.

**B. Brandon Gulch.**

1. The Brandon Gulch THP shall be amended such that the treatment objective shall be “acceleration of the development of late seral forest conditions” (ALSF).
  - a. The prescriptions and demonstration protocol for achieving the treatment objective shall be determined by the Director based on consideration of the recommendations of the JAG subcommittee.
  - b. The plan shall be treated as a demonstration in ALSF. There shall be an appropriate demonstration protocol as determined by the Director, including objectives and a plan for educating the public, including persons using the area for recreation. Demonstration purposes shall include demonstration of the degree of compatibility of recreation with management for ALSF.
  - c. More than one approach to ALSF may be applied within the plan area.
  - d. The ALSF protocol and plan made here for the Brandon Gulch THP area is subject to future review by the JAG in the context of developing an overall forest landscape and management plan during the initial implementation period. The JAG may recommend modifications to the protocol and plan as part of its final recommendations to the Director for changes in the JDSF Management Plan.
2. Recreation use will be considered when devising the THP amendments. Potential harvest modifications to reduce visual impact on recreation users, including but not limited to those provided by the Management Plan and the Forest Practice Rules, shall be considered for incorporation in the THP amendments. The JAG subcommittee for providing late seral development prescriptions and protocols shall include this recreation item in its recommendations to the Director.
3. It is the intent of this process that the JAG subcommittee will provide the Director with its complete recommendations regarding changes to the Brandon Gulch THP by August 9, 2008. All materials and information needed for the preparation of a THP amendment for the Brandon Gulch sale, including the Director’s decision made in response to the recommendations of the JAG subcommittee, shall be provided to CAL FIRE staff by September 1, 2008. The Brandon Gulch THP amendment must be filed with CAL FIRE by October 15th, 2008. It is intended that the provisions of this agreement shall not preclude on-the-ground timber operations on the Brandon Gulch THP from commencing by April 1, 2009. It is intended that operations to remove substitute timber from other THPs shall be able to commence by August 1, 2008.

**C. Camp Three THP.**

1. The Camp Three THP shall be amended such that the treatment objective shall be the “acceleration of the development of late seral forest conditions” (ALSF).
  - a. The prescriptions and experimental protocol for achieving the treatment objective shall be determined by the Director based on consideration of the recommendations of the JAG subcommittee.
  - b. The amended THP shall be treated as an applied research project in ALSF. There shall be an appropriate experimental protocol developed which will include objectives, measurements to be made over time, and the calculation of baseline resource inventories in such areas as timber, botanicals, wildlife, hillslope conditions, and stream characteristics. There shall be included in the protocol a plan for educating the public, including persons using the area for recreation.
  - c. Development of baseline resource inventories shall be focused, practical, within available CAL FIRE resources as determined by the Director, and able to be accomplished by April 1, 2009.
  - d. Ongoing monitoring shall be focused, practical, and within available CAL FIRE resources as determined by the Director.
  - e. More than one approach to ALSF shall be applied within the amended Camp Three THP area. Any ALSF treatment area that includes removal of more than 30 percent of the volume of timber in the treatment area outside of protected stream zones shall be the minimum acreage necessary for scientific validity of the results of the research.
  - f. The ALSF protocol and plan made here for the Camp Three THP area is subject to later review by the JAG in the context of developing an overall forest landscape and management plan during the initial implementation period. The JAG may recommend modifications to this designation as part of its final recommendations to the Director for changes in the JDSF Management Plan.
2. Recreation use will be considered when devising the THP amendments. Potential harvest modifications to reduce visual impact on recreation users, including but not limited to those provided by the Management Plan and the Forest Practice Rules, shall be considered for incorporation in the THP amendments. The JAG subcommittee for providing late seral development prescriptions and protocols shall include this recreation item in its recommendations to the Director.
3. Recreation considerations provided for the Camp Three THP area shall be reviewed and may be changed in the future as a part of the Management Plan process for the Initial Implementation Period, including the recreation planning process for JDSF that has been designated as a responsibility of the JAG during the Initial Implementation Period.

4. The harvest plan area shall be modified as shown in the accompanying map "Proposed Modifications to Camp Three THP" (Exhibit A).
  - a) The area enclosed marked with a pink line shall have no timber harvest activities other than as noted below.
  - b) The road to be constructed, highlighted in yellow, will be extended to the point shown in the original THP plan to allow, to the extent practicable, cable yarding of the area designated on the east side of the harvest area as cable yarded. No road spurs will be constructed to the west of the new road. Landings may be constructed and trees may be removed along the new road as needed to complete yarding operations. The general intent, however, is to maintain natural stand conditions along both sides of the road where it lies inside the pink line.
  - c) A hiking trail shall be laid out, but not built as a part of this agreement, as shown in an indicative, conceptual manner in a red dashed line on Exhibit A. Actual layout is expected to vary from the mapped line, based on on-the-ground considerations. The potential recreation use of this potential trail will be considered when devising the THP amendments. Potential harvest modifications to reduce visual impact on recreational trail users, including but not limited to those provided by the Management Plan and the Forest Practice Rules, shall be considered for incorporation in the THP amendments.
  - d) As indicated on Exhibit A, a portion of the harvest area of approximately 24 acres will be changed from cable yarding to helicopter yarding.
  - e) The exclusion of an area within the Camp Three THP area from harvesting is subject to later review by the JAG in the context of developing an overall forest landscape and management plan during the initial implementation period. The JAG may recommend modifications to the no-active-management designation for this area as part of its final recommendations to the Director for changes in the JDSF Management Plan.
- 5) It is the intent of this process that the JAG subcommittee will provide the Director with its complete recommendations regarding changes to the Camp 3 THP by September 19, 2008. All materials and information needed for the preparation of a THP amendment for the Camp Three sale, including the Director's response to the recommendations of the JAG subcommittee, shall be provided to CAL FIRE staff by November 1, 2008. The Camp Three THP amendment must be filed with CAL FIRE by December 15th, 2008. It is intended that the provisions of this agreement shall not preclude on-the-ground timber operations in the Camp Three THP from commencing on April 1, 2009. It is intended that operations to remove substitute timber from other THPs shall be able to commence by April 1, 2009.

## **II. Contract Modifications**

### **A. Camp Three Contract**

1. The Camp Three timber sale contract (CAL FIRE Agreement No. 8CA02027, as amended) shall be modified according to sections I(A) and I(C) of this agreement.
2. Substitute timber shall be provided to contractor Willits Redwood Company to make up for the estimated net volume of marked timber that will not be available for harvest due to the changes to be made to the Camp Three timber sale and THP based on sections I(A) and I(C) of this agreement.
3. Contractor and CAL FIRE shall negotiate an adjusted fair market value for the timber to be removed by contractor from the Camp Three THP area and other THP area(s) from which substitute timber shall be provided.
4. Valuation Methodology
  - a. After the timber is marked and tallied in substitute areas selected by the Director in Paragraph I(A)(1), and remarked and tallied as necessary in Camp Three, a sample inventory estimate of the marked timber shall be performed by the Department, seeking to achieve an appropriate statistical reliability level.
  - b. From this inventory sample of the marked trees, an estimate shall be made of volume by species and log size mix by species. The log size mix shall be taken from default stock tables produced by the Cooperative Redwood Yield Project's Timber Output Simulator system (CRYPTOS), after input of the inventory plot data.
  - c. The value for each species shall be taken from the California State Board of Equalization Harvest Value Schedule, effective July 1, 2008 through December 31, 2008, Table G (Timber Harvest Values) for Timber Value Area 2N. The value shall be determined for the volume of each species falling within each of the three volume-per-log classes in Table G, and through proportioning, reduced to a single value for all logs of a single species.
  - d. The Department shall make an adjustment of the value for each species in consideration of the cable yarding deduction (Table G), and for other factors, including yield taxes and other factors related to the logging and hauling processes. The adjustment factor may also take into account changes in the value of logs reasonably expected as the result of price trends in the market.
  - e. Estimated payments shall be made according to the process set out in CAL FIRE Agreement No. 8CA02027, except that each species shall have a unique price, based upon the method established herein.

- f. These adjustment factors shall be informed through contractor's knowledge of current market trends and CAL FIRE's exclusive access to State Board of Equalization proprietary data. Contractor acknowledges that it will not have access to that proprietary data. Both Parties shall act in good faith to achieve a fair market value for purchased timber.

**B. Brandon Gulch Contract**

1. The Brandon Gulch timber sale contract (CAL FIRE Agreement No. 8CA02020, as amended) shall be modified according to Sections I(A) and I(B) of this agreement.
2. Substitute timber shall be provided to contractor Mendocino Redwood Company to make up for the estimated net volume of marked timber that will not be available for harvest due to the changes to be made to the Brandon Gulch timber sale and THP based on sections I(A) and I(B) of this agreement.
3. Contractor and CAL FIRE shall negotiate an adjusted fair market value for the timber to be removed by contractor from the Brandon Gulch THP area and other THP area(s) from which substitute timber shall be provided.
4. Contractor shall be released from contract requirements for South Fork Caspar Creek weir pond excavation.
5. Valuation Methodology
  - a. After the timber is marked and tallied in 14 Gulch, and remarked and tallied as necessary in Brandon Gulch, a sample inventory estimate of the marked timber shall be performed by the Department, seeking to achieve an appropriate statistical reliability level.
  - b. From this inventory sample of the marked trees, an estimate shall be made of harvest volume by species and log size mix by species. The log size mix shall be taken from default stock tables produced by the CRYPTOS model, after input of the inventory plot data.
  - c. The value for each species shall be taken from the California State Board of Equalization Harvest Value Schedule, effective July 1, 2008 through December 31, 2008, Table G (Timber Harvest Values) for Timber Value Area 2N. The value shall be determined for the volume of each species falling within each of the three volume-per-log classes in Table G, and through proportioning, reduced to a single value for all logs of a single species.
  - d. The Department shall make an adjustment of the value for each species in consideration of the cable yarding deduction (Table G), and for other factors, including yield taxes and other factors related to the logging and hauling

processes. The adjustment factor may also take into account changes in the value of logs reasonably expected as the result of price trends in the market.

- e. Estimated payments shall be made according to the process set out in CAL FIRE Agreement No. 8CA02020, except that each species shall have a unique price, based upon the method established herein.
- f. These adjustment factors shall be informed through contractor's knowledge of current market trends and CAL FIRE's exclusive access to State Board of Equalization proprietary data. Contractor acknowledges that it will not have access to that proprietary data. Both Parties shall act in good faith to achieve a fair market value for purchased timber.

### **III. Mutual Releases.**

- A. The parties, for themselves and on behalf of their respective heirs, successors and assigns, fully and forever release and discharge the other and their respective successors, agents, employees, affiliates, attorneys, accountants, insurers, partners and joint ventures, and each of them, of and from any and all liability, claims, demands, damages, punitive damages, choses in action, disputes, suits, actions, claims for relief and causes of action, whether known or unknown, arising out of or relating to facts and circumstances arising out of the issues alleged in the complaints and cross-complaints in the Actions, whether based in tort, contract, statute, equity, or other legal theory.
- B. The parties hereto certify that they have read the provisions of California Civil Code § 1542. The Parties hereto waive any and all rights under California Civil Code § 1542, which states:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

### **IV. Further Assurances.**

The parties agree to perform in good faith such acts and to prepare and execute such documents and stipulations as are reasonably required to perform the covenants and satisfy the provisions of this Agreement.

### **V. No Admission of Liability.**

This Agreement constitutes a settlement and compromise of various disputed claims and is made solely to avoid expensive and time-consuming litigation. Neither the offer nor acceptance of the terms and conditions of the Agreement represent an admission of liability or fault on the part of any party, but instead represents a resolution of the parties claims deemed by the parties to be mutually favorable and made by mutual agreement.



**VI. Costs and Attorney's Fees.**

The Parties agree to bear their own costs and attorney's fees in connection with the litigation referenced above and in connection with the negotiation of this Agreement.

**VII. Governing Law and Integration.**

This is a fully integrated Agreement, made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of California, except that parole evidence shall not be admissible to interpret, vary or modify any of the terms of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties with regard to the subject matter hereof are contained herein, and the documents referred to herein or implementing the provisions hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby.

**VIII. Severability.**

Should any covenant, condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of the Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, it shall be deemed valid to the extent of the scope or breadth permitted by law.

**IX. Notices.**

All notices, requests, demands and other communications under the Agreement shall be in writing and by personal delivery or overnight courier, and shall be deemed having been duly given on the date of receipt (receipt shall also include communications that are delivered to the designated address and left at the premises if no one is at the premises). Notices shall be addressed as follows, or as the parties may subsequently designate by written notice:

**X. Jurisdiction and Venue.**

The parties agree that jurisdiction over this settlement agreement shall vest in the Superior Court, County of Mendocino and that venue shall be proper in Mendocino County, California.

**XI. Miscellaneous.**

A. This Agreement cannot be amended, altered, modified, waived or superseded, in the whole or in part, except by a written agreement so stating which is signed by all parties to this Agreement. No delay or omissions on the part of any party to this

Agreement shall operate as a waiver of any such right or any other right. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

- B. This Agreement shall inure to the benefit of and be binding on each party, as well as its respective successors or assigns.
- C. Each of the parties to this Agreement warrants that it has not assigned or transferred any cause of action, claim for relief, or other matter released under the Agreement.
- D. Nothing in this Agreement shall confer any rights upon any person or entity who is not a party to this Agreement, nor shall anything in this Agreement be construed as creating an obligation by either party to any non-party to this agreement.
- E. Section headings are for convenience only and are not part of the Agreement.
- F. The parties hereby agree that faxed signatures of the parties to this Agreement shall be as binding and enforceable as original signatures; and that this Agreement may be executed in multiple counterparts with the counterparts together being deemed to constitute the complete agreement of the parties.
- G. Each person who executes this Agreement on behalf of any party to the Agreement represents and warrants that he or she has been duly authorized by such party to execute the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in counterparts, to be effective on the last date executed below.

\_\_\_\_\_  
Dharma Cloud Charitable Foundation Trust  
Vince Taylor  
Trustee  
Date

\_\_\_\_\_  
Campaign to Restore Jackson State Redwood Forest  
Vince Taylor  
Executive Director  
Date

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Forests Forever Foundation  
Paul Hughes  
Executive Director  
Date

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Mendocino Redwood Company  
Richard Higgenbottom  
CEO

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Date

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Willits Redwood Company  
Bruce Burton  
President

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Date

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CA Board of Forestry and Fire Protection  
Stan Dixon  
Chairman

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Date

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CA Dept. of Forestry and Fire Protection (CAL FIRE)  
Ruben Grijalva  
Director

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Date

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Paul Carroll  
Attorney at Law  
Approved as to form only

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Date

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James F. King  
Mannon, King, & Johnson  
Approved as to form only for Willits Redwood Co.

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Date

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Jim Russell  
Mendocino Redwood Co., In-House Counsel  
Approved as to form only

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Date

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Giny Chandler  
Chief Counsel, CAL FIRE  
Approved as to form only

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Date

Proposed Modifications to Camp Three THP

