

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITIZENS FOR BETTER FORESTRY
et al.,

Plaintiffs/Appellees

v.

UNITED STATES DEPARTMENT
OF AGRICULTURE *et al.*,

Defendants/Appellants

and

AMERICAN FOREST & PAPER
ASSOCIATION *et al.*,

Defendants/Intervenors/Appellants

No. 07-16573

No. 07-16618

D. Ct. No. CV-05-01144-PJH
(N.D. Cal.)

DEFENDERS OF WILDLIFE
et al.,

Plaintiffs/Appellees

PEOPLE OF THE STATE OF
CALIFORNIA *ex rel.* BILL LOCKYER

Intervenor/Plaintiff/Appellee

v.

CHUCK CONNER, Acting Secretary of
Agriculture, In His Official Capacity, *et al.*,

Defendants/Appellants

and

AMERICAN FOREST & PAPER
ASSOCIATION *et al.*,

Defendants/Intervenors/Appellants

No. 07-16575

No. 07-16619

D. Ct. No. CV-05-04512-PJH
(N.D. Cal.)

**APPELLANTS' JOINT
MOTION TO DISMISS
CONSOLIDATED APPEALS**

**APPELLANTS' JOINT MOTION
TO DISMISS CONSOLIDATED APPEALS**

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, Defendants-Appellants United States Department of Agriculture *et al.* ("USDA") and Intervenors/Defendants/Appellants American Forest & Paper Association and the American Forest Resource Council ("AFPA/AFRC") hereby move the Court to dismiss their consolidated appeals. The basis for this motion is as follows:

1. The four appeals in this case arise from orders by the District Court for the Northern District of California setting aside a final rule issued by Defendant/Appellant United States Department of Agriculture ("USDA"), 70 Fed. Reg. 1023 (Jan. 5, 2005) (the "2005 Planning Rule"). The district court entered the orders in two related cases: (1) an action by Plaintiff/Appellee Citizens for Better Forestry *et al.* ("CBF"), N.D. Cal. No. 05-cv-1144-PJH; and (2) an action by Plaintiff/Appellee Defenders of Wildlife *et al.* ("DOW"), in which the People of the State of California *ex rel.* Edmund G. Brown, Jr. ("California"), joined as Intervenor Plaintiff, N.D. Cal. No. 04-cv-4512-PJH. AFPA/AFRC intervened in defense of the 2005 Planning Rule in both cases.

2. The following four appeals were filed from the district court's final judgment: (1) an appeal by USDA *et al.* in case no. 05-cv-1144, docketed as No. 07-16573; (2) an appeal by the Secretary of Agriculture *et al.* in case no. 04-cv-

4512, docketed as 07-16575; (3) an appeal by AFPA/AFRC in case no. 05-cv-1144, docketed as No. 07-16618; and (4) an appeal by AFPA/AFRC in case no. 04-cv-5412, docketed as 07-16619.

3. This Court consolidated the four appeals by order dated October 11, 2007. Under the current briefing schedule, the opening brief for appellant USDA is due on January 7, 2008 and the opening brief for Intervenor AFPA/AFRC is due on January 22, 2008. No briefs have been filed and no taxable costs have been incurred.

4. Following internal review, USDA has decided not to pursue its appeals. *See* 28 C.F.R. § 0.20(b) (federal appeal decisions to be determined by Solicitor General). In light of the federal government's decision, AFPA/AFRC has likewise decided not to pursue their appeals.

5. Rule 42(b) states that the Court may dismiss an appeal on the appellants' motion "on terms agreed to by the parties or fixed by the Court." Fed. R. App. P. 42(b).

6. On January 7, 2008, undersigned counsel John L. Smeltzer spoke by telephone with Mark D. Fink, counsel for Appellees CBF *et al.*, and Raissa Lerner, counsel for Intervenor/Appellee California. Mr. Fink and Ms. Lerner advised that their clients have no objection to the dismissal of the appeals, with each party to pay its own costs on appeal. Undersigned counsel also telephoned Trent W. Orr,

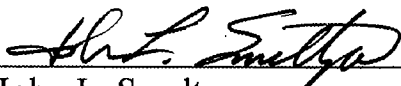
counsel for Appellees DOW *et al.*, but was unable to obtain his clients' position in time for the filing of this motion.

Based on the foregoing, Appellants USDA and Intervenor/Appellants AFPA/AFRC jointly move for dismissal of their consolidated appeals, with each party to pay its own costs on appeal.


Respectfully submitted,

for Defendants-Appellants United States Department of Agriculture et al.

for Intervenor-Defendants-Appellants American Forest and Paper Association and American Forest Resource Council



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DATE: January 7th, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellants' Joint Motion to Dismiss Consolidated Appeals has been served by United States mail, this 7/12 day of January 2008, upon the following counsel of record:

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