



United Four Wheel Drive Associations, Inc.

... An International Organization

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Cape Hatteras National Seashore
c/o Mike Murray, Superintendent
Designated Federal Officer
Via e-mail: Mike_Murray@nps.gov

April 29, 2008

Dear Superintendent Murray,

I am writing to you in your capacity as the Designated Federal Officer (DFO) for the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle (ORV) Management at Cape Hatteras National Seashore.

I hereby request that the Designated Federal Officer remove the following parties from the committee based on the reasons discussed below and on the grounds that they are not participating in good faith in the development of the rule under consideration and they are participating in a specific party matter in which the members have a direct financial interest. The parties to be removed are Defenders of Wildlife, The National Audubon Society, and Southern Environmental Law Center (SELC) (parties at issue).

Parties must be willing to negotiate in good faith, and no single interest should be able to dominate the negotiations.

In this case, SELC has admitted before the committee that it will not consider any OHV and species management options less restrictive than contemplated under the law suit brought by the parties¹, "unless good science is provided to them in support of less restrictive OHV and species management options". In light of the fact that a less restrictive option was presented to the parties at issue in the form of the USGS protocols² and formalized through the Interim Protected Species Management Strategy, such a claim is without basis. The USGS recommendations for species management was prepared by the same scientists upon which the parties at issue base their current demands, as articulated in their law suit. However, the parties at issue have rejected adoption or consideration of one of the three protocols for

¹ Defenders of Wildlife, et al. v. National Park Service et al., Case No. 2:07-CV-45-BO.

² Jonathan B. Cohen, R. Michael Erwin, John B. French, Jeffrey L. Marion, J. Michael Meyers, *Synthesis of Management, Monitoring, and Protection Protocols for Threatened and Endangered Species and Species of Special Concern at Cape Hatteras National Seashore, North Carolina*, Virginia Tech University and USGS Patuxent Wildlife Research Center.

species management. It is disingenuous for the parties at issue to claim they would negotiate only if sound science were presented to them, when in fact sound science has been provided to them, and relied up by them, they just do not like the particular scientifically based option chosen by the agency. Such a refusal to consider any OHV and species management options less restrictive than contemplated under the law suit brought by the parties at issue is a clear indication of their unwillingness to negotiate in good faith.

Second, they are dominating the negotiations as a result of having brought the law suit demanding that ORV restrictions be changed prior to the development of ORV regulations through the rulemaking process, including Negotiated Rulemaking. Though the proposed consent degree states it is not binding on the Reg. Neg. as they develop the final Special Regulation, in practical terms the consent degree is a road map by which the parties at issue will conduct themselves. It is unfathomable that the parties at issue would negotiate lesser restrictions upon ORV use than those they are assured will be supported through court ruling as demonstrated through the current legal proceedings.

Finally, the charter for the committee states at Section E that no committee member shall participate in any specific party matter including related litigation or agreement with the Department of Interior in which the member has a direct financial interest. Upon direct questioning before the committee, SELC specifically stated that it did NOT have a direct financial interest through the collection of attorney fees because it was not getting paid by its client for representation. However, paragraph 38 of the proposed consent degree stipulates that the parties at issue are prevailing parties and entitled to reasonable attorneys' fees pursuant to the Equal Access to Justice Act. Therefore, if the parties at issue receive attorneys' fees upon finalization of the consent decree, they must be removed from the committee or refrain from voting on any specific party matter related to the litigation including ORV regulations and species management. ORV regulations and species management are integral aspects of the committee undertaking leaving the parties at issue with nothing upon which to negotiate, having barred themselves from all germane matters to the litigation and the Reg. Neg. process as a result of such direct financial interest in the collection of attorneys' fees.

If there is a concern whether the committee will be balanced after the removal of the parties at issue, the DOI could seek replacements for the seats opened as a result of the removal of the regional/local and national environmental groups. Following is a list of regional/local and national environmental groups capable of providing balance to the committee should such balance be a concern.

Regional/Local Groups
National Groups

However, the parties at issue knowingly placed their seat on the committee in jeopardy by willingly and voluntarily undertaking litigation on matters before the

committee. Therefore, their absence from the committee is a direct result of their informed decisions and any perceived “unbalance” as a result of their removal is negated.

Threat of litigation usually weighs heavily upon consideration of actions taken by the agency. Such considerations pertaining to the litigating parties at issue should be given minimal consideration of this request as agency action relating to a negotiated rulemaking committee is not subject to judicial review.

I await your quick response.
Yours truly,

Carla Boucher

Carla Boucher, Attorney for
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Negotiated Rulemaking Committee Member