

\$1 billion timber slush fund or fair trade deal?

Lawsuit, U.S. senators want details on Bush administration deal

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Is it an illegal \$1 billion slush fund for Bush administration friends in the timber industry, extorted from Canada and designed to evade congressional oversight?

Or is it a fairly negotiated end to an expensive trade war that's "the best thing that has happened to private forest land conservation in the United States in 100 years?"

It depends on your point of view. Now, a federal lawsuit filed in Seattle is bringing more scrutiny to the controversial deal. Sen. Maria Cantwell, D-Wash., is spearheading a Senate effort to get more information about who got the money and what they're doing with it.

The deal had its roots in the administration's decision six years ago to slap tariffs on Canadian lumber. Echoing the U.S. timber industry, the administration contended that Canadian timber companies were selling their wood in the United States at unfairly low prices. Over the next five years, the tariffs collected and held by the United States grew to more than \$5 billion, including interest.

The Canadians fought back in U.S. and international courts, winning most of the decisions in a drawn-out process. The U.S. lost before NAFTA panels, and two rulings by the U.S. Court of International Trade. Rulings at the World Trade Organization were mixed.

But despite the largely favorable rulings, the Canadians were being starved into submission by the continuing U.S. tariffs, said Elliott Feldman, a lawyer representing Canadian timber interests.

And with Prime Minister Stephen Harper's government seeking a closer relationship with the Bush administration, the Canadians finally agreed to a U.S. proposal: We'll stop fighting you in court and send you back the \$5 billion, if you wire \$1 billion back across the border to the U.S. timber industry and timber-friendly groups.

The U.S. Trade Representative's Office arranged the deal to get the money paid directly to timber companies and nonprofits, including one hastily organized entity dominated by timber industry insiders.

"This is about an administration that wanted to see this money go to friendly faces and didn't want the inconvenience of dealing with Congress," said Peter Goldman, a Seattle attorney who has filed suit over the deal, representing environmental groups.

He maintains that the money collected from Canada belongs in public coffers. But administration officials say the \$1 billion is not public money, because it was held in special U.S. Customs accounts and never deposited into the U.S. Treasury.

"The United States (government) never claimed a right to the funds," said Gretchen Hamel, a spokeswoman for the U.S. Trade Representative's Office.

"It is a bypass of Congress," Goldman contends, adding that the Constitution provides that money under control of the United States has to be spent by Congress, not the president. The administration "knew if it stayed here they would have to send it to Congress, so they created this fiction of sending it all back to Canada," he said. His clients are the Sierra Club, Conservation Northwest and the Center for Biological Diversity.

Hamel defended the deal, saying that under the law at the time, it was perfectly legal to send the proceeds to the industry. However, courts had ruled otherwise.

Previously, a provision known as the Byrd Amendment called for winnings in a trade dispute to go to the affected

industry. But it had been rejected as illegal by two rulings of the U.S. Court of International Trade.

The first of that court's rulings came just two weeks before the Bush and Harper governments announced a tentative agreement in April 2006. The court reaffirmed its decision that July, well before the payments were authorized in October.

The deal sparked contentious debates in the Canadian Parliament, and timber interests there are bitter. It's "the worst deal Canada ever made," lawyer Feldman says, contending Canada should have kept the entire \$5 billion plus interest.

"Most of us in the industry believe it was done out of political expediency," said Ron McAllister, a Toronto-area timber trader.

Bush administration officials pointed out that they had the right to keep appealing the court rulings, which could have tied up the money for many more years.

Now, the environmentalists are asking how the beneficiaries were chosen. They filed a Freedom of Information Act request last year, then filed suit when the Bush administration refused to release the documents. Under court order, the administration has recently begun to release the documents.

So far, the records show that the deal was monitored by Harriet Myers, then President Bush's chief lawyer. They also show that the University of Washington College of Forest Resources was among those trying to get a slice of the money. That was not successful, but a retired dean of the college was appointed to the board of the nonprofit that got the most money, the U.S. Endowment for Forestry and Communities.

The administration will next send the environmentalists a listing of all the documents the administration chose to withhold, and citing the section of the law that allegedly allows the withholding.

The nonprofit groups that received money in the deal emphasize that they are doing work to conserve forests, help small timberland owners and aid timber-dependent communities in their efforts to diversify their economic base.

"The result is an infusion of funds and energy into forestland conservation that would not have come about in any other way," said Larry Wiseman, executive director of the American Forest Foundation, one of the recipients. His group has helped small timber owners for 26 years. He added that "this is the best thing that's happened to private forest land conservation in the United States in 100 years."

Wiseman said the deal "is going to benefit every citizen who depends on sustainable forests for clean water, clean air, carbon sequestration, wildlife habitat, green space, solitude and a place to hike, hunt and fish."

"It's not about the Bush administration rewarding its friends," Wiseman said. "It's about organizations that are truly committed and engaged in protecting forest conservation for the benefit of all Americans."

The director of the newly organized recipient, the U.S. Endowment for Forestry & Communities, says one of its earliest actions shows it's not purely controlled by the timber industry. The endowment recommended that the timber companies kick in more money for a marketing campaign along the lines of "Beef -- it's what's for dinner" and "Got milk?"

"To propose an idea that says we need a little more money (from the timber industry) is not popular," Director Carlton Owen said. "It's ugly out there."

A third group funded by the settlement, The Bi-National Council, has funded a \$1 million educational campaign in California, designed to put forth the industry's message that using wood is better environmentally than building with steel or concrete, because it produces much less in the way of greenhouse gases.

Jon Gartman, co-chairman of the council and an executive with Sierra Pacific Industries, said, "Science supports the use of wood as environmentally preferable to any other building product.

"People get told by environmentalists: Don't cut a tree. It hurts global warming. It's exactly the opposite. Working, or managed, forests are good for global warming."

When environmentalists got wind of the deal, and realized the proceeds were supposed to benefit the environmental side of forestry, they demanded some representation on the governing boards of the American Forest Foundation and the U.S.

Endowment for Forestry & Communities.

Rebuffed, they turned to Sens. Cantwell, Patty Murray, D-Wash., and Ron Wyden, D-Ore. The three senators wrote to U.S. Endowment officials, saying environmentalists and foresters who specialize in Earth-friendly timbering should be included on the board. Endowment officials declined.

Cantwell now says she wants answers about how the money is being used.

She asks: Is it really going to promote ecologically and economically sustainable forestry? For wildlife habitat? How can Congress be assured?

"We're going to try to get to the bottom of how the money is being spent," Cantwell said in an interview. "We're going to raise the concerns we've had from the beginning about representation (of environmental concerns) and, because of what the settlement said, to make sure they are spending it in environmentally conscious ways."

Players in the timber decision

WHO GOT THE MONEY:

The Bush administration agreed to send back to Canada \$5 billion collected in tariffs on Canadian timber -- but only if the Canadians promised to wire back across the border \$1 billion. Of that, \$900 million went to American timber interests and nonprofits with close ties to the timber industry. Environmentalists say the deal amounted to an international shell game. The Bush administration and timber interests defend it. Here's how it was split up:

Coalition for Fair Lumber Imports: \$500 million. The timber trade group that launched this round of the lumber war. The World Trade Organization and U.S. Court of International Trade both ruled that it is illegal under international trade law for the United States to pay proceeds of a trade dispute to American industry. U.S. negotiators skirted those rulings, convincing Canadian officials to accomplish the same thing.

Bi-National Council: \$50 million. Nonprofit timber trade group was set up to increase the market for timber on both sides of the border. The group's board of directors is half American, half Canadian. Not required to report its expenditures. At least \$1 million of its money went to a timber lobbying group in California, California Forests for the Next Century, which has ties to the California Forestry Association. Bi-National Council co-Chairman Jon Gartman and California Forestry Association President Dave Bischel said the group is organized to get out the industry's message that using wood is environmentally better than using steel or concrete because it produces much less planet-warming greenhouse gases. California Secretary of State's Office records show the forestry lobby has been spending money on the same message for several years.

U.S. Endowment for Forestry & Communities: \$200 million. Set up in a little over a month, just as the deadline for finalizing the deal approached. Board of directors includes five people in the timber industry, a musician who owns a tree farm, a retired college forestry dean, a sociology professor, and the head of an anti-poverty group. It is to promote educational and charitable causes in timber-reliant communities as well as "projects addressing forest management issues that affect timber-reliant communities, or the sustainability of forests as sources of building materials, wildlife habitat, bio-energy, recreation, and other values," according to its Web site.

American Forest Foundation: \$150 million. The infusion of money ramped up the budget of this longstanding nonprofit geared toward helping owners of small timber plots that make up a large percentage of the industry. Board of directors includes a two timber executives, two forest landowners, a lawyer who represents timber and agricultural interests, three environmentalists and an executive from a packaging corporation that uses a lot of paper. The money boosted its previous endowment of \$3 million many times over.

Habitat for Humanity: \$100 million. The nonprofit's construction of homes would help spur demand for American and Canadian lumber, negotiators reasoned.

WHO DECIDED:

U.S. Trade Representative: Said it relied for advice on the White House's Council on Environmental Quality.

White House Council On Environmental Quality: Would not discuss the matter despite repeated requests for comment.

SOURCES: Auburn University; U.S. Endowment for Forestry & Communities; Bi-National Council; Coalition for Fair Labor Imports; American Forest Foundation; U.S. Trade Representative; World Trade Organization; U.S. Court of International Trade; Baker & Hostetler LLP.

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