

FILED

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Superior Court
Linda Myhre Enlow
Thurston County Clerk

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

CENTER FOR BIOLOGICAL DIVERSITY,)

Petitioner,)

No. 18-2-02766-34

v.)

WASHINGTON DEPARTMENT OF FISH)
AND WILDLIFE and JOE STOHR, in his)
official capacity as Acting Director,)

Respondents.)

~~FINDINGS OF FACT AND~~
~~CONCLUSIONS OF LAW AND~~
ORDER GRANTING PETITIONER'S
MOTION FOR TEMPORARY RELIEF
UNDER RCW 34.05.550

THIS MATTER having come before the Court on Petitioner's Motion for Temporary Relief Under RCW 34.05.550 ("Motion"), filed June 7, 2018, Respondents Washington Department of Fish and Wildlife ("WDFW") and Joe Stohr ("Respondents") having been provided with formal notice of this hearing and the Court having reviewed all pleadings, including declarations and exhibits, filed related to the Motion, now, therefore, the Court hereby:

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FINDS THAT

the motion for temporary relief should be determined using the factors in RCW 34.05.550(3).

1. WDFW issues Permits use bait, traps, and hounds to kill black bears through the Black Bear Timber Damage Management Program ("Program"). Petitioner alleges that the Program is conducted unlawfully, and in contravention of the requirements of Initiative 655 (codified as RCW 77.15.194) and Initiative 713 (codified as RCW 77.15.245).

2. At this point, the Court finds it difficult to analyze the likelihood that Petitioner will succeed on the merits of this claim, since there is no agency record to consider, and the

1 Court is relying on the pleadings and associated materials submitted by the parties. The Court
2 concludes that as presented it is impossible to analyze the likelihood that Petitioner will prevail,
3 Petitioner ~~is~~ ^{has shown preliminarily that it is} likely to succeed on the merits, ^{but} The Court recognizes that this is hotly
4 contested, and the Court has many questions that could not be answered at this preliminary
5 stage. ~~FURTHER CONCLUDES that a bond of \$100,000 is appropriate in the case.~~

6 9. Respondents and the Washington State Animal Damage Control Program
7 ("Intervenor") have alleged that the issuance of a preliminary injunction will cause property
8 damage that is real and significant. However, the Court finds that this damage could be
9 addressed through monetary damages. ^{Petitioner asserts irreparable}
^{injury that cannot be addressed}
^{through monetary compensation.}

10 10. Respondents have established that the permit holders have an interest the
11 continuation of the Permits, and that the property owners also have an interest. This interest is
12 significant for current Permit holders, but less significant for future Permits that have not yet
13 been issued. ~~FURTHER ORDERED on Petitioner's motion that the stay be~~

14 **FURTHER CONCLUDES that:**

15 11. The issuance of stay or preliminary relief in an action against an agency under
16 the Administrative Procedure Act is governed by the standard in RCW 34.05.550(3). ~~Although~~
17 ~~the parties have disputed this standard, they agree that~~ The issue of any injunctive relief requires
18 a balancing of the interests as set forth in RCW 34.05.550(3).

19 12. Based on the above findings, the Court concludes that Petitioner has alleged
20 sufficient facts to meet the requirement that it is likely to prevail on the merits.

21 13. Based on the above findings, the Court concludes that Petitioner has shown that
22 it will suffer irreparable injury if the Court does not grant relief.

23 14. Based on the above findings, the Court concludes that although an injunction
24 may cause harm to Respondents and Intervenor, that harm can be compensated by monetary
25 compensation that can be addressed through a bond. On the other hand, it is difficult to quantify
26 or compensate for the harm that would be caused to Petitioner by what it claims would be a
27 continued violation of the law.

1 15. At this time, the Court is not making any finding as to the allegations of the
2 parties regarding the threat to the public health, safety, or welfare.

3 **AND HEREBY CONCLUDES** that Petitioner Center for Biological Diversity has met
4 the requirements for the Court to issue a preliminary injunction pursuant to RCW 34.05.550.

5 **FURTHER CONCLUDES** that a bond of \$100,000 is appropriate in this case, given
6 the serious nature of the property harm that has been alleged by Respondents and the Intervenor.

7 **ORDERS** that the hearing on the merits may be expedited.

8 **ORDERS** that pending final judgment in this matter, Respondents are hereby
9 temporarily enjoined as follows:

10 1. Respondents are restrained and enjoined from issuing Black Bear Timber
11 Depredation Permits ("Permits"). This injunction shall take effect on the next business day
12 after Petitioner has posted the required bond, and continues until this court issues
13 a ruling on the Petition for Judicial Review.

14 **IT IS FURTHER ORDERED** that Petitioner shall post security, in the amount of
15 \$100,000 for the payment of any party's costs and damages that may be incurred in the event
16 that the party is found to be wrongfully enjoined or restrained by this Order, and such security
17 shall be posted no later than June 20, 2018.

18 DATED this 15th day of June, 2018.

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20 Carol Murphy
21 THE HONORABLE CAROL MURPHY
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The Petitioners have met
their burden as to that
factor at this preliminary
stage.

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set as quickly as possible.

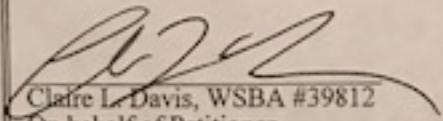
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1 Submitted by:

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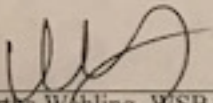
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Claire L. Davis, WSBA #39812
On behalf of Petitioner

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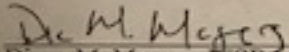
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Martha Wehling, WSBA #36295
On behalf of Respondents

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11 
Diane M. Meyers, WSBA #40729
On behalf of Intervenor

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