



Trout Unlimited Litigation Policy

I. Definitions.

For the purposes of this Policy, the following definitions apply:

TU:	Trout Unlimited, its staff, chapters and its councils collectively
TU Entity:	Trout Unlimited, its chapters and its councils individually
Litigation:	Defined in Section III
Participation in Litigation:	Defined in Section III
Form of Participation:	The document commencing the participation in Litigation by a TU Entity
Litigation Memorandum:	Defined in Section V
Litigation Checklist:	Attached as <u>Exhibit A</u>

II. Introduction and Overview.

Several of TU's core interests are at stake whenever any part of the organization engages in Litigation (defined in Section III, below) or contributes TU funds toward Litigation in the organization's name. TU's financial resources and reputation are at risk when TU becomes a party to Litigation, and any financial liability incurred by councils or chapters resulting from Litigation could potentially become the responsibility of the national organization.

Litigation proceedings are among the most public acts TU can take, and these actions can substantially affect how the public or specific individuals view the organization. This, in turn, can profoundly affect TU's relationship with state and federal agencies, elected officials, members, potential members, partners, donors and foundations. It is critical that any litigation filed in TU's name or to which a TU Entity contributes be consistent with TU's mission, values, and strategies, and is approved by the President and CEO. TU will consider the effects of proposed Litigation on all branches of the organization and their activities.

Litigation should not be considered the first option or default course of action. Instead, litigation should be pursued only when viewed as absolutely necessary to further the mission, strategy and values of the organization.

It is also important for TU to monitor the status of pending Litigation. TU's auditors and government grant programs often require a status list regarding all Litigation in which TU participates.

This policy ensures that staff and volunteer leaders are coordinating activities and applying consistent criteria in considering and proceeding with Litigation.

This Litigation Policy is designed to achieve the following objectives:

- Ensure that the staff leaders, volunteer leaders, and ultimately, the President and CEO, are aware of, and approve, potential Litigation before it is commenced, and to ensure that decisions to participate in Litigation are made using consistent criteria;
- Ensure that the national staff and volunteer leaders are immediately aware of the commencement of any Litigation against TU, its staff, officers, or members acting on behalf of TU, to properly defend against the Litigation and secure available insurance coverage;
- Allow the General Counsel and relevant Vice-Presidents, plus volunteer leaders, and ultimately the President and CEO to evaluate both individual cases and TU's complete universe of Litigation to ensure consistency with TU's overall programs and available resources;
- Ensure that the TU Entity proposing to be involved in the Litigation can handle the financial obligations of the Litigation and understands the often-uncertain nature of Litigation generally;
- Keep the national staff and volunteer leaders aware of the status of Litigation as it progresses;
- Maximize the opportunity to protect communications relating to the potential Litigation under the attorney-client privilege; and
- Allow the General Counsel to maintain information about all of TU's Litigation in a central location so that it is easily accessible to TU's senior management, auditors, and the Board of Trustees.

III. Definition of "Participating in Litigation."

For the purposes of this Policy, the term "Litigation" is defined as involving any of the proceedings described below. The term "Participating in Litigation" is defined as: any time a chapter, council or TU national staff (A) causes TU or a TU Entity to appear in any of the following legal proceedings using the TU name in any form; or (B) contributes funds of a chapter, council or TU in support of any Litigation.

- Lawsuits filed directly in court;
- Lawsuits served on a party prior to a court filing;
- Appeals of actions of state or federal administrative agencies to either state or federal court;
- Intervention in Litigation filed by others;
- Amicus briefs filed in Litigation involving other parties;
- Notice of intent to sue (see below); or
- Commencement of or intervention in certain administrative proceedings (see below).

Sometimes, TU volunteers and staff participate in a variety of activities involving state and federal agencies, such as commenting on rules or permits, or filing applications for permits. These situations do not qualify as Litigation and will not require approval of the national office.

In some proceedings, however, administrative agencies can have the same powers as courts, holding evidentiary hearings, issuing subpoenas, and levying fines.

If an administrative proceeding includes one or more of the following attributes, it should be reported as Litigation:

- a trial-type evidentiary hearing;
- written discovery or depositions;
- the issuance of subpoenas or the assessment of fines; or
- jurisdiction of the administrative agency to order parties to perform specific acts.

Notices of intent to sue (NOI) qualify as “Litigation” for purposes of this Policy and must be cleared under this Policy prior to being issued. Such notices lay the immediate groundwork for Litigation and reporting them will allow us to be prepared for future Litigation and will also help with approving the specific lawsuit should it become necessary to file.

Whether this Policy applies to any particular legal proceeding will sometimes involve a judgment call, but if there are any doubts about whether the contemplated legal proceedings require compliance with this Policy, contact the General Counsel.

IV. Individual Financial Contributions Toward Legal Proceedings.

It should be noted that the contribution of personal funds made by an individual TU member or TU employee, not in the name of a TU Entity, in support of or in opposition to any type of legal proceeding, is not covered by this policy. Nevertheless, TU staff and volunteer leaders are urged to consider, before making such a contribution, whether the contribution has the potential to do harm to TU’s reputation.

V. Procedures for Approval of Participation in Litigation.

- **Timing and Pre-Approval**
 - Staff Requests (for participation by Trout Unlimited the national entity)
 - Inform relevant chapter and council leaders;
 - Draft Litigation Memorandum;
 - Send draft Litigation Memorandum (described below) to the relevant VP and General Counsel; then
 - The finalized Litigation Memorandum will be sent by General Counsel and VP to the CEO with a recommendation.
 - The President and CEO will make the final determination of whether to proceed with litigation.

- Volunteer Requests (for participation by a Trout Unlimited chapter or council, including chapters and councils with staff)
 - Inform relevant staff leaders, including the state or regional director if applicable, the VP of Volunteer Operations and the regional conservation VP;
 - If a chapter, obtain buy-in by the state council, if applicable;
 - Draft Litigation Memorandum;
 - Send draft Litigation Memorandum to the VP of Volunteer Operations and the General Counsel; then
 - The finalized Litigation Memorandum will be sent by General Counsel and VP to the CEO with a recommendation.
 - The President and CEO will make a final determination of whether or not to proceed with litigation.

Unless exigent circumstances arise that require otherwise, the Litigation Memorandum must be submitted at least three weeks prior to the date required for the submission of the Form of Participation.

○ **Content of the Litigation Memorandum**

The Litigation Memorandum must describe the Litigation and address at least the following issues:

- The legal claims, defenses or other legal principles asserted (described briefly);
- The goal of the Litigation, described within the broader background of the conservation issues that gave rise to the Litigation (describe what will flow immediately from winning, and also, what the case will achieve in the long run, whether it be for a particular legal issue, a particular species, or a broader landscape);
- The potential downside of Litigation, including a loss in the Litigation and its anticipated impacts;
- TU's role in the Litigation (for example, is TU leading or actively engaged in formulating and executing legal strategy or merely signing on);
- If the Litigation involves a coalition or multiple aligned parties, information must be provided about how decisions concerning the direction and management of the Litigation will be made;
- Alternatives to Litigation, and the extent to which those alternatives have been explored or attempted;
- A realistic assessment of the chances of succeeding in the Litigation;
- The TU financial, personnel, and other resources the case will require;
- In the case of notices of intent to sue, an exit strategy, in the event Litigation is not filed;

- The attorneys who will represent TU or a group of parties including TU. This must include a copy of a written fee agreement;
- An anticipated timeline for the Litigation and how the Litigation is likely to unfold procedurally (e.g., will it likely be a record review case, require discovery and the presentation of evidence or a trial);
- A summary of communications with TU staff and the affected state council(s) and chapter(s) about the potential Litigation and whether any concerns have been raised; and
- A copy of the proposed Form of Participation.

A proposed format for the Litigation Memorandum is attached to this Policy as Exhibit B. All of the issues above should be addressed succinctly to provide a clear idea of the rationale for the Litigation and how it might likely unfold. Many cases require extensive consultation with TU staff and volunteer leaders, and it should be recognized that if inadequate communication occurs, it may make approval of the participation in the Litigation more difficult or impossible.

Where the request for Participation in Litigation involves only the contribution of funds in the name of a TU Entity and no TU Entity will be a party to the Litigation or part of a coalition that is a party to the Litigation, then a streamlined format for the Litigation Memorandum may be submitted, following the form attached to this Policy as Exhibit C. The completed Exhibit C must be submitted to the TU officials as set out above in Section V (A). The appropriate TU Vice President, General Counsel and the CEO will endeavor to give the request expedited review.

- **Authority for Approval of Participation in Litigation.**

The decision whether to approve participation in Litigation will be made by the CEO, with input from the appropriate TU Vice President, the General Counsel and other stakeholders, as appropriate. When the Litigation, (1) may involve TU in substantial controversy, with the potential for adverse publicity or the potential for significant adverse member or donor reaction, or (2) may involve significant risk of financial liability for TU, the CEO should discuss the matter with the TU Board of Trustees Executive Committee before granting or denying consent to participate in the Litigation. In all events, the CEO and the General Counsel should keep the Board informed periodically about the status of all Litigation. Additionally, the General Counsel shall keep the Risk/Legal Committee informed about the status of all Litigation.

- **Criteria for Approval of Participation in Litigation.**

The primary criteria for approving Litigation will be whether the case is well thought out and is consistent with TU's mission, values, and strategies. In addition, the grant of approval may involve the assessment of whether the Litigation is the most appropriate method of securing a result benefitting TU's mission. TU will not shrink from Litigation when the organization's interests and mission are at stake and will not shrink from notoriety that Litigation may bring. That said, there are often multiple paths to achieve TU's conservation mission, and all of those should be explored prior to engaging in Litigation. The grant of

approval may also involve an assessment of the balance between the goal of the Litigation and the extent to which TU's participation in Litigation may cause undue or unnecessary controversy or reputational harm for the organization.

Once a decision to approve or decline the proposed Litigation is reached, that decision and the rationale for the decision will be communicated by the President and CEO or his designee, in writing, to the volunteer representative or staff member who has proposed the Litigation and the responsible VP.

VI. Reporting Litigation Against TU.

If any TU staff member or TU member/volunteer, (1) receives information concerning threatened Litigation against or involving any TU Entity, TU employee or TU member for TU related activities; or (2) if the person is served with legal "papers" in any form relating to Litigation against a TU Entity, TU employee or TU member for TU related activities, the matter should be immediately reported to (1) the VP to whom the staff member ultimately reports or, for TU members/volunteers, to the VP for Volunteer Operations and (2) the General Counsel. The responsible VP or General Counsel will report the Litigation to the CEO .

VII. Notice to TU Insurers.

Many times, Litigation against or involving a TU Entity or a TU member for TU related activities will be covered by an insurance policy maintained by TU. These policies require that prompt notice of the claim be given to the insurer. Therefore, it is critically important that information concerning a new claim against a TU Entity, a TU member or a TU employee, be promptly reported to the General Counsel. The General Counsel provides notice to insurers, so it is imperative that the General Counsel be alerted to claims and potential claims in a timely manner.

VIII. Monitoring Litigation

It is important that TU monitor the status of ongoing Litigation and consult with volunteers or field staff about the case, as appropriate. After receiving approval, the TU Entity, the chapter, council, or TU staff who submitted the initial request shall provide the appropriate VP and General Counsel with the case number and jurisdiction in which the Litigation exists. With respect to Litigation commenced by TU or a TU Entity, the chapter, council or TU staff who submitted the initial request for Litigation approval must periodically update the national office (through the appropriate VP and the General Counsel) as to the status of the case. The frequency of updates will vary from case to case. A case that moves along quickly might require monthly or quarterly updates, while twice a year might suffice for slower-moving cases. In addition, the responsible VP and General Counsel should receive copies of all significant documents in the case (responsive pleadings, dispositive motions, and important court rulings). Not every document filed in the Litigation must be sent to the responsible VP and General Counsel. Rather, those filings or orders that substantially affect the status of the case should be passed on. The responsible VP and the General Counsel must also be notified when the case is completed, and a closing report must be submitted to the responsible VP and General Counsel. The closing report should include a brief statement of the outcome and the likelihood of future related proceedings.

As to Litigation against TU, the relevant VP and the General Counsel will monitor all developments, together with the council and/or chapter, if any, involved in the Litigation.

IX. Interplay with the TU Stream Access Working Group

TU has adopted a Stream Access Policy and has created a permanent Stream Access Working Group (“SAWG”) to address the circumstances in which TU members, chapters, councils and TU national staff can be involved with cases involving stream access. In some cases, the desired involvement will involve Litigation, as defined in this Litigation Policy. When this happens, the Litigation Memorandum should be submitted to the Stream Access Working Group, the CEO and the General Counsel. The Stream Access Working Group will consider the request and make a recommendation whether to grant approval to the Executive Committee of the Board of Trustees, as provided in the Stream Access Policy.

Revised and Adopted Nov 27, 2023 | 11:42 AM PST

DocuSigned by:
Chris Wood
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President & CEO

EXHIBIT A

CHECKLIST FOR PARTICIPATION IN LITIGATION IN COMPLIANCE WITH TU'S LITIGATION POLICY

The following steps must be taken by TU staff, chapters and councils before participating in Litigation:

1. Read the Litigation Policy in detail.
2. Determine whether the proposed legal proceeding is "Litigation," as defined in Section III of the Litigation Policy ("Policy").
3. Determine whether the proposed participation in the Litigation by TU staff, chapter or council is "Participation in Litigation," as defined in Section III of the Policy.
4. TU staff must notify their department Vice President, and TU volunteers must notify the VP for Volunteer Operations of the potential request for Participation in Litigation. Both staff and volunteers must also notify the General Counsel at the same time they notify the responsible VP.
5. TU staff should discuss the potential Participation in Litigation with the affected chapter and council (if any).
6. The TU entity proposing to participate in the Litigation should prepare a complete Litigation Memorandum for the President and CEO (attached as Exhibit B) with all of the information set forth in Section V(B) of the Litigation Policy. The TU Entity proposing to contribute funds in the name of the TU Entity but not proposing to participate in the Litigation in any other way should prepare the more streamlined Litigation Memorandum form attached to this Policy as Exhibit C. If assistance with the Litigation Memorandum is required, TU staff should contact their Vice President and TU chapters and councils should contact the Vice President for Volunteer Operations, along with the General Counsel.
7. The Litigation Memorandum must be submitted to the appropriate Vice President and TU's General Counsel at least three weeks before the proposed due date for the submission of the document that is the Form of Participation in Litigation, except in extenuating circumstances.
8. If approval to participate in the Litigation is given by the President and CEO (or in the case of controversies concerning stream access, approval is given by the Executive Committee of the Board of Trustees), proceed.
9. Periodic updates concerning the Litigation should be made to the responsible Vice President and the General Counsel.
10. Upon the conclusion of the Litigation, a closing report should be submitted to the appropriate Vice President and the General Counsel.

EXHIBIT B



LITIGATION MEMORANDUM – DIRECT PARTICIPATION BY TU

TO: [RECIPIENT NAME]
FROM: [YOUR NAME]
SUBJECT: REQUEST FOR LITIGATION APPROVAL
DATE: [CLICK TO SELECT DATE]
CC: [NAME]

Pursuant to the Trout Unlimited (TU) Litigation Policy, [INSERT chapter, council or employee name] requests approval to Participate in Litigation, as described more fully below.

A. **Description of the Litigation**

- a. **Background of the dispute**
- b. **The legal claims, defenses or other legal principles to be asserted**
- c. **Description of the Form of Participation and timing for commencement**
- d. **Goal of the Litigation and how this advances TU's interests**
- e. **Potential downsides of Litigation, including a loss**

f. **Alternatives to Litigation**

g. **Communications with affected chapters and councils**

B. **TU's Role in the Litigation**

a. **Information about other parties aligned with TU**

- b. **The attorneys representing TU or a group of parties**
 - c. **Description of the fee agreement**
 - d. **The TU financial, personnel and other resources required for the Litigation**
- c. **Timeline and Description of Likely Outcome of the Litigation**
- a. **Anticipated timeline of the Litigation and anticipated procedural steps**
 - b. **Likelihood of success on the issues involved**
 - c. **Reporting timelines and responsibility for reporting on the status of the Litigation**

Recommended for approval:

Vice President

General Counsel

Approved:

CEO

EXHIBIT C



LITIGATION MEMORANDUM – CONTRIBUTION OF TU FUNDS

TO: [RECIPIENT NAME]
FROM: [YOUR NAME]
SUBJECT: REQUEST FOR LITIGATION APPROVAL
DATE: [CLICK TO SELECT DATE]
CC: [NAME]

Pursuant to the Trout Unlimited (TU) Litigation Policy, [chapter, council or employee name] requests approval to Participate in Litigation limited to the contribution of TU funds, as described more fully below.

A. **Description of the Litigation**

- a. **Background of the dispute and amount to be contributed**
- b. **The legal claims, defenses or other legal principles to be asserted**
- c. **Goal of the Litigation and how contributing TU funds advances TU's interests**
- d. **Potential downsides of Litigation, if any**
- e. **Alternatives to Litigation**

B. Description of Likely Outcome of the Litigation

a. **Anticipated timeline of the Litigation**

b. **Likelihood of success on the issues involved**

Recommended for approval:

Vice President

General Counsel

Approved:

CEO