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## Trout Unlimited Litigation Policy

### I. Definitions.

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

<b>TU:</b>	Trout Unlimited, its staff, chapters and its councils collectively
<b>TU Entity:</b>	Trout Unlimited, its chapters and its councils individually
<b>Litigation:</b>	Defined in Section III
<b>Participation in Litigation:</b>	Defined in Section III
<b>Form of Participation:</b>	The document commencing the participation in Litigation by a TU Entity
<b>Litigation Memorandum:</b>	Defined in Section VB

### II. Introduction and Overview.

Several of TU's core interests are at stake whenever any part of the organization engages in Litigation or contributes TU funds toward Litigation in the organization's name. TU's financial resources and reputation are on the line 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, potential members, 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. TU needs to consider the effects of proposed Litigation on all branches of the organization and their activities. It is also important for TU to monitor the status of pending Litigation. TU's auditors and government grant programs often require a current 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 national office and volunteer leaders 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 office and volunteer leaders are immediately aware of the commencement of any Litigation against TU, its staff, officers, or members acting on behalf of TU, in order to properly defend against the Litigation and secure available insurance coverage.

- Allow senior management and volunteer leaders 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 is able to handle the financial obligations of the Litigation.
- Keep the national organization 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
- Allow the Legal Advisor to the Board to report to the Board and TU's auditors as to the status and likely consequences of Litigation against TU or a TU Entity.
- Maintain information about all of TU's Litigation in a central location so that it is easily accessible to TU's senior management, auditors, General Counsel, Legal Advisor to the Board 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 and/or program, (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;
- An amicus brief filed in Litigation involving other parties;
- A notice of intent to sue (see below);
- 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, TU volunteer leaders should contact the VP for Volunteer Operations and TU employees should contact the VP to whom the employee ultimately reports.

#### **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.**

##### **A. Timing and Pre-Approval**

Participation in Litigation by TU or a TU Entity must be approved by TU’s national office, in consultation with relevant program staff and volunteer leaders. Before proceeding with Litigation, TU staff must send the memorandum described below (“Litigation Memorandum”) to the VP responsible for their program. TU chapters or councils must send the Litigation Memorandum to the VP for Volunteer Operations. Prior to the submission of a Litigation Memorandum by TU staff to the appropriate VP, the staff member must inform the affected council and chapter volunteer leaders, if any, of the proposed action and discuss the potential Litigation. A copy of the Litigation Memorandum must also be sent to TU’s General Counsel, who will provide legal advice concerning the request to the submitting party, the reviewing VP and to the CEO. The responsible VP will review the Litigation Memorandum with the General Counsel and make a recommendation to the CEO.

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

## **B. 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;
- 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 brief 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 and the CEO will endeavor to give the request expedited review.

### **C. 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 and the Legal Advisor to the Board before granting or denying consent to participate in the Litigation. In all events, the CEO, the General Counsel and the Legal Advisor to the Board should keep the Board informed periodically about the status of all Litigation.

### **D. 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 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 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, (A) receives information concerning threatened Litigation against or involving any TU Entity, TU employee or TU member for TU related activities; or (B) 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 the VP to whom the staff member ultimately reports or, for TU members/volunteers, to the VP for Volunteer Operations. The applicable VP will report the Litigation to the CEO, General Counsel and Legal Advisor to the Board of Trustees.

## **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 through the prescribed TU channel.

## **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. With respect to Litigation commenced by TU or a TU Entity, the chapter, council or TU staff submitting the 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. 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 should 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 or not to grant approval to the Executive Committee of the Board of Trustees, as provided in the Stream Access Policy.

Revised and Adopted June \_\_, 2017

## **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 should alert their Vice President and TU volunteers should alert the VP for Volunteer Operations of the potential request for Participation in Litigation.
5. TU Staff should discuss the potential Participation in Litigation with the affected chapter and council.
6. The TU entity proposing to participate in the Litigation should prepare a complete Litigation Memorandum, 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.
7. The Litigation Memorandum should 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.
8. If approval to participate in the Litigation is given by the 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 appropriate 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.

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**EXHIBIT B**

**LITIGATION MEMORANDUM – DIRECT PARTICIPATION BY TU**

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

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Pursuant to the Trout Unlimited (TU) Litigation Policy, [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

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**EXHIBIT C**

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**LITIGATION MEMORANDUM – CONTRIBUTION OF TU FUNDS**

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

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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**