UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
(Corpus Christi Division)

In re	§	**Case No. 07-20027**
	§	
SCOTIA DEVELOPMENT, LLC, et al.,	§	**Chapter 11**
	§	
Debtors	§	**Jointly Administered**
	§	

SUPPORTING RESPONSE TO MOTIONS TO TRANSFER CASES

The United States on behalf of the US Fish and Wildlife Service ("FWS"), Department of the Interior, and the National Marine Fisheries Service ("NMFS"), Department of Commerce hereby supports the United States' Trustee's Motion to Transfer Cases To the Northern District of California.

1. FWS and NMFS are jointly responsible for overseeing compliance with the Endangered Species Act, of 1973, as amended ("ESA"), 16 U.S.C. §§ 1531 et seq.

2. Debtors Pacific Lumber Company ("Palco"), Scotia Pacific Company LLC ("Scopac"), and Salmon Creek Corp. ("Debtors") currently hold incidental take permits issued by FWS and NMFS under Section 10(a)(1)(B) of the ESA. The permits cover any incidental take of ESA-protected species that may result from Debtors' logging-related activities in California. The terms and conditions of the 50-year permits require the Debtors to implement the Habitat Conservation Plan (HCP) and the associated Implementation Agreement (IA) in California. The HCP and IA include an array of mitigation measures to offset impacts to fish and wildlife species covered under the permits.

3. Debtors have liability to FWS and NMFS for mitigation measures required under the permits, HCP, and IA and for penalties for violations of the permits. The liability for

mitigation measures is partially secured by a $2,412,715 Certificate of Deposit issued by Bank of America.[1] Depending on developments in these cases, the cost of Debtors' liability for mitigation measures may substantially exceed this amount.

4. NMFS has commenced an administrative proceeding for penalties against Debtor Palco for violations of the ESA. In re Pacific Lumber Co., NOAA Case No. SW060036A. A copy of the Notice of Violation is attached hereto as Attachment 1.

5. In addition to the United States' interest in these cases as a regulator, the United States thus is also a creditor.

6. FWS and NMFS agree with the U.S. Trustee that these cases should be transferred to the Northern District of California in the interest of justice and for the convenience of the parties. These cases have everything do with California and almost nothing to do with Texas.

7. These Debtors are heavily regulated entities. The regulators are located in California. The primary FWS and NMFS offices that deal with Debtors are located in Arcata, California in the Northern District of California. It would be inconvenient and costly for government witnesses to have to travel to Texas for hearings in this case.

8. The Debtors in their papers contend that regulatory interests are not relevant to venue because of the police and regulatory exception to the automatic stay, 11 U.S.C. § 362(b)(4). The United States appreciates the Debtors' respect for the police and regulatory exception and assumes that the Debtors will therefore not try to litigate police and regulatory matters in these cases. However, in other cases involving heavily regulated debtors, the United

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[1] The United States reserves all rights to contend that the Certificate of Deposit is not property of the estate.

States has found that Debtors' proposed Plans and other Motions inevitably raise police and regulatory concerns that require significant governmental involvement. See, e.g., In re Mirant Corp., No. 03-46590-DML (Bankr. N.D. Tex); In re Pacific Gas & Electric Co., No. 01-30923 DM (Bankr. N.D. Cal.).

9. Moreover, here Debtor Palco has already sent NMFS a letter wrongfully contending that its administrative action for penalties for violations of the ESA (cited above) may not continue under the police and regulatory exception. A copy of this letter is attached hereto as Attachment 2. Contrary to Debtor Palco's assertions, this action may continue under the police and regulatory exception. See In re Commerce Oil Co., 847 F.2d 291 (6th Cir. 1988); United States v. LTV Steel Company, Inc., 269 B.R. 576 (W.D. Pa. 2001). Debtor Palco is thus not being consistent in its position that police and regulatory matters may go forward in California. Palco's position indicates that as in other cases of heavily regulated debtors, and notwithstanding the clear intent of the police and regulatory exception, the governmental regulators will find themselves spending significant time in Bankruptcy Court.

10. It should be noted that Debtors' papers to date have a repeated theme that the reason the Debtors filed for bankruptcy is allegedly the cost of regulatory compliance. This position also indicates a likelihood of the need for significant Governmental participation such as with respect to any Plan proposed by Debtors or other Motions of Debtors that ask this Court to approve actions that the Government believes to be forbidden by applicable law.

11. The Debtors also contend in their papers that the interests of unliquidated or contingent claims of creditors or regulators, as opposed to holders of liquidated claims, should for some reason not be given the same weight in the Court's determination of the venue motion. This position is contrary to the Fifth Circuit's decision in In re Commonwealth Oil Refining Co.,

596 F.2d 1239 (5th Cir. 1979), where the Fifth Circuit held that the proximity of "creditors of every kind" and "witnesses necessary to the administration of the estate" should be considered. Id. at 1247. Indeed, in many cases it is the holders of unliquidated or contingent claims that may find themselves spending the most time litigating in Bankruptcy Court.

12. Likewise, the suggestion that large claims have "more importance" than small claims on venue matters was expressly rejected as "inappropriate" by the Fifth Circuit in Commonweatlh Oil. Id. at 1248.

13. Just about the only connection that Debtors can point to with the Southern District of Texas (other than a de minimis unrelated alleged real estate venture of a recently created Debtor) is that the members of the Board of just one of the five Debtors (Scopac) reside in the Southern District of Texas. Debtors contend that under Commonwealth Oil the residence of the Board members of this one Debtor is more important to venue than the location of the Debtors' assets in California.

14. Debtors misread Commonwealth Oil. Commonwealth Oil held that the location of a debtor's operational management can sometimes be more important to venue than the location of assets. Operational management is very different from corporate governance management. Commonwealth Oil looked to the location of corporate executives and managers who operated the company on a day-to-day basis, not at the level of a board of directors or equivalent:

> Our review of CORCO's corporate structure demonstrates that it manages most of its affairs from San Antonio. The feedstocks for its facilities are purchased by people working out of the San Antonio office. The transportation of the raw product to Puerto Rico is arranged from San Antonio. The operation of the refineries is directed from San Antonio. The sale of its refined products is managed from Virginia, and the sale of petrochemical is managed from San Antonio. The people who deal with

> the Department of Energy and other federal agencies are stationed in San Antonio. On these facts, we conclude that the bankruptcy court was not clearly erroneous in locating CORCO's principal place of business in San Antonio.

The residence of members of the Board of one of the five Debtors in Texas does not come close to establishing that the Debtors' principal place of business is in Texas as the Fifth Circuit found to be the case in Commonwealth Oil.

15. The recently decided case of In re SIL Clean Water, LLC, No. 07-B1127 (Bankr. N.D. Ill.) is instructive. There, the debtor was organized under Illinois law but all of its wastewater treatment business was in Virginia. The Bankruptcy Court transferred the case to Virginia as a matter of fairness and in the interest of justice. A copy of the ruling is attached hereto as Attachment 3. The Court held as follows:

> Is it fair to allow an Illinois company organized for the purpose of doing business in Virginia [to] pursue [its] Chapter 11 case in Illinois? Especially when the only thing tethering it to Illinois is its counsel, 2 creditors and the fact that it was organized under Illinois law? SIL Clean Water chose to do business in Virginia and as such should have expected to have its disputes involving enforcement of Virginia's environmental laws to be resolved in Virginia under Virginia law.

Order at 4.

16. The same is true here. Debtors chose to operate in California. As a matter of fairness and in the interest of justice and for the convenience of witnesses, these cases should be transferred to the Northern District of California.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on March 1, 2007, a true copy of the foregoing was served on all parties on the service list entitled to notice through the Court's electronic filing system.

/s/

Alan S. Tenenbaum