From: Joe Zisa
To: Shauna Ginger; Paul Henson; Doug Young; Jeffrey Dillon; Jeff Everett; Rollie White; Gary Miller; Nancy Gilbert
Subject: RE: FW: Activity in Case 3:12-cv-00596-MO Oregon Natural Desert Association et al v. Salazar et al Order on motion for summary judgment
Date: Monday, September 16, 2013 12:37:04 PM

The North Steens-Echanis Order is a significant endorsement of our ability to rely on mitigation actions developed post-project review provided they are in accord with an up-front programmatic mitigation framework and that there is a clear articulation of the standards underlying that framework. In this case, the Service was largely responsible for developing the framework and the standards, tying them to the ODFW documents and ensuring "gaps" in the ODFW documents were filled, and negotiating all of that into the ROD. A lot of our late nights and sweat went into doing this.

For better or worse in terms of our personal feelings about this specific project, we enabled this decision. I can't imagine the judge reaching the conclusions (about mitigation) in this Order absent the Service-developed standards.

This should give us optimism about where we're going with SG more broadly, especially about mitigation. If we have a strong framework with clear standards, we'll be in good shape. The challenge will be: 1) influencing those standards into the process while still honoring our critical "state-driven, ground-up" approach and 2) not mistaking standards for binding orthodoxy that hinders creativity and flexibility.

Jz.

From: Shauna Ginger [mailto:shauna_ginger@fws.gov]
Sent: Friday, September 13, 2013 3:53 PM
To: Paul Henson; Doug Young; Jeffrey Dillon; Jeff Everett; Joe Zisa; Rollie White; Gary Miller; Nancy Gilbert
Subject: RE: FW: Activity in Case 3:12-cv-00596-MO Oregon Natural Desert Association et al v. Salazar et al Order on motion for summary judgment

My take-home from reading this is that between NEPA being a procedural statute and deference to the agencies for scientific expertise, the various agency policies and plans (RMPs, ODFW Plan) that lead to an FEIS, RODs and relevant plans that show effects are being mitigated for (e.g. HMPs, Avian Plans) are key. For example,

"…it was not necessary for BLM to independently analyze effectiveness [of mitigation] because it adopted a HMP based on the ODFW Mitigation Framework, which the parties and the cooperating agencies agree is a cutting-edge document that represents the best science on sage-grouse conservation."

So…the future ODFW mitigation product for sage-grouse (whatever form it takes) needs to be solid.

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Shauna Ginger
Ecosystem Services Biologist
USFWS Oregon Field Office
Portland, OR | 503-231-6949

Learn more about USFWS & Ecosystem Services here

From: Henson, Paul [mailto:paul_henson@fws.gov]
Sent: Friday, September 13, 2013 11:49 AM
To: Doug Young; Jeffrey Dillon; Jeff Everett; Joe Zisa; Shauna Ginger; Rollie White; Gary Miller; Nancy Gilbert
Subject: Fwd: FW: Activity in Case 3:12-cv-00596-MO Oregon Natural Desert Association et al v. Salazar et al Order on motion for summary judgment

FYI. This has some implications for structuring mitigation...

---------- Forwarded message ----------
From: **Cain, Brendan** <bcain@blm.gov>
Date: Fri, Sep 13, 2013 at 9:51 AM
Subject: Fwd: FW: Activity in Case 3:12-cv-00596-MO Oregon Natural Desert Association et al v. Salazar et al Order on motion for summary judgment
To: Paul Henson <Paul_Henson@fws.gov>

Paul, attached is the Judge Mosman Opinion and Order regarding the North Steens Transmission Line lawsuit filed by ONDA and Audubon Society of Portland. There may be a more official announcement of this opinion forthcoming from the State Office. Thank you to you and your team for assisting in the crafting of a solid document that has now withstood judicial review.

---------- Forwarded message ----------
From: **Grenham, Edward** <brad.grenham@sol.doi.gov>
Date: Thu, Sep 12, 2013 at 3:02 PM
Subject: Fwd: FW: Activity in Case 3:12-cv-00596-MO Oregon Natural Desert Association et al v. Salazar et al Order on motion for summary judgment
To: Michael Haske <mhaske@blm.gov>, Jerome Perez <jperez@blm.gov>, Brendan Cain <bcain@blm.gov>, Rolando Mendez <rrmendez@blm.gov>, Rhonda Karges <rkarges@blm.gov>

Please find attached an opinion and order fully upholding BLM's Right of Way Decision concerning the Echanis Wind Energy Transmission Line Project in Burns District. Congratulations to Burns District for carrying out a NEPA analysis that fully survived federal district court review!

Thanks, Brad

Brad Grenham

Office of the Regional Solicitor

U.S. Department of the Interior

805 SW Broadway, Suite 600

Portland, OR 97205

(503) 231-6826

(503) 231-2166 (fax)

brad.grenham@sol.doi.gov

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---------- Forwarded message ----------
From: **Bair, Tyler (ENRD)** <Tyler.Bair@usdoj.gov>
Date: Thu, Sep 12, 2013 at 2:52 PM
Subject: FW: Activity in Case 3:12-cv-00596-MO Oregon Natural Desert Association et al v. Salazar et al Order on motion for summary judgment
To: "Larvie, Veronica" <veronica.larvie@sol.doi.gov>, Edward Grenham <Brad.Grenham@sol.doi.gov>, Rhonda Karges <rkarges@blm.gov>, "McLain, Tara" <tlmclain@blm.gov>, Matthew Obradovich <mobradov@blm.gov>

Hot off the presses. Attached is Judge Mosman's opinion granting summary judgment to BLM on all counts, and fully rejecting ONDA's claims regarding Steens Mountain. Hooray.

Thank you all for your exceptional work on this case. It was hard going, but the thorough and well-reasoned decision made by BLM carried the day. I will inform you of any further developments, including any appeal by ONDA. Congratulations to all of you. I'll forward the opinion to Charlie, whom I'm sure will be thrilled to see it too.

From: info@ord.uscourts.gov [mailto:info@ord.uscourts.gov]
Sent: Thursday, September 12, 2013 5:42 PM
To: nobody@ord.uscourts.gov
Subject: Activity in Case 3:12-cv-00596-MO Oregon Natural Desert Association et al v. Salazar et al Order on motion for summary judgment

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U.S. District Court

District of Oregon

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Case Name: Oregon Natural Desert Association et al v. Salazar et al
Case Number: 3:12-cv-00596-MO

Filer:
Document Number: 80

Docket Text:
OPINION AND ORDER: Because I find that BLMs decision was not arbitrary and capricious, I grant BLMs motion [51] for summary judgment. For the same reason, I also grant CEPs motion [46] for summary judgment and Harney Countys motion [44] for summary judgment. I deny ONDAs motion [37] for summary judgment. I also deny the motions [48, 53] to strike extra-record declarations filed by BLM and CEP. Signed on 9/11/13 by Judge Michael W. Mosman. (dls)

3:12-cv-00596-MO Notice has been electronically mailed to:

Dominic M. Carollo dcarollo@yockimlaw.com, kbooth@yockimlaw.com

Kristin F. Ruether kruether@advocateswest.org

Laurence J. Lucas llucas@lairdlucas.org, lairdlucas55@gmail.com, llucas@advocateswest.org

Peter Macnamara Lacy lacy@onda.org

Ronald S. Yockim ryockim@yockimlaw.com, kbooth@yockimlaw.com

Ty Bair tyler.bair@usdoj.gov, efile_nrs.enrd@usdoj.gov

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Brendan Cain
District Manager
Burns District - OR/WA BLM
541-573-4422

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Paul Henson, Ph.D.
State Supervisor
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(503)231-6179