

From: [Jacobsen, Dana E](#)
To: [DeBerry, Drue](#); [Burgess, Angela](#); [Runge, Jeff](#); [Boroja, Maria T](#)
Subject: RE: [EXTERNAL] FW: OCTA v. Walsh, 1:19-cv-1945 (D. Colo.)
Date: Friday, July 10, 2020 3:46:44 PM

Hi all,

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

Dana

From: DeBerry, Drue <drue_deberry@fws.gov>
Sent: Wednesday, July 8, 2020 1:00 PM
To: Burgess, Angela <Angela_Burgess@fws.gov>; Jacobsen, Dana E <Dana.Jacobsen@sol.doi.gov>;
Runge, Jeff <jeff_runge@fws.gov>; Boroja, Maria T <maria_boroja@fws.gov>
Subject: Re: [EXTERNAL] FW: OCTA v. Walsh, 1:19-cv-1945 (D. Colo.)

I concur with Angela. (b) (5) [REDACTED]
[REDACTED]

Drue DeBerry
Colorado and Nebraska Field Offices Supervisor
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drue_deberry@fws.gov

From: Burgess, Angela <Angela_Burgess@fws.gov>
Sent: Wednesday, July 8, 2020 10:59 AM
To: Jacobsen, Dana E <Dana.Jacobsen@sol.doi.gov>; DeBerry, Drue <drue_deberry@fws.gov>;
Runge, Jeff <jeff_runge@fws.gov>; Boroja, Maria T <maria_boroja@fws.gov>
Subject: Re: [EXTERNAL] FW: OCTA v. Walsh, 1:19-cv-1945 (D. Colo.)

Hi Dana,

(b) (5) [REDACTED]
[REDACTED]

However, Drue, Jeff, and Maria, may have other thoughts.

Thanks,
Angela

Angela Burgess

Fish and Wildlife Biologist
Ecological Services
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For FWS IR 5&7 ES employees: Headquarters SharePoint site with Briefing Paper Templates for the Service Director, Secretary of the Interior, and Federal Register: [HQ Briefing Paper Templates](#); Unified Interior Regions 5 and 7 Correspondence Fishnet site for other templates: [Regional Correspondence Fishnet Site](#)

From: Jacobsen, Dana E <Dana.Jacobsen@sol.doi.gov>
Sent: Wednesday, July 8, 2020 10:33 AM
To: DeBerry, Drue <drue_deberry@fws.gov>; Burgess, Angela <Angela_Burgess@fws.gov>; Runge, Jeff <jeff_runge@fws.gov>
Subject: FW: [EXTERNAL] FW: OCTA v. Walsh, 1:19-cv-1945 (D. Colo.)

Good morning,

Please see below.

(b) (5)

I'd like to let DOJ know that, if you all agree.

Dana

From: McNeil, Bridget (ENRD) <Bridget.McNeil@usdoj.gov>
Sent: Wednesday, July 8, 2020 9:58 AM
To: Jacobsen, Dana E <Dana.Jacobsen@sol.doi.gov>
Cc: Izfar, Sarah (ENRD) <Sarah.Izfar@usdoj.gov>; Herman, Brian (ENRD) <Brian.Herman@usdoj.gov>
Subject: [EXTERNAL] FW: OCTA v. Walsh, 1:19-cv-1945 (D. Colo.)

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(b) (5)

From: Bill Eubanks <bill@eubankslegal.com>
Sent: Monday, June 29, 2020 1:40 PM
To: McNeil, Bridget (ENRD) <BMcNeil@ENRD.USDOJ.GOV>
Cc: Izfar, Sarah (ENRD) <SIzfar@ENRD.USDOJ.GOV>; Murray Feldman <mfeldman@hollandhart.com>; Herman, Brian (ENRD) <BHerman@ENRD.USDOJ.GOV>
Subject: Re: OCTA v. Walsh, 1:19-cv-1945 (D. Colo.)

Bridget -- thank you for the update. How about **next Wednesday (July 8) at 2pm eastern / noon mountain**? Does someone have a conference line we can use?

While I agree that we should focus on any on-the-ground activities that NPPD plans to take in the future, I'd also like to discuss at least some high-level input my clients have about the new decisionmaking process (e.g., my clients want to confirm that there will be a public comment opportunity after any new analysis required by the court but before FWS makes a new decision about whether to issue an ITP). It would be helpful to have this high-level discussion to make sure that all of our clients are operating under the same facts, and to assist my clients in understanding how they can best participate in this process going forward.

In addition, to the extent that the Justice Department or Murray has information about the Corps of Engineers, it would be helpful to understand the Corps' position with respect to its NWP 12 verifications in light of Judge Martinez's decision. As you know, I emailed the Corps on May 22, but I have not received any response. I have also left several voicemails for the Corps' project lead, but due to COVID I do not know if those voicemails are getting through to the Corps. It would be very helpful to know whether the Corps is aware of the Court's ruling and that agency's position on how it affects the NWP 12 verifications.

Thanks,

Bill

On Mon, Jun 29, 2020 at 3:06 PM McNeil, Bridget (ENRD) <Bridget.McNeil@usdoj.gov> wrote:

Hi Bill,

We have now had the opportunity for initial discussions with our client. The U.S. is certainly not in position to speak to the appeal options or any new decisionmaking process, but if there is something that Plaintiffs would like to convey to us on these points, we are willing to participate in a call. As the email traffic between yourself and Murray Feldman reflects, a call might be more beneficially focused on any on-the-ground activities at present or in the near future.

If you would still like to set up such a call, we have good availability next week: Tuesday, between 11 AM and 2 PM Mountain, or Wednesday through Friday, after about 11 AM Mountain.

Sincerely,

Bridget

Bridget Kennedy McNeil, Senior Trial Attorney
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Environment and Natural Resources Division
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From: Bill Eubanks <bill@eubankslegal.com>

Sent: Friday, June 19, 2020 2:49 PM

To: McNeil, Bridget (ENRD) <BMcNeil@ENRD.USDOJ.GOV>; Izfar, Sarah (ENRD) <SIzfar@ENRD.USDOJ.GOV>; Murray Feldman <mfeldman@hollandhart.com>

Subject: OCTA v. Walsh, 1:19-cv-1945 (D. Colo.)

Bridget, Sarah, and Murray,

I hope my email finds you doing well. In light of the Court's ruling earlier this week, I thought it might be prudent for counsel to set up a conference call to discuss next steps in terms of either an appeal or the Service's new decisionmaking process (as well as the status of project construction), so that we are all working from the same information. I recognize that some of this information might be preliminary at this stage, but my clients nevertheless asked me to reach out since there is no harm in a conference call to understand where each party is at the moment. Please let me know if there are dates and times next week that work best for you. Have a good weekend.

Thanks,

Bill

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