

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

SIERRA CLUB and MONTANA
ENVIRONMENTAL INFORMATION
CENTER,

Plaintiffs,

vs.

TALEN MONTANA LLC, AVISTA
CORPORATION, PUGET SOUND
ENERGY, PORTLAND GENERAL
ELECTRIC COMPANY,
NORTHWESTERN CORPORATION,
and PACIFICORP,

Defendants.

CV 13-32-BLG-DLC-JCL

ORDER

FILED

FEB 15 2017

Clerk, U S District Court
District Of Montana
Missoula

United States Magistrate Judge Jeremiah C. Lynch entered findings and recommendations in this case on January 30, 2017, recommending that Plaintiffs' motion for attorney fees and costs be granted in the amount of \$1,565,150.93, and Defendants' cross motion for attorney fees and costs be denied. Defendants did not object to the findings and recommendations, and so have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See*

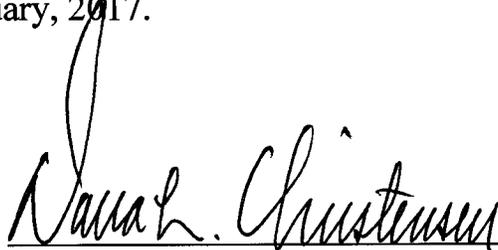
McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the findings and recommendations, the Court finds no clear error in Judge Lynch’s conclusion that Plaintiffs’ motion for attorneys’ fees and costs be granted in the amount of \$1,565,150.93, and Defendants’ cross motion be denied. This Court agrees that the Consent Decree requires the Defendants to do something they were otherwise not legally obligated to do, which enables the Plaintiffs to establish prevailing party status under § 304(d) of the Clean Air Act, 42 U.S.C. § 7604(d). Further, Plaintiffs achieved some success on the merits by requiring Defendants to retire two units on the Colstrip plant by mid-2022. The Court further agrees with Judge Lynch’s analysis that the \$3.1 million in attorneys’ fees requested by Plaintiffs should be reduced by 50% to account for Plaintiffs’ limited success. Finally, the Court agrees that Defendants’ cross motion for attorneys’ fees is without merit because none of Plaintiffs’ claims were frivolous or unfounded.

Accordingly, IT IS ORDERED that Judge Lynch's Findings and Recommendations (Doc. 355) are ADOPTED IN FULL. The Plaintiffs are awarded \$1,565,150.93 in attorneys' fees and costs.

IT IS FURTHER ORDERED that this case be DISMISSED. The Clerk of Court shall CLOSE this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 15th day of February, 2017.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large initial "D".

Dana L. Christensen, Chief Judge
United States District Court