

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. **08-cv-02167-AP**

WILDEARTH GUARDIANS,

Plaintiff,

v.

UNITED STATES FOREST SERVICE, et al.

Defendants.

JOINT CASE MANAGEMENT PLAN

1. APPEARANCES OF COUNSEL AND PRO SE PARTIES

For Plaintiff WildEarth Guardians:

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For Federal Defendants:

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Environment and Natural Resources Division
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2. **STATEMENT OF LEGAL BASIS FOR SUBJECT MATTER JURISDICTION**

Plaintiff alleges that this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), and 5 U.S.C. §§ 701-706 (judicial review provisions of the Administrative Procedure Act).

3. **DATES OF FILING OF RELEVANT PLEADINGS**

- A. **Date Complaint Was Filed:** October 7, 2008
- B. **Date Complaint Was Served on U.S. Attorney's Office:** October 9, 2008
- C. **Date Answer Was Filed:** December 12, 2009
- D. **Date First Amended Complaint Was Filed:** February 20, 2009
- E. **Date Answer to First Amended Complaint Was Filed:** March 6, 2009

4. STATEMENT REGARDING THE ADEQUACY OF THE RECORD

The Federal Defendants shall file the administrative record in this case with the Court no later than July 14, 2009.

5. STATEMENT REGARDING ADDITIONAL EVIDENCE

Parties shall consult regarding any disputes over the record. Plaintiff shall provide to Federal Defendants a list of documents proposed to be added or deleted from the record, if any, on or before July 30, 2009. Federal Defendants shall respond to any requests by Plaintiff for documents to be added or deleted from the record on or before August 14, 2009. A revised record or supplements to the administrative record, if any, shall be filed on or before August 14, 2009. Plaintiff shall file any motion to supplement the administrative record, strike portions of the administrative record, or for leave to take discovery, if necessary, by September 4, 2009.

6. STATEMENT REGARDING WHETHER THIS CASE RAISES UNUSUAL CLAIMS OR DEFENSES

Parties do not at this point anticipate unusual claims or defenses. Plaintiff WildEarth Guardians alleges that Federal Defendants actions in approving the West Elk Mine's E seam expansion project and methane venting violated the National Environmental Policy Act ("NEPA"). Federal Defendants contend that they complied with NEPA in concurring with the State of Colorado's decision to issue a permit for the challenged mine under certain circumstances, based on the administrative record in the case.

7. OTHER MATTERS – POTENTIAL FOR SETTLEMENT

The parties believe that there is a potential for settlement of this case. Plaintiff provided an outline of a settlement proposal to Federal Defendants on May 14, 2009. Federal Defendants shall hold a meeting with Plaintiff to discuss Plaintiff's proposal no later than June 25, 2009.

8. PROPOSED BRIEFING SCHEDULE

The following briefing schedule is premised on the assumption that no motions will be filed to supplement the administrative record, strike portions of the administrative record, or for leave to take discovery, if necessary, pursuant to Paragraph 5. In the event that a motion or motions are filed regarding the record, Plaintiff shall file a motion with the Court to amend the briefing schedule to provide for resolution of issues regarding the record prior to preparation of an opening brief.

A. Plaintiff's Opening Brief Due: September 21, 2009

B. Defendants' Brief Due: October 21, 2009

C. Plaintiff's Reply Brief Due: November 9, 2009.

9. STATEMENTS REGARDING ORAL ARGUMENT

Parties request oral argument in order to highlight the key elements of their respective briefs and to respond to facts or arguments raised in opposition briefs.

10. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE

The Parties do not at this time consent to exercise of jurisdiction by magistrate judge in this matter.

11. AMENDMENTS TO JOINT CASE MANAGEMENT PLAN

The parties agree that the Joint Case Management Plan may be altered or amended only upon a showing of good cause.

DATED this 29th day of May, 2009.

BY THE COURT:

S/John L. Kane
U.S. DISTRICT COURT JUDGE

APPROVED:

s/ Edward B. Zukoski
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