

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, and

MOUNTAIN COAL COMPANY,

Intervenor-Defendant.

FOURTH REVISED JOINT CASE MANAGEMENT PLAN

Pursuant to this Court's order of April 2, 2010, the Parties hereby submit this revised Joint Case Management Plan. See Order (Dkt. # 76) (Apr. 2, 2010).

1. APPEARANCES OF COUNSEL AND PRO SE PARTIES

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For Intervenor-Defendant Mountain Coal Company

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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, 2008
- D. Date First Amended Complaint Was Filed:** February 20, 2009
- E. Date Answers to First Amended Complaint Were Filed:** March 6, 2009 (Federal Defendants); August 12, 2009 (Intervenor-Defendant Mountain Coal Company)
- F. Date Plaintiff's Motion for Leave to File Second Amended Complaint Will Be Filed:** August 26, 2009
- G. Date Plaintiff's Second Amended Complaint Was Filed:** September 16, 2009.
- H. Date Answers to Second Amended Complaint Were Filed:** October 6, 2009.

4. STATEMENT REGARDING THE ADEQUACY OF THE RECORD

On April 1, 2010, this Court ordered the Administrative Records in this case:

remanded to the Respondents for completion. Upon remand of the Administrative Records, Respondents must include all materials directly and indirectly considered by the relevant decision makers. This should include, at a minimum, Exhibits 2A, 4-7, 9-10, 13, 15, and 17-24 [to Plaintiff's Motion to Complete the Record (Dkt. #71)] for the Mine Plane Modification Administrative Record and Exhibits 25-26, 30-35, and 37-41 for the Lease Amendment Administrative Record.

Memorandum Opinion and Order (Apr. 1, 2010) ("Order") at 31 (Dkt. #75).

By May 28, 2010, Federal Defendants shall comply with the Order and re-submit the administrative records with "all materials directly and indirectly considered by the relevant decisionmakers," including, at a minimum, the documents identified in the Order as excerpted above.

Further, this Court's April 1, 2010 order required that:

Respondents shall submit an updated privilege log identifying for each document withheld on the basis of the attorney-client privilege: the author or origin of the

document; any documents or materials attached to the document; all recipients of the document, including addresses and persons or entities receiving copies; the date of the origin of the document; and a description of the contents of the document in sufficient detail as to reveal why it is subject to the asserted privilege.

Id. at 31-32.

By May 28, 2010, Federal Defendants shall comply with this Order by submitting an “updated privilege log identifying for each document withheld ... the basis of the attorney-client privilege” as described in the Court’s order as excerpted above.

5. STATEMENT REGARDING ADDITIONAL EVIDENCE

If, applying the Court’s Order, Federal Defendants submit completed administrative records containing writings or other materials that the Court did not identify by exhibit number, then they shall submit copies of these materials to Plaintiff and Intervenor-Defendant by May 17, 2010. Plaintiff and Intervenor-Defendant shall submit objections, if any, to these materials by May 24, 2010. After considering these objections, if any, Federal Defendants shall comply with the Order by filing the completed administrative records by May 28, 2010.

Plaintiff and Intervenor-Defendant shall file any motion to supplement or complete the submitted administrative records, strike portions of them, or for leave to take discovery, if necessary, by June 18, 2010. Federal defendants’ opposition to this motion will be due by or before July 16, 2010.

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 contends that Federal Defendants’ actions in approving the West Elk Mine’s E seam expansion project and methane venting and in amending coal leases violated NEPA. Federal

Defendants and Intervenor-Defendants contend that the Federal Defendants 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 AND ONGOING ADMINISTRATIVE PROCEEDINGS

The Parties believe that there is little potential for settlement of this case.

8. BRIEFING SCHEDULE

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

A. Plaintiff's Opening Brief Due: July 12, 2010

B. Defendants' And Intervenor-Defendant's Brief Due: August 30, 2010

C. Plaintiff's Reply Brief Due: September 21, 2010

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 15th day of April, 2010.

BY THE COURT:

s/ John L. Kane

U.S. DISTRICT COURT JUDGE

APPROVED:

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