

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
SENIOR JUDGE WALKER D. MILLER

Civil Action No. 09-cv-01288-WDM-KLM

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

U.S. FISH AND WILDLIFE SERVICE AND
KEN SALAZAR, SECRETARY OF THE DEPARTMENT OF THE INTERIOR,

Defendants.

NOTICE CONCERNING WAIVER OF JUDICIAL DISQUALIFICATION

Canon 3D of the Code of Conduct for United States Judges provides (with exceptions not pertinent to this case) that when a judge is disqualified in a proceeding because “the judge’s impartiality might reasonably be questioned,” the judge may participate in the proceeding if all the parties and lawyers, after notice of the basis for the disqualification, agree in writing to waive the disqualification under a procedure independent of the judge’s participation.

Unless a waiver is obtained from all parties and all counsel, I intend to disqualify myself in this proceeding because of these circumstances:

Although the limited issue of this case does not address the ultimate merit of plaintiff’s claim that the Colorado River cutthroat trout should be listed as an endangered species, I am an avid fly fisherman. Prior to my service on the bench I was, but no longer am, a member or supporter of various environmental organizations, including Trout Unlimited, an organization which has a history of lobbying and litigating in support of trout and their habitat.

If you and your client(s) wish to waive my disqualification, letters to that effect from you and from your client(s) must be sent by U.S. Mail to Ed Butler, Legal Officer, Office of the Clerk, 901 19th Street, Denver, CO 80294, within 20 days of this notice. The letters should not be e-filed, nor copies sent to me and other counsel. If all parties and all counsel submit such waivers, all responses will be made part of the record, as required by Canon 3D, and I will continue participation in the proceeding. If a waiver is not received from all parties and all counsel, any responses will be kept under seal by the Clerk and not shown to me nor will I be informed of the identity of any party or lawyer who declined to waive the disqualification. If the disqualification is not waived, the case will be reassigned to another judge by random draw.

Plaintiff's counsel is further directed to immediately serve defendants and their counsel with a copy of this notice.

DATED at Denver, Colorado, on June 4, 2009.

BY THE COURT:

s/ Walker D. Miller
United States Senior District Judge