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Am. Rivers, Inc. v. NOAA Fisheries, No. CV-04-0061, 2004 U.S. Dist. LEXIS 18928
(D. Or. Sept. 14, 2004)

Am. Rivers, Inc. v. NOAA Fisheries, No. CV-04-0061, 2004 U.S. Dist. LEXIS 18928 (D. Or. Sept. 14, 2004) (denying motion to stay action challenging a biological opinion on grounds of prudential mootness).

NOAA Fisheries (“NOAA”) and the United States Bureau of Reclamation (“BOR”) filed a motion to stay proceedings of an action filed by American Rivers, Inc. and various other environmental groups (collectively “ARI”) in the United States District Court for the District of Oregon. ARI challenged a biological opinion issued by NOAA in 2001 (“2001 BioOp”) that assessed the impact of BOR’s water projects in the Snake River Basin on salmon evolutionary significant units (“ESUs”). ARI’s challenge to the 2001 BioOp related to a challenge of another biological opinion issued by NOAA in December of 2000 (“2000 BioOp”).

The court previously ruled the 2000 BioOp was arbitrary and capricious due to the 2000 BioOp’s reliance on mitigation actions not certain to occur. On May 7, 2003 the court remanded the 2000 BioOp to NOAA for reconsideration. Similarly, ARI alleged the 2001 BioOp was also arbitrary and capricious.

BOR conducted water storage operations for flood control, power generation, and irrigation on the Upper Snake River in Oregon and Idaho. These operations adversely affected salmon and steelhead ESUs that were listed as endangered or threatened under the Endangered Species Act. In May 2001 NOAA issued the 2001 BioOp, concluding that BOR’s operations were not a serious threat to the listed ESUs. ARI filed a motion for partial summary judgment asking the court to set aside the 2001 BioOp and order NOAA to incorporate BOR operations into the remand proceedings for the 2000 BioOp pending before the court in *National Wildlife Federation v. National Marine Fisheries Service*. NOAA moved to stay the proceedings to determine the validity of the 2001 BioOp, arguing theories of prudential mootness and the broad discretion of federal courts to manage their dockets in the interest of economy.

The court summarized the central factor of prudential mootness as whether “circumstances changed since the beginning of litigation that [forestalled] any occasion for meaningful relief.” The court found the 2001 BioOp had a legal effect independent of the 2000 BioOp. The court also found that NOAA failed to withdraw the 2001 BioOp and failed to indicate intent to change its opinion. Thus, the court declined to stay the action on grounds of prudential mootness.

Lastly, although “[f]ederal courts possess the inherent and broad, although not unlimited, discretion to manage their dockets and stay proceedings in the interests of economy and fairness,” the court found that pendency of the remanded 2000 BioOp would not render the discussion of ARI’s claims unproductive. NOAA had not offered evidence

that it would substantially alter its approach based on the remanded opinion. Further, the court found there was no basis to conclude continuing with the instant action would adversely affect the remanded proceedings or other concurrent proceedings involving the Upper Snake River. Accordingly, the court denied the motion to stay the proceedings.

Kevin Kennedy

Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 2004 U.S. Dist. LEXIS 15239 (D. Or. July 29, 2004) (holding a report on the effects of a proposed curtailment of water spills on salmon habitat constituted arbitrary and capricious action).

The National Marine Fisheries Service ("NMFS") issued a biological opinion ("BioOp") in December 2000 pursuant to the Endangered Species Act ("ESA"). The BioOp addressed the effects of the Federal Columbia River Power System ("FCRPS") on salmon Evolutionary Significant Units ("ESUs"). The report concluded that FCRPS operations threatened a number of ESUs and proposed a Reasonable and Prudent Alternative ("RPA") to mitigate the effects on the salmon. The National Wildlife Federation and various environmental groups (jointly "NWF") challenged the BioOp on grounds that the RPA's conclusions relied on federal, state, and private mitigation actions not reasonably certain to occur. The United States District Court for the District of Oregon granted NWF summary judgment and remanded the BioOp to the NMFS to compose a report based upon reliable data. However, the court allowed the BioOp to remain in effect during the remand period.

During this remand period, the United States Army Corps of Engineers ("Corps") and the Bonneville Power Administration ("BPA") issued proposals to modify the summer spill program. On July 1, 2004 the NMFS issued its findings on the FRCPS plan and approved the reduced the spill proposals. A week later, the Corps committed itself to the spill modifications set forth in the plan. On July 9, 2004 the NWF filed an amended complaint under the Administrative Procedure Act ("APA") alleging that the NMFS and the Corps illegally changed the spill program. The NWF sought a preliminary injunction to enjoin the Corps from implementing the spill proposals and to require the NMFS to withdraw their report approving the Corps' action.

The test regarding whether to grant a preliminary injunction involves a balancing of "the plaintiff's likelihood of success against the relative hardship to the parties." The court qualified this test, stating that under the ESA, "the balance of hardships and public interest tipped heavily in favor of the protected species." The court thus held the standard only required that the plaintiff show a future ESA violation was likely to occur.