

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

NO.: 2:07-CV-45-BO

DEFENDERS OF WILDLIFE,
Plaintiff,

v.

NATIONAL PARK SERVICE, ET AL.
Defendants

April 4, 2008
Raleigh, North Carolina

and

DARE COUNTY, ET AL.
Intervenor/Defendants

MOTION HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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P R O C E E D I N G S

1:58 P.M.

THE COURT: GOOD AFTERNOON. THIS IS THE CASE OF DEFENDERS OF WILDLIFE VERSUS THE NATIONAL PARK SERVICE AND OTHERS.

AND WHILE I KNOW THAT THERE WAS A MOTION FILED A DAY AGO, A DAY AND A HALF AGO, BY THE DEFENDANTS AND THE PARK SERVICE TO CONTINUE THE HEARING, I FELT LIKE IT WAS ESSENTIAL THAT WE GO FORWARD AT THIS POINT AND AT LEAST UNDERTAKE AS MUCH AS MAY BE APPROPRIATE NOW.

I THINK IT'S ALSO IMPORTANT AND CRITICAL TO A CASE AND MATTERS IN FRONT OF THE FEDERAL COURT THAT THEY BE OPEN AND PUBLIC AND TRANSPARENT. AND SO THIS IS ANOTHER REASON WHY WE'RE GOING TO PROCEED WITH THE MATTERS BEFORE THE COURT.

I KNOW FROM THE MOTION TO CONTINUE THAT THERE'S SOME REPRESENTATION THAT AT LEAST THE PLAINTIFF AND THE PARK SERVICE PARTIES HAVE BEEN ENGAGED IN SOME DISCUSSION ABOUT A RESOLUTION OF THE CASE. AND CERTAINLY PARTIES ARE THE MASTERS OF THEIR CASE, NOT THE COURT. AND I DON'T HAVE ANY INTEREST OR RIGHT TO INTERFERE WITH THAT AND SO I'LL RESPECT THAT AS IT GOES FORWARD.

THE COURT HAS CERTAIN DUTIES, TOO, AND PENDING BEFORE THE COURT TODAY HAVING BEEN SET FOR SOME TIME IS THE PRELIMINARY INJUNCTION BY THE PLAINTIFFS.

AND BY WAY OF PREFACE, I'LL SAY THAT I HAVE READ THE BRIEFS AND I HAVE FOLLOWED THE EVIDENCE THAT HAS BEEN

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1 PROPOUNDED BY THE PLAINTIFFS, AND THE PLAINTIFFS HAVE A
2 COMPELLING CASE FOR PRELIMINARY INJUNCTIVE RELIEF.

3 THE COURT IS WELL AWARE, AS ARE THE LAWYERS, OF THE
4 LEGAL STANDARD THAT APPLIES FOR PRELIMINARY INJUNCTIVE RELIEF;
5 THE BALANCE OF HARMS, THE PUBLIC INTEREST, AND THE LIKELIHOOD
6 OF SUCCESS ON THE MERITS AND THE SPECIALIZED STANDARDS THAT
7 APPLY TO CASES IN WHICH THE ENDANGERED SPECIES ACT COMES TO
8 PLAY. AND SO THERE ARE TWO PARALLEL TRACKS OF EXAMINATION
9 THAT THE COURT HAS ENGAGED IN.

10 AND WHILE -- I'LL BE GLAD TO HEAR FROM THE PARTIES,
11 BUT WHILE IT APPEARS THAT YOU ARE ENTITLED TO PRELIMINARY
12 INJUNCTION, THE EXACT SCOPE AND EFFECT OF SUCH RELIEF IS
13 REALLY WHAT'S IMPORTANT. AND IT'S MY PERCEPTION WITHOUT
14 HAVING ANY SPECIAL INSIGHT FROM THE PARTIES THAT THAT'S WHAT
15 YOU'RE WORKING ON, THAT YOU'RE WORKING ON THE PRACTICAL
16 APPLICATION, STRIVING FOR A BALANCE BETWEEN THE INTEREST OF
17 NATURE AND THE INTEREST OF MAN IN THIS ARENA AND TRYING TO
18 STRIKE A POINT AT WHICH THE LAW IS FAITHFULLY OBSERVED AND THE
19 RIGHTS AND TRADITIONS OF THE PEOPLE WHO ARE ULTIMATELY THE LAW
20 ARE ALSO GIVEN RESPECT IN THIS.

21 AND SO I'LL BE GLAD TO HEAR FROM YOU. I'M PREPARED
22 TO MAKE A RULING ON THE INJUNCTION TODAY OR SHORTLY HEREAFTER.
23 CERTAINLY ANY RULING I MAKE WILL BE A WRITTEN ONE, BUT I'LL BE
24 GLAD TO HEAR FROM THE PLAINTIFFS AND WHAT THEIR POSITION IS
25 TODAY.

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