Message

From: Cora, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C8850941BF1540C796559DCE75C2F5EE-CORA, LORI]
Sent: 2/25/2015 8:52:33 PM
To: Villa, Clifford [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=046d2a303c2c4b1d9508804f75b1bd00-Villa, Clifford]
Subject: RE: CBD v. EPA decision and summary

Not that I'm aware of.

Lori Houck Cora | Assistant Regional Counsel
U.S. Environmental Protection Agency | Region 10
P: (206) 553.1115 | F: (206) 553.1762 | cora.lori@epa.gov

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From: Villa, Clifford
Sent: Wednesday, February 25, 2015 8:58 AM
To: Cora, Lori
Subject: RE: CBD v. EPA decision and summary

Thanks. I'm doing a panel at PIELC this year on oil trains with Jared Margolis of CBD, and just wondered if he was involved with this ocean acidification case as well.

Cliff Villa
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
(206) 553-1185 (office) | (206) 419-2744 (cell)

From: Cora, Lori
Sent: Wednesday, February 25, 2015 8:21 AM
To: Villa, Clifford
Subject: RE: CBD v. EPA decision and summary

Emily Jeffers and Myoko Sakashita

Lori Houck Cora | Assistant Regional Counsel
U.S. Environmental Protection Agency | Region 10
P: (206) 553.1115 | F: (206) 553.1762 | cora.lori@epa.gov

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From: Villa, Clifford
Sent: Tuesday, February 24, 2015 4:54 PM
To: Cora, Lori
Subject: RE: CBD v. EPA decision and summary

Thanks for sharing, Lori. Do you know who from CBD argued the case and/or worked on the briefs?

Cliff Villa

Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
(206) 553-1185 (office) | (206) 419-2744 (cell)

From: Cora, Lori
Sent: Tuesday, February 24, 2015 12:26 PM
To: R10-ORC Mail Group
Subject: FW: CBD v. EPA decision and summary

Hello. On Friday, February 20th, U.S. District Court Judge James Robart issued his decision in Center for Biological Diversity v. EPA. EPA's decisions were upheld. Attached is the opinion and below is DOJ's summary of the decision. Feel free to come discuss any questions you have about the case.

Lori Houck Cora | Assistant Regional Counsel
U.S. Environmental Protection Agency | Region 10
P: (206) 553.1115 | F: (206) 553.1762 | cora.lori@epa.gov

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From: Morris, Cynthia (ENRD) [mailto:C.J.Morris@usdoj.gov]
Sent: Tuesday, February 24, 2015 10:26 AM
To: Sweeney, Stephen; Cora, Lori; Fullagar, Jill
Subject: summary of CBD decision

On February 19, Judge Robart (W.D. Wa.) issued a favorable decision in the case of *Center for Biological Diversity v. EPA*. The case involved an APA challenge to EPA's approval of Washington's and Oregon's CWA section 303(d) lists of impaired waters based on the failure of the states to list coastal and estuarine waters as impaired for ocean acidification. In a 70-page Order, the court concluded that CBD had standing to challenge EPA's decisions (an issue not raised by the United States) and denied the CBD motion for summary judgment and granted the United States' motion for summary judgment, and granted in part and denied in part our motions to strike extra record materials submitted to the court and relied upon by plaintiff and in amici briefs.

With respect to the motions to strike, the court recognized the general rule that judicial review is to be based on the administrative record certified by the agency and presented to the court, but also recognized exceptions to the rule. The court rejected the argument of amici that certain extra-record information should be considered to explain complex subject matter, finding that the additional information submitted would be cumulative of the extensive administrative record already before the court, and thus unnecessary. The court also rejected post-decisional information offered by amici, recognizing that the information was not presented to clarify or explain the agency's decision as asserted but, rather, was referenced to advance a substantive rationale for overturning the agency's decisions. Finally, the court denied the motion to strike certain extra-record data that were offered to show that the agency failed to consider all relevant factors. However, the court accepted the data for the limited purpose of showing that the data were available to the states and to EPA at the time they made their respective decisions and that the data may provide evidence of violation of the states' water quality standards; but the court declined to consider the extra-record data to determine the correctness or wisdom of the agency's decision, and did not consider the substantive arguments advanced by CBD and amici based on that extra-record data. Ultimately, the court concluded that the state did consider the data, and that the state provided a reasonable explanation for its decision to not rely upon the data, and that EPA reviewed the state's explanation and deemed it reasonable – and that nothing more is required of EPA.

With respect to the merits, CBD had argued that evidence before the agency demonstrated violations of Washington's numeric pH standard, and both states' narrative standard for protection of aquatic life uses. With respect to the numeric pH standard, the court concluded that Washington provided a reasonable explanation for its decision not to list certain waters as impaired based on data that CBD argued provided evidence of a violation of the numeric standard for pH, and further concluded that EPA was justified in accepting the state's explanation and in relying upon the analysis of its own experts. With respect to the narrative standards, the court found the EPA offered a reasonable

explanation for its conclusion that the evidence before it did not justify a finding of impairment, and the court found that EPA offered a rational connection between the facts found and the choices made. In all of its findings, the court relied heavily upon the agency's decision documents, and granted a high degree of deference to EPA's technical and scientific expertise, relying on existing 9th Circuit authority.