

0031692

From: [Waanders, Jason](#)
To: [Murray, Mike](#); [Stevens, Mike](#)
Subject: RE: Your ORV EIS
Date: 11/14/2011 10:29 AM

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-----Original Message-----
From: Mike_Murray@nps.gov [mailto:Mike_Murray@nps.gov]
Sent: Monday, November 14, 2011 9:46 AM
To: Waanders, Jason; Stevens, Mike
Subject: Fw: Your ORV EIS

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----- Forwarded by Mike Murray/CAHA/NPS on 11/14/2011 09:42 AM -----

"Judith Lee"
<jleeeeps@mchsi.co
m>
11/13/2011 06:28
PM
To
<Mike_Murray@nps.gov>
cc
Subject
Your ORV EIS

Mike,
I was the one who was interested in your project from the beginning of the workshop and the more I learned, the more intrigued I became. It is very difficult, heart-rending, really, to watch your employees get harassed, and violence against others and property based on a decision you are preparing to make. I am sure that no one in the community is prepared to stand up and support you, under the circumstances. They also have to live in the community. Your equanimity and quiet strength is admirable.

I just wanted to pass on a few more thoughts I have had since this afternoon. The Supreme Court recently made it much more difficult for a plaintiff to be awarded an injunction against a government NEPA decision with the Monsanto case. Actions resulting from NEPA decisions must meet a 4-part test now - previously it was much easier.

Also, the ORV actions are in violation of the ESA - individual citizens can be fined, if I remember correctly, \$25,000 and lose their ORV (or their truck, or gun, or whatever was used in the violation) for take of a listed species - and I would assume that running over a nesting sea turtle would certainly be a "take". I cannot imagine a District judge placing an injunction on an action stopping illegal activity in violation of a substantive law. And even if the judge ordered an injunction, it would simply continue what has been going on for 30 years. But it won't happen. The same with a remand - the ORV activity would simply continue. It is also illegal to vandalize government property. Not having seen your EIS, I cannot imagine that there would be a sufficient concern with the requisite "hard look" that, under the circumstances, a judge would remand for further analysis. With all the collaborative work you have done, I am certain that you are very clear with a sufficient array of alternatives and you have done a bang-up job with impact analyses. With an EIS, the burden of proof is on the plaintiff regarding procedural compliance.

It would be wonderful, in a way, if you got sued, because any environmental litigants would really be supporting your case. I cannot imagine what they would sue on, unless it is that the Park didn't go far enough in environmental protection. Really, again, I am not familiar with your EIS or the details of the situation. It seems it might be more likely they would file a friend of the court petition in your favor. I would like to understand further the court decisions that you have already been dealt, and how violations of the court order can be ongoing. It seems the biggest problem is the congressional support of the ORV folks. The NPS WO should be like a bad rash on whomever in the Congressional delegation is actively supporting illegal activity and violence. Cultural change is extremely difficult, and I think perhaps more so in the South. Some times it is just necessary for change to be forced, such as with your EIS (or the Civil Rights Act, or blacks in the military, or regulation of air or water pollutants, for example) and time makes the changes less threatening and things ultimately get accepted into a new culture. But the transition is not easy for those in the midst. It usually gets uglier before it gets better, sadly, as folks feel they have to ramp it up as the balance of power shifts or to prevent it from shifting. It is probably not possible for you, or anyone, to create a more positive relationship with the current instigators. It is in their best interest to continue their behavior, and they are being supported. It is possible that a court decision, if enforceable and actually enforced, on the EIS, and for ESA and other violations, could also shift the balance of power in the community, and some peer pressure could be brought to bear by the community. You would certainly understand those dynamics better than I. As I said, Catron County wasn't ready to come to the table until stress-related health problems started surfacing in the community and a local doctor chose to speak out about the insanity (and residents got frustrated with their taxes going to a lawyer in Montana rather than fixing roads, etc).

If you would ever like to call and chat further about your situation, just to bounce ideas, risks, whatever, I would be pleased and honored. I am always happy to help in any small way I can in such unfortunate circumstances, if it is possible. And, I have to say, no charge! I always learn something myself, or look at something in a new way, and if I can support a good person trying to do the right thing, so much the better. And if not, I certainly wish you well.

Judith

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