

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS, et al.,**

Plaintiffs,

V.

FELD ENTERTAINMENT, INC.,

Defendant.

Case No.: 03-2006 (EGS/JMF)

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR ENTITLEMENT TO ATTORNEYS' FEES

EXHIBIT 3

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Cases – Alphabetical Order

Our firm works on various types of cases for a variety of clients generally centered around public interest, environmental, and animal welfare issues. Here is a representative list of our past and present cases.

CASES

Alliance for the Wild Rockies v. Department of the Interior, 53 F. Supp. 2d 32 (D.D.C. 1999) (challenge to withholding under Exemption 6 of the names and addresses of public commenters).

American Rivers v. Federal Energy Regulatory Commission, 372 F.3d 413 (D.C. Cir. 2004) (challenge via writ of mandamus to compel FERC to respond to citizen petition seeking ESA consultation concerning hydropower complex's effect on endangered salmon).

American Wild Horse Preservation Campaign v. Ken Salazar, Civ. No. 11-1352 (D.D.C.) (challenge to BLM's decision to round-up and castrate a large number of wild, free-roaming horses without analyzing the significant impacts of castration).

Anderson v. Evans, 350 F.3d 815 (9th Cir. 2003) (challenge to NMFS permit that authorized whaling without completing an environmental impact statement under NEPA).

Animal Legal Defense Fund v. Glickman, 154 F.3d 426 (D.C. Cir. 1998) (en banc) (challenge to USDA regulations issued under the Animal Welfare Act by an individual who goes to zoo to visit particular animals).

Animal Legal Defense Fund v. Shalala, 104 F.3d 424 (D.C. Cir. 1997) (challenge to establish that National Academy of Sciences committee on animal care standards is subject to a request for information under FACA).

Animal Protection Institute v. Babbitt, Civ. No. R-85-365 (D. Nev.) (challenge to wild horses and burros management).

Animal Protection Institute v. Stanton, Civ. No. 97-2563 (D.D.C.) (challenge to the Park Service's decision to kill white-tailed deer in Cuyahoga National Park).

Animal Welfare Institute v. Beech Ridge Energy, 675 F. Supp. 2d 540 (D. Md. 2009) (challenge to wind developer's construction and operation without first obtaining an incidental take permit under the ESA for likely takes of Indiana bats).

Animal Welfare Institute v. BP America, Inc., Civ. No. 10-1866 (E.D. La.) (challenge to BP's and Coast Guard's in-situ burns in the Gulf of Mexico after the Deepwater Horizon oil spill that indiscriminately killed sea turtles)

ASPCA v. Department of Agriculture, Civ. No. 01-2628 (D.D.C.) (challenge to USDA's failure to provide records concerning investigations of circus).

Biodiversity Legal Foundation v. Babbitt, 943 F. Supp. 23 (D.D.C. 1996) (challenge to FWS's decision not to list Alexander Archipelago wolf as threatened or endangered).

Biodiversity Legal Foundation v. Babbitt, Civ. No. 96-641 (D.D.C.) (challenge to FWS's failure to provide notice and comment before deleting the ESA Category 2 species list).

Biodiversity Legal Foundation v. Babbitt, Civ. No. 96-1156, 1997 U.S. Dist. LEXIS 23007 (D.D.C. March 27, 1997) (challenge to FWS's failure to make a 90-day finding for the California mountain yellow legged frog).

Biodiversity Legal Foundation v. Department of Interior, Civ. No. 98-1812 (D.D.C.) (challenge to FWS's failure to produce document concerning the mountain plover).

Biodiversity Legal Foundation v. Norton, 285 F. Supp. 2d 1 (D.D.C. 2003) (challenge to agency's failure to revise critical habitat for Cape Sable seaside sparrow).

Bluewater Network v. Kempthorne, 721 F. Supp. 2d 7 (D.D.C. 2010) (challenge to Park Service's reintroduction of jet skis into two national parks after previous settlement agreement).

California Department of Health Services v. Babbitt, 46 F. Supp. 2d 13 (D.D.C. 1999) (defense of Interior's refusal to proceed with Ward Valley dump land transfer), *aff'd* on standing grounds, *U.S. Ecology Center v. Babbitt*, 231 F.3d 20 (D.C. Cir. 2000).

Campaign for Responsible Transplantation v. Food & Drug Administration, 180 F. Supp. 2d 29 (D.D.C. 2001) (challenge to the applicability of FOIA Exemptions 4 and 5 to permits for animal to human transplants). Three related decisions were also published: 219 F. Supp. 2d 106 (ordering FDA to submit new sample Vaughn indices); 511 F.3d 187 (D.C. Cir. 2007) (holding that plaintiffs were entitled to attorneys' fees); 593 F. Supp. 2d 236 (D.D.C. 2009) (awarding attorneys' fees).

Cary v. Salazar, 626 F. Supp. 2d 102 (D.D.C. 2009) (challenge to FWS rule that allowed the killing of captive-bred endangered species of African antelopes).

PENDING

Center for Auto Safety v. U.S. Department of Treasury, Civ. No. 11-1048 (D.D.C.) (challenge to a denial of a fee waiver for access to records pertaining to government involvement in the Chrysler and General Motors bankruptcies).

Center for Biological Diversity v. Evans, Civ. No. 04-4496, 2005 WL 1514102 (N.D. Cal. 2005) (challenge to agency's failure to designate critical habitat for the Right whale in the North Pacific Ocean).

Center for Biological Diversity v. Marine Corps, Civ. No. 00-2387, 2005 WL 3262901 (D.D.C. Sept. 19, 2005) (challenge to Exemption 5 withholding of records concerning impacts of Camp Pendleton on endangered species).

Center for Biological Diversity v. Salazar, Civ. No. 08-4595 (N.D. Cal.) (challenge to FWS's rule designating no critical habitat for the California tiger salamander's Sonoma County population).

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Center for Biological Diversity v. Salazar, Civ. No. 09-1684 (D.D.C.) (challenge to the FWS's refusal to designate appropriate critical habitat for the Cape Sable Seaside Sparrow in southern Florida)

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Center for Native Ecosystems v. Salazar, Civ. No. 09-1463 (D. Colo.) (challenge to FWS's delisting of a portion of the Prebles Meadow Jumping Mouse population and the agency's Distinct Population Segment policy)

Cheat Lake Environment and Recreation Association v. Allegheny Wood Products, Inc., Civ. No. 05-61 (N.D.W.V.) (challenge to logging operation for causing take of the three-toothed land snail and Indiana bat).

Citizens for Responsible Wildlife Management v. State, 71 P.3d 644 (Wash. 2003) (defense of citizen initiative restricting wildlife traps and poisons).

Coast Alliance v. Babbitt, 6 F. Supp. 2d 29 (D.D.C. 1998) (challenge to FWS's definition of boundaries in violation of Coastal Barrier Resource Act).

Consumers Union v. National Highway & Transportation Safety Administration, Civ. No. 98-1811 (D.D.C.) (challenge to Exemption 4 withholding of records concerning rollovers of Sport Utility Vehicles).

Dalton v. Forest Service, Civ. No. 97-774 (D.D.C. 1997) (challenge regarding Forest Service employees' appeal rights).

DC "Jasper" Carlton v. Department of the Interior, Civ. No. 97-2105 (D.D.C.) (challenge to FWS's failure to produce documents concerning the use of Conservation Agreements instead of ESA-listing).

Defenders of Wildlife v. Babbitt, 130 F. Supp. 2d 121 (D.D.C. 2001) (challenge to various federal agencies' failure to consider cumulative impacts of federal activities on Sonoran Pronghorn under section 7).

Defenders of Wildlife v. Babbitt, Civ. No. 99-206 (D.D.C.) (challenge to FWS's refusal to list the Atlantic salmon as threatened or endangered).

Defenders of Wildlife v. Ballard, 73 F. Supp. 2d 1094 (D. Ariz. 1999) (challenge to Corps' failure to analyze cumulative effects of development on the Pygmy owl).

Defenders of Wildlife v. Gutierrez, 532 F.3d 913 (D.C. Cir. 2008) (challenge to Coast Guard's failure to consult with FWS regarding its commercial shipping regulations in right whale habitat).

Defenders of Wildlife v. Meissner, Civ. No. 99-2262 (D.D.C.) (challenge to Border Patrol activities in habitat of Jaguarundis and ocelots).

Defenders of Wildlife v. Norton, 239 F. Supp. 2d 9 (D.D.C. 2002) (challenge to FWS's failure to list the Canada lynx as endangered and to designate critical habitat).

PENDING

Defenders of Wildlife v. Salazar, Civ. No. 08-237 (M.D. Fla.) (challenge seeking to enforce prior settlement agreement concerning use of ORVs on Big Cypress National Preserve).

Defenders of Wildlife v. Widnall, Civ. No. 96-2117 (D.D.C.) (challenge to Air Force bombing in Sonoran pronghorn habitat).

Environmental Defense Fund v. Babbitt, Civ. No. 93-1801 (D.C. Cir.) (challenge to DOI's unreasonable delay regarding natural resource damages).

The Florida Biodiversity Project v. Kennedy, Civ. No. 95-24(D) (M.D. Fla.) (challenge to Park Service's failure to address adverse effects of ORVs on Big Cypress National Preserve).

Friends of Blackwater v. Salazar, 772 F. Supp. 2d 232 (D.D.C. 2011) (challenge to the removal of the West Virginia Northern Flying Squirrel from endangered species protections).

Friends of Blackwater v U.S. Department of the Interior, 391 F. Supp. 2d 115 (D.D.C. 2005) (challenge to FWS's adequacy of search for records concerning bird and bat mortality from wind energy facilities).

Fund for Animals v. Babbitt, 903 F. Supp. 96 (D.D.C. 1995) (challenge to the adequacy of FWS's recovery plan for the grizzly bear).

Fund for Animals v. Babbitt, Civ. No. 97-1126 (D.D.C.) (challenge to Park Service's failure to consider impacts of Yellowstone snowmobiling and trail grooming on bison).

Fund for Animals v. Clark, 27 F. Supp. 2d 8 (D.D.C. 1998) (challenge to joint federal agency plan to shoot bison in Wyoming).

Fund for Animals. v. Espy, 814 F. Supp. 142 (D.D.C. 1993) (challenge to killing of Yellowstone bison).

Fund For Animals v. Hall, 448 F. Supp. 2d 127 (D.D.C. 2006) (challenge to FWS's policy of hunting in national wildlife refuges and the cumulative effects on migratory birds and federally listed species).

Fund for Animals v. Lujan, Civ. No. 92-800 (D.D.C.) (challenge to FWS's failure to list multiple candidate species as threatened or endangered).

Fund for Animals v. Mainella, 283 F. Supp. 2d 418, 432 (D. Mass. 2003) (challenge to pheasant release and hunting on national park lands).

Fund for Animals v. Norton, 294 F. Supp. 2d 92 (D.D.C. 2003) (challenge to Yellowstone winter use plan).

Fund For Animals v. Norton, 281 F. Supp. 2d 209 (D.D.C. 2003) (challenge to FWS's decision to authorize the killing of mute swans).

Gerber v. Norton, 294 F.3d 173 (D.C. Cir. 2002) (challenge to Habitat Conservation Plan for the Delmarva fox squirrel).

Gibbs v. Babbitt, 214 F.3d 483 (4th Cir. 2000), cert. denied, 2001 WL 137648 (defense of the constitutionality of special rule for reintroduction of endangered red wolf).

Hulsizer v. Labor Day Committee, 734 A.2d 848 (Pa. 1999) (challenge to Pennsylvania pigeon shoots).

Humane Society of the United States v. Department of Agriculture, Civ. No. 05-197 (D.D.C.) (challenge to USDA's withholding of annual reports and failure to post reports on-line).

Humane Society of the United States v. Glickman, 217 F.3d 882 (D.C. Cir. 2000) (challenge to FWS's policy of not requiring federal agencies to comply with the MBTA, and to USDA's decision to kill Canada Geese without an MBTA permit).

Humane Society of the United States v. Johanns, 520 F. Supp. 2d 8 (D.D.C. 2007) (challenge to USDA's fee-for-service horse slaughter inspection system that was implemented without appropriate environmental review under NEPA)

In Defense of Animals v. Department of Agriculture, 656 F. Supp. 2d 68 (D.D.C. 2009) (challenge to USDA's withholding of animal research laboratory records under FOIA Exemptions 4 and 5)

In Defense of Animals v. Norton, Civ. No. 02-2068 (D.D.C. 2002) (challenge to Asian elephant import permit issued to Marine World).

In re: Bluewater Network and Ocean Advocates, 234 F.3d 1305 (D.C. Cir. 2000) (challenge to Coast Guard's failure to promulgate regulations for oil tanker leak detection devices as mandated by Oil Pollution Act).

In re: Polar Bear Endangered Species Act and 4(D) Rule Litigation, Misc. 08-764 (D.D.C.) (defense of FWS's ban on imports of polar bear trophies)

Judicial Watch v. Department of Energy, 310 F. Supp. 2d 271 (D.D.C. 2004) (challenge to DOI's and DOE's withholding of Cheney Energy Task Force records); *aff'd* in part 412 F.3d 125 (D.C. Cir. 2005).

Leahy v. Department of Agriculture, Civ. No. 05-1135 (D.D.C.) (challenge to USDA's approval of the transfer of four Hawthorn elephants to Carson & Barnes' Endangered Ark Foundation).

Lurie v. Department of the Army, 970 F. Supp. 19 (D.D.C. 1997) (challenge to the government's withholding of information regarding AIDS research under FOIA Exemptions 6 and 7).

Maine v. Norton, 257 F. Supp. 2d 357 (D. Me. 2003) (defense of challenge to listing of Atlantic salmon).

Metcalf v. Daley, 214 F.3d 1135 (9th Cir. 2000) (challenge to gray whale hunting by the Makah Tribe).

Mohler v. Labor Day Committee, 663 A.2d 162 (Pa. Super. 1995) (challenge to Pennsylvania pigeon shoots).

Mount Graham Coalition v. Thomas, 53 F.3d 970 (9th Cir. 1995) (challenge to telescope project in habitat of the Mt. Graham red squirrel).

The Nation v. Department of State, 71 F.3d 885 (D.C. Cir. 1995) (challenge to the propriety of FOIA Exemption 6 to covert operative and adequacy of the search).

National Audubon Society v. Davis, 307 F.3d 835 (9th Cir. 2002) (defense of citizen initiative restricting wildlife traps and poisons).

Natural Resources Defense Council v. Abraham, 223 F. Supp. 2d 162 (D.D.C. 2002) (challenge to DOE advisory committees on the National Ignition Facility).

Natural Resources Defense Council v. Department of Energy, 2007 WL 1302498 (challenge under NEPA to cleanup of a Department of Energy radioactive waste site in southern California).

Natural Resources Defense Council v. Environmental Protection Agency, Civ. No. 05-340 (D.D.C.) (challenge under FACA to EPA advisory committees stacked with industry representatives concerning the harmful pesticide Atrazine)

Natural Resources Defense Council v. National Marine Fisheries Service, 409 F. Supp. 2d 379 (S.D.N.Y. 2006) (challenge to NMFS's failure to disclose documents concerning the Navy's use of sonar).

Natural Resources Defense Council v. Richardson, Civ. No. 97-308 (D.D.C.) (challenge to National Academy of Sciences committee on the National Ignition Facility).

New Jersey Society for the Prevention of Cruelty to Animals v. N.J. Department of Agriculture, Civ. No. A-006319-03T3 (N.J. Sup.) (challenge to New Jersey Department of Agriculture's standards for the humane treatment of domestic livestock).

People for the Ethical Treatment of Animals v. Babbitt, Civ. No. 93-1836 (D.D.C. 1994) (challenge to ESA permit for Orangutans used in entertainment).

People for Ethical Treatment of Animals v. Department. of Agriculture, Civ. No. 06-930, 2007 WL 1720136 (D.D.C. June 11, 2007) (challenge to agency's withholding of investigatory records and to agency's pattern and practice of withholding witness statements under FOIA).

People for the Ethical Treatment of Animals v. Department of Agriculture, Civ. No. 03-195 (D.D.C.) (challenge to withholdings and search adequacy by USDA of its loan guarantees for nation's largest puppy distributor).

People for the Ethical Treatment of Animals v. Department of Agriculture, Civ. No. 03-195, 2005 WL 1241141 (D.D.C. May 25, 2005) (challenge to adequacy of USDA's Vaughn Index and withholdings).

People for the Ethical Treatment of Animals v. Department of the Interior, Civ. No. 01-2299 (D.D.C. 2001) (challenge to the unlawful confinement and display of polar bears in traveling Mexican circus).

PENDING

People for the Ethical Treatment of Animals v. National Institutes of Health, Civ. No. 10-1818 (challenge

to NIH's withholding of records regarding Auburn University's alleged violations of the Animal Welfare Act while using federal funds).

Physicians' Committee for Responsible Medicine v. Glickman, 117 F. Supp. 2d 1 (D.D.C. 2000) (challenge to National Nutritional Guideline Committee as violative of FACA and to withholdings of conflict of interest records under FOIA).

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Public Employees for Environmental Responsibility v. Bromwich, Civ. No. 10-1067 (challenge to DOI's, BOEMRE'S, and FWS's environmental reviews of the Cape Wind off-shore wind project under NEPA, ESA, and MBTA).

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Public Employees for Environmental Responsibility v. Salazar, Civ. No. 11-647 (M.D. Fla.) (challenging NPS's decision to introduce extensive ORV use and ORV-assisted hunting into the Addition Lands of the Big Cypress National Preserve and its decision to severely circumscribe the amount of eligible acreage for designation as wilderness).

Queen Anne's Conservation Association v. U.S. Department of State, Civ. No. 10-670 (D.D.C.) (challenge to State Department's withholding of records concerning wildlife impacts of a military training facility).

Ralph Hoar & Associates v. National Highway & Transportation Safety Administration, 985 F. Supp. 1 (D.D.C. 1997) (challenge to the withholding of records under FOIA Exemption 4 concerning information on Chrysler mini-van defects).

Rock Springs Grazing Association v. Ken Salazar, Civ. No. 11-263 (D. Wy.) (challenge to action brought by grazing association to compel BLM to remove wild horses from both private and public lands).

Save the Manatee Club v. Ballard, 215 F. Supp. 2d 88 (D.D.C. 2002) (challenge to agency's failure to implement terms of settlement agreement requiring new refuges and sanctuaries for manatees).

Save San Onofre Coalition v. Wolff, Civ. No. 08-1470 (S.D. Cal.) (challenge under the ESA to a toll road in Southern California planned through important endangered species habitat)

Shelby Proie, et al. v. National Marine Fisheries Service, Civ. No. 2:11-cv-01923 (W.D.WA 2011)

Showing Animals Respect and Kindness v. Department of the Interior, 730 F. Supp. 2d 180 (D.D.C. 2010) (challenge to DOI's withholding of records under FOIA Exemptions 5, 6, and 7 concerning the killing of a black bear).

Sierra Club v. Department of Agriculture, Civ. No. 08-4248 (N.D. Cal.) (challenge to USDA's failure to provide records under FOIA concerning federal funding for coal-fired power plants).

Sierra Club v. Maniella, Civ. No. 459 F. Supp. 2d 76 (D.D.C. 2006) (challenge to the Park Service's failure to comply with APA, NEPA, and Organic Act in weakening standards for directional drilling).

Sierra Club v. Van Antwerp, 709 F. Supp. 2d 1254 (S.D. Fla. 2009) (challenge to Army Corps of Engineers decision to authorize hard-rock mining adjacent to Everglades National Park without engaging in formal consultation).

Sierra Club v. Van Antwerp, 719 F. Supp. 2d 58 (D.D.C. 2010) (challenge to Corps' grant of a dredge and fill permit for a large commercial development and to the Corps' failure to comply with its NEPA and ESA consultation obligations).

Southern Utah Wilderness Alliance v. Norton, 237 F. Supp. 2d 48 (D.D.C. 2002) (challenge to oil and gas exploration outside Arches National Park).

Southwest Center for Biological Diversity v. Babbitt, 939 F. Supp. 49 (D.D.C. 1996) (challenge to FWS's failure to list the Queen Charlotte Goshawk in the Tongass National Forest as threatened or endangered).

Spirit of the Sage Council v. Babbitt, Civ. No. 98-1873 (D.D.C.) (challenge to the No Surprises rule for Habitat Conservation Plans).

Town of Golden Beach v. Army Corps of Engineers, Civ. No. 94-1816 (S.D. Fla. 1994) (challenge to beach renourishment in Florida on NEPA grounds).

United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006) (challenge to tobacco companies' deceptive practices under RICO and setting precedent for public health groups intervening as of right); aff'd in part, 566 F.3d 1095 (D.C. Cir. 2009).

PENDING

Wild Equity Institute v. City and County of San Francisco, Civ. No. 11-958 (N.D. Cal)

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