

S. Elizabeth Birnbaum
National Wildlife Federation
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
(202) 797-6832

Edward M. Norton, Jr.
Grand Canyon Trust
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
(202) 797-5429

Wayne G. Petty
Moile & Draper, P.C.
15 East First South, #600
Salt Lake City, Utah 84111
(801) 521-0250

Attorney for Plaintiff
Grand Canyon Trust

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<hr/>	
NATIONAL WILDLIFE FEDERATION,)
et al.,)
)
Plaintiffs,)
)
v.)
)
WESTERN AREA POWER)
ADMINISTRATION, et al.)
)
Defendants.)
<hr/>	
<hr/>	
SALT LAKE CITY, et al.,)
)
Plaintiffs,)
)
v.)
)
WESTERN AREA POWER)
ADMINISTRATION, et al.,)
)
Defendants.)
<hr/>	

No. 88-C-1175-J

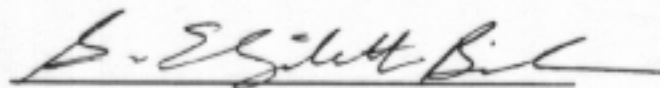
MOTION TO CONSOLIDATE

No. 86-C-1000-G

National Wildlife Federation, Grand Canyon Trust,
American Rivers, Inc. and Western River Guides Association,

plaintiffs in case No. 88-C-1175-J, respectfully move to consolidate the two above-captioned cases, pursuant to Rule 42(a), Fed. R. Civ. P. The legal issues raised in the more recently filed case, No. 88-C-1175-J, are similar to issues raised in case No. 86-C-1000-G, and arise out of the same facts. Both cases challenge, on various grounds, the Western Area Power Administration's ("WAPA's") adoption of the Final Post-1989 General Marketing and Allocation Criteria and Call for Applications for Power sold by WAPA's Salt Lake City Area Office. Judicial economy would best be served by addressing the common questions of law and fact in a single consolidated proceeding.

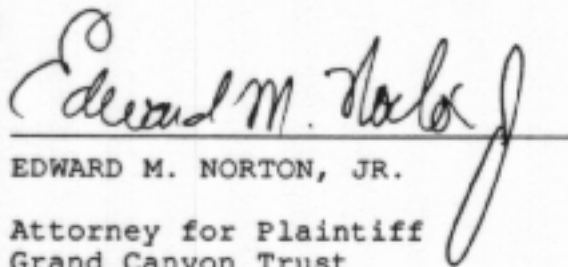
Date: December 21, 1988



S. ELIZABETH BIRNBAUM

WAYNE G. PETTY

Attorneys for Plaintiffs



EDWARD M. NORTON, JR.

Attorney for Plaintiff
Grand Canyon Trust

Area Power Administration, et al., Civil No. 86-C-1000-G are
to be consolidated for purposes of discovery and trial.

Date:

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<hr/>		
NATIONAL WILDLIFE FEDERATION,)	
et al.,)	
)	
Plaintiffs,)	
)	No. 88-C-1175-J
v.)	
)	MEMORANDUM OF POINTS AND
WESTERN AREA POWER)	AUTHORITIES IN SUPPORT OF
ADMINISTRATION, et al.)	MOTION TO CONSOLIDATE
)	
Defendants.)	
<hr/>		
<hr/>		
SALT LAKE CITY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 86-C-1000-G
)	
WESTERN AREA POWER)	
ADMINISTRATION, et al.,)	
)	
Defendants.)	
<hr/>		

Plaintiffs in case No. 88-C-1175-J ("NWF et al.") have moved to consolidate the above-captioned cases because they present nearly identical issues of law and fact, challenging a single administrative rulemaking by the Western Area Power Administration ("WAPA"). Because common questions of law and fact predominate in these cases, consolidation is appropriate under Rule 42(a), Fed. R. Civ. P.

INTRODUCTION

In October 1986, Utah Power & Light and over 100 municipalities in the states of Utah and Wyoming (collectively, "UP&L") brought a suit challenging WAPA's Final Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power ("Post-1989 Criteria"), case No. 86-C-1000-G. Among the challenges to the Post-1989 Criteria included in that suit were claims that WAPA had violated the National Environmental Policy Act ("NEPA") by failing to prepare an environmental impact statement on the Post-1989 Criteria, and that the Post-1989 Criteria exceeded WAPA's statutory authority by contemplating, among other things, large purchases and resales of nonfederal-generated power.

On April 14, 1988, this Court dismissed several of UP&L's claims, including the claim that the Post-1989 Criteria exceeded WAPA's statutory authority, and set the NEPA claim for trial. Pursuant to Rule 54(b), Fed. R. Civ. P., the Court entered judgment on most of the dismissed claims to facilitate immediate appeal. The appeal, including the issue of WAPA's statutory authority, has already been briefed before the Tenth Circuit. Three of the plaintiffs in case No. 88-C-1175-J submitted joint amicus briefs on the issue of WAPA's authority to the Tenth Circuit. The conservation organizations were also prepared to submit amicus briefs to this Court upon trial of the NEPA issue.

The parties to case No. 86-C-1000-G have recently informed the Court that they have been conducting settlement negotiations. Due to their representations regarding the imminence of settlement, the Court has postponed trial on the NEPA issue indefinitely. The conservation organizations filed a separate action, No. 88-C-1175-J, to assure that the NEPA claim will be subject to appropriate judicial review if the organizations' interests in that claim are not adequately represented by UP&L in the settlement of the earlier suit. NWF et al. now move to consolidate the two cases, because the issues raised in the organizations' complaint are similar in fact and law to those now and formerly before the Court in UP&L's suit.

ARGUMENT

Rule 42(a), Fed. R. Civ. P., provides that "[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; . . ." This rule is "designed and intended to encourage consolidation of actions." Attala Hydratane Gas, Inc. v. Lowry Tims Co., 41 F.R.D. 164, 165 (N.D. Miss. 1966). It gives the court "broad discretion" to order consolidation "where there is 'a common question of law or fact.'" Gillette Motor Transport, Inc. v. Northern Oklahoma Butane Co., 179 F.2d 711, 712 (10th Cir. 1950). "The end is to give the court broad discretion to decide how cases on its docket

are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." 9 C. Wright & A. Miller, Federal Practice and Procedure § 2382 at 253 (1971).

In the present case, interests of judicial economy weigh strongly in favor of consolidation. NWF et al.'s first two causes of action, the NEPA claim and the claim that WAPA's nonfederal power purchases exceed its authority, are quite similar to the claims already raised by UP&L in the other case. The organizations' third claim, that WAPA is violating the Fish and Wildlife Coordination Act, was raised in the NEPA claim brought in UP&L's complaint as well. Both cases rest on the same factual nucleus, the adoption of the Post-1989 Criteria. Both raise similar legal issues, WAPA's statutory responsibilities under NEPA and the Fish and Wildlife Coordination Act and WAPA's authority to purchase nonfederal power. The two cases should be considered together, by a single judge.

In cases such as these, with the same defendants, the same nucleus of relevant fact, and similar legal claims, consolidation is appropriate. As in Thomas v. Deason, 317 F. Supp. 1098 (W.D. Ky. 1970),

both involve the same parties and identical questions of law. The evidence applicable to issues in one case would be relevant, competent, material and admissible in the other. By consolidating the two cases the problems

of duplication can be prevented without causing prejudice to the parties. The plaintiffs' motion to consolidate these two actions should be sustained.

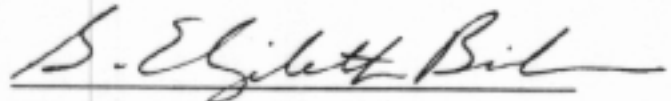
Id. at 1101.

CONCLUSION

For the foregoing reasons, the Court should grant NWF et al.'s motion and consolidate the two above-captioned cases.

Date: December 23, 1988

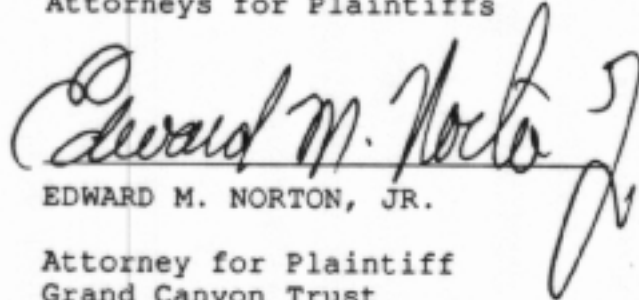
Respectfully submitted,



S. ELIZABETH BIRNBAUM

WAYNE G. PETTY

Attorneys for Plaintiffs



EDWARD M. NORTON, JR.

Attorney for Plaintiff
Grand Canyon Trust