

Sustainability & Climate Change Reporter

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9th Circuit Fast Tracks Nevada Wind Farm Construction

Nevada's first utility-scale wind farm, the Spring Valley Wind Energy Facility, already on a fast track approval process through the federal Bureau of Land Management (BLM), apparently also has been on a fast track through the courts as well. The U.S. Ninth Circuit Court of Appeals on July 15 affirmed a March 28 decision by the U.S. District Court for Nevada that refused to block the 66-turbine project to be located about 30 miles east of Ely, Nevada.



The plaintiffs, Western Watersheds Project and the Center for Biological Diversity, contended that the BLM's fast track process [failed to adequately assess](#) impacts to the greater sage-grouse and bat populations.

Sage Grouse

According to the plaintiffs, the project's significant effects on wildlife required that BLM do a full Environmental Impact Statement (EIS), rather than a more limited Environmental Assessment (EA). The district court [ruled](#), however, that there were no sage-grouse mating grounds (called "leks") in the project area, existing highways separated leks from the project boundaries and, in any event, the BLM had implemented mitigation measures that would reduce impacts on sage-grouse. Accordingly, the court said the plaintiffs had not raised substantial questions that the project would cause significant deterioration to the sage-grouse population and habitat and, therefore a more detailed EIS was not required.

Bats

The plaintiffs also argued that an EIS was necessary due to the presence of the Rose Guano Cave nearby (a seasonal roost to more than a million Brazilian free-tailed bats during the August-September migration season) and the likelihood that bats would fly near the project site while foraging or migrating. The court disagreed and said that BLM had provided "persuasive scientific data" that the impact on bats, particularly with mitigation measures imposed on the project, will not be significant and, therefore, BLM was not required to do an EIS.

Ninth Circuit

On appeal, the Ninth Circuit panel issued a memorandum (unpublished) [decision \(PDF\)](#) agreeing with the district court, although Judge Susan Graber (a former Oregon Supreme Court justice and Clinton appointee) wrote a concurring opinion. Judge Graber agreed that the project's construction was unlikely to cause irreparable harm, but she wrote that EA was not legally adequate in its consideration of the cumulative impacts. Judge Graber pointed out that the BLM estimated future projects would add another 995 wind turbines to the region, 225 of which would be in Spring Valley, but the EA only stated this "would result in further mortality" to bats, while future projects would contribute to greater habitat fragmentation for sage-grouse. Judge Graber said: "BLM's statements regarding 'further mortality,' a 'somewhat larger percent increase in mortality,' and 'greater habitat fragmentation' are precisely the type of 'general statements about possible effects and some risk' that we have rejected as legally insufficient in the absence of an explanation as to why more definitive information was unavailable."

Going Forward

The plaintiffs have limited court options left to block the project. They will have until the end of July to petition for rehearing by the panel and/or by the court en banc, both of which are uphill battles. Meanwhile, [grading](#) work has begun on the site and, if no delays are encountered, the project is supposed to start operating in the summer of 2012.

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