

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Environmental Protection Information Center, et al. v. Alicia Van Atta, et al.

Environmental Protection Information Center · No. 22-cv-03520-TLT · Decided December 22, 2025

SUMMARY

The United States District Court for the Northern District of California grants in part and denies in part Plaintiffs’ motion for attorneys’ fees, costs, and other expenses under the Equal Access to Justice Act. The court holds that Plaintiffs properly proceeded under the Administrative Procedure Act and EAJA after prevailing on claims challenging the National Marine Fisheries Service’s biological opinion and decision not to prepare an environmental impact statement concerning endangered coho salmon. The court also denies Defendants’ objections to reply arguments and declarations and reduces the requested fee award in part.

CASE DETAILS

COURT	United States District Court for the Northern District of California
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 22, 2025
DOCKET	22-cv-03520-TLT
DISPOSITION	other
PROCEDURAL POSTURE	After granting Plaintiffs’ motion for summary judgment on claims challenging NMFS’s biological opinion and decision not to prepare an environmental impact statement, the court considered Plaintiffs’ motion for attorneys’ fees, costs, and expenses under the Equal Access to Justice Act. Defendants also objected to Plaintiffs’ reply arguments and declarations.
STANDARD OF REVIEW	The court applied the Equal Access to Justice Act substantial-justification standard, under which the government bears the burden of showing that its position had a reasonable basis in law and fact or that special circumstances make an award unjust. Fee calculations were evaluated under the lodestar method, with reductions reviewed under the court’s discretion.
PRECEDENTIAL VALUE	unpublished

PARTIES

Environmental Protection Information Center, Friends of the Shasta River v. Alicia Van Atta, Jim Simondet, National Marine Fisheries Service

TOPICS

attorney fees costs endangered species act administrative procedure act judicial review of agency action

PRACTICE AREAS

environmental law administrative law attorney fees civil procedure

QUESTIONS PRESENTED

1. Whether Plaintiffs properly sought attorneys' fees under the Equal Access to Justice Act rather than the Endangered Species Act's citizen-suit provision.
2. Whether Plaintiffs' fee application was timely under the Equal Access to Justice Act.
3. Whether the government's original agency action and litigation position were substantially justified.
4. Whether the requested attorneys' fees should be reduced for work performed by in-house counsel, pre-retainer work, excessive or duplicative work, or clerical work.
5. Whether enhanced San Francisco market rates and requested costs and expenses were recoverable under the Equal Access to Justice Act.

HOLDINGS

1. Plaintiffs properly brought their fee motion under the EAJA because their challenges to NMFS's biological opinion and incidental take statement concerned discretionary agency implementation reviewable under the APA, not an ESA citizen suit.
2. Plaintiffs' EAJA fee motion was timely because it was filed within 120 days after the Ninth Circuit dismissed the appeal, accounting for the period in which a petition for certiorari could be filed.
3. The government failed to establish that either its original agency action or its litigation position was substantially justified.
4. The court deducted \$6,641.35 for in-house counsel work and \$11,333.30 for pre-retainer work, denied an unspecified reduction for excessive or duplicative work, and applied a 10-percent reduction of \$2,392.00 for clerical work.
5. The court applied enhanced San Francisco market rates for attorneys with distinctive environmental-law expertise and awarded the requested \$1,721.28 in costs and expenses.

KEY QUOTATIONS

"Accordingly, because Plaintiffs' claims arose out of the APA, the Court finds that Plaintiffs have properly brought their fees motion pursuant to the EAJA." (Section III.A)

“The Court awards Plaintiffs’ attorneys’ fees of \$672,465.97 and \$1,721.28 for costs and expenses.”
(Conclusion)

FACTUAL BACKGROUND

NMFS issued permits to fourteen private landowners authorizing incidental take of endangered coho salmon in the Shasta River in exchange for conservation measures. Plaintiffs challenged NMFS’s biological opinion, incidental take statement, and decision not to prepare an environmental impact statement. The merits court found that NMFS improperly limited the biological opinion’s action area, relied on measures not reasonably certain to occur, and acted arbitrarily and capriciously in declining to prepare an environmental impact statement.

PROCEDURAL HISTORY

Plaintiffs filed this action in June 2022 and amended their complaint to assert claims under the Endangered Species Act, NEPA regulations, and the Administrative Procedure Act. The court granted Plaintiffs’ summary-judgment motion on July 11, 2023, holding that NMFS improperly restricted the biological opinion’s action area and acted arbitrarily and capriciously in declining to prepare an environmental impact statement, and remanded for further agency action. The parties appealed; Defendants voluntarily dismissed their cross-appeal, and the Ninth Circuit dismissed Plaintiffs’ appeal for lack of appellate standing. Plaintiffs then moved for fees, costs, and expenses, which the court granted in part and denied in part.

DISPOSITION

other

CASES CITED

- Emelyenko v. Strafach, No. 23-cv-570, 2024 WL 4336522, at *5 (N.D. Cal. Sept. 24, 2024)
- Golden v. Google LLC, No. 22-cv-5246, 2024 WL 1880336, at *1 (N.D. Cal. Apr. 3, 2024)
- W. Watersheds Project v. Kraayenbrink, 632 F.3d 472, 481 (9th Cir. 2011)
- Coos Cnty. Bd. of Cnty. Comm’rs v. Kempthorne, 531 F.3d 792, 802 (9th Cir. 2008)
- White v. United States Army Corps of Eng’rs, 659 F. Supp. 3d 1045, 1054 (N.D. Cal. 2023)
- South Yuba River Citizens League v. National Marine Fisheries Serv., No. 06-cv-2845, 2008 WL 11400759, at *4-5 (E.D. Cal. Dec. 23, 2008)
- Citizens for Better Forestry v. United States Department of Agriculture, No. 05-cv-1144, 2008 WL 5210945, at *4 (N.D. Cal. Dec. 11, 2008)
- Home Builders Ass’n of Northern California v. United States Fish & Wildlife Service, No. 05-cv-0629, 2007 WL 4374047, at *2 (E.D. Cal. Dec. 14, 2007)
- Bennett v. Spear, 520 U.S. 154, 174-77 (1994)
- San Francisco Baykeeper v. United States Fish & Wildlife Service, No. 21-cv-2566, 2021 WL 3426961, at *12 (N.D. Cal. Aug. 5, 2021)
- Pham v. Jaddou, 2024 WL 436351
- American Rivers v. National Marine Fisheries Service, 126 F.3d 1118

- Oregon Nat. Res. Council v. Allen, 476 F.3d 1031, 1035-36 (9th Cir. 2007)
- Weyerhaeuser Co. v. United States Fish & Wildlife Service, 586 U.S. 9, at *25 (2018)
- Fish Nw. v. Rumsey, No. 22-35641, 2023 WL 4071941, at *8 (9th Cir. June 20, 2023)
- Nat. Res. Defense Council v. Kempthorne, 506 F. Supp. 2d 322, 349 (E.D. Cal. 2007)
- United States v. Marin Alliance for Medical Marijuana, 706 F. App'x 346, 347 (9th Cir. 2017)
- Gutierrez v. Barnhart, 274 F.3d 1255, 1258 (9th Cir. 2001)
- Center for Food Safety v. Vilsack, No. 08-cv-484, 2011 WL 6259891, at *3, *16-17 (N.D. Cal. Oct. 13, 2011)
- Innova Solutions v. Campagnolo, No. 17-cv-3674, 2021 WL 5889424, at *3 (N.D. Cal. Dec. 13, 2021)
- Garcia v. Commissioner of Social Security, No. 23-cv-131, 2024 WL 714664, at *1 (N.D. Cal. Feb. 21, 2024)
- Nielsen v. Colvin, No. 11-cv-3379, 2015 WL 2174222, at *4 (N.D. Cal. May 8, 2015)
- Corbin v. Apfel, 149 F.3d 1051, 1053 (9th Cir. 1998)
- Moralez v. Monterey Plaza Hotel Limited Partnership, No. 22-cv-7540, 2025 WL 2469334, at *2 (N.D. Cal. Aug. 27, 2025)
- Blade Room Group, LLC v. Emerson Electric Co., No. 15-cv-1370, 2019 WL 13036321, at *6-7 (N.D. Cal. Dec. 11, 2019)
- Planned Parenthood Federation of America, Inc. v. Center for Medical Progress, No. 16-cv-236, 2020 WL 7626410, at *5 (N.D. Cal. Dec. 22, 2020)
- San Francisco Baykeeper v. City of Sunnyvale, No. 20-cv-824, 2024 WL 4227747, at *2 n.3 (N.D. Cal. Sept. 17, 2024)
- Greenpeace, Inc. v. Stewart, 2020 WL 2465321, at *7 (9th Cir. 2020)
- Ingram v. Oroudjian, 647 F.3d 925, 928 (9th Cir. 2011)
- Nat. Res. Def. Council, Inc. v. Winter, 543 F.3d 1152, 1158-60 (9th Cir. 2008)
- Love v. Reilly, 924 F.2d 1492 (9th Cir. 1991)
- Pollinator Stewardship Council v. U.S. EPA, No. 13-72346, 2017 WL 3096105, at *11 (9th Cir. June 27, 2017)
- Neil v. Commissioner of Social Security, 495 F. App'x 845, 847 (9th Cir. 2013)
- Nadarajah v. Holder, 569 F.3d 906, 921 (9th Cir. 2009)