

EXHIBIT 3

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

NATURAL LAND INSTITUTE,)	Docket No. 21 CV 50410
)	
Plaintiff,)	Rockford, Illinois
)	Wednesday, August 31, 2022
v.)	10:00 o'clock a.m.
)	
THE GREATER ROCKFORD AIRPORT)	
AUTHORITY, et al.,)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE IAIN D. JOHNSTON

APPEARANCES:

For the Plaintiff:	VON BRIESEN & ROPER, SC (411 East Wisconsin Avenue, Milwaukee, WI 53202) by MR. JOSEPH M. RUSSELL MR. DEREK WATERSTREET
For the Defendants:	ALLEN GALLUZZO HEVRIN LEAKE, LLC (839 North Perryville Road, Rockford, IL 61107) by MR. THOMAS J. LESTER MR. DEVIN B. NOBLE
	UNITED STATES ATTORNEY'S OFFICE (219 South Dearborn Street, Chicago, IL 60606) by MR. NIGEL B. COONEY
	OFFICE OF THE ILLINOIS ATTORNEY GENERAL (100 West Randolph Street, Chicago, IL 60601) by MS. MARGARET JONES MS. ERIN WALSH
Court Reporter:	Heather M. Perkins-Reiva 327 S. Church Street Rockford, Illinois 61101 (779) 772-8309

1 THE CLERK: 21 CV 50410, *Natural Land Institute v.*
2 *The Greater Rockford Airport Authority, et al.*

3 THE COURT: All right. Let's get some appearances
4 for the record.

5 MR. RUSSELL: Joseph Russell on behalf of NLI, the
6 plaintiff.

7 THE COURT: Good morning, Mr. Russell.

8 Hold on one second.

9 All right. I will try to do this in a way that makes
10 Ms. Perkins-Reiva's life a little easier.

11 All right. Let's get an appearance for the Rockford
12 Airport Authority.

13 Mr. Lester and Mr. Noble?

14 MR. LESTER: Good morning, Your Honor. Tom Lester
15 and Devin Noble on behalf of the airport defendants.

16 THE COURT: Good morning.

17 MR. LESTER: Good morning, Your Honor.

18 THE COURT: And U.S. DOT?

19 MR. COONEY: Good morning, Your Honor. Nigel Cooney
20 from the U.S. Attorney's Office on behalf of the federal
21 agency defendants. With me in the gallery are Patrick Wells
22 and Kate Barber from the FAA Office of Chief Counsel.

23 THE COURT: Okay. All right. So you have got all
24 the federal defendants. There is a few of them.

25 Okay. Hold on.

1 And IDOT?

2 MS. JONES: Good morning, Your Honor. Maggie Jones
3 and Erin Walsh, assistant attorneys general on behalf of the
4 Illinois Department of Transportation and Director Omer Osman.

5 THE COURT: All right. Good morning.

6 I think that's it. Okay.

7 MR. RUSSELL: Your Honor, also with me is my partner
8 Derek Waterstreet, also on behalf of Natural Land Institute.

9 THE COURT: Good morning.

10 MR. WATERSTREET: Good morning.

11 THE COURT: All right. Hopefully, the drive from
12 Milwaukee wasn't so bad.

13 MR. RUSSELL: It was a wonderful day for a drive down
14 to Rockford.

15 THE COURT: It took all my ability to get off my bike
16 and come home this morning.

17 I entered the order because I think we have a
18 jurisdictional issue. I could be wrong. But I just wanted to
19 put that out there. There is a lot of filings. There is a
20 lot of paper. There is a lot of arguments being made.
21 Obviously, the first issue that this Court has to address at
22 any time is jurisdiction. We have got a couple jurisdictional
23 issues at play. I forgot what phrase I used, but it looks
24 like you are coming and going.

25 So talk to me about your thoughts, Mr. Russell.

1 MR. RUSSELL: Your Honor, first, I would like to
2 introduce, in the gallery, there are three board members from
3 NLI in attendance, Jay Evans, John Cook, and Paul Baits, who
4 is also the president of the board. In addition, we have
5 Assistant Director Jill Kennay. The executive director, Kerry
6 Lee, could not be here today. She is out of state.

7 But, Your Honor, first of all, NLI and its members
8 have spent decades trying to preserve Bell Bowl Prairie and
9 its flora and fauna, and this has been pursuant to a
10 longstanding agreement with the airport, and it was with great
11 surprise and excitement that last August 8th, 2021, a
12 federally endangered species, the rusty patched bumble bee,
13 was found on the prairie for the first time.

14 It was then it came as a shock for NLI to learn
15 through rumor that the airport was still going to bulldoze
16 Bell Bowl Prairie after the finding of the rusty patched
17 bumble bee. NLI has tried to seek some transparency from the
18 airport and from the federal defendants regarding the
19 airport's plans, regarding not just the access road that was
20 going to go through the prairie, but the entire prairie and
21 its welfare. Those requests for information were rebuffed or
22 met with silence before November 1st, which was the date that
23 we understood was the day that the prairie was going to be
24 bulldozed.

25 So not knowing exactly what was going on, the NLI,

1 its mission, which had long been to preserve this prairie,
2 stepped into the breach and with significant expense filed the
3 complaint in front of you and moved for a preliminary
4 injunction. As you know, the airport and plaintiffs agreed to
5 postpone the bulldozing of the prairie pending the
6 consultation process, but it wasn't clear at the time the
7 action was filed exactly who was authorizing the bulldozing.

8 We still are open to discussions with the defendants
9 following your rule to show cause. We reached out to the
10 defendants to say that we were willing to mediate or engage in
11 other informal resolution of claims. The airport notified us
12 that while theoretically possible, it is just not willing to
13 participate in mediation with NLI, and federal
14 defendants -- and I won't speak for them -- they also declined
15 to mediate.

16 We are still willing to discuss resolution outside
17 the courtroom, but I think, Your Honor, that addresses one of
18 the two issues you wanted the parties to address in your rule
19 to show cause. So I don't have any more to say about our
20 willingness to open up discussions with the defendants, but if
21 you have questions for me on that point --

22 THE COURT: Okay. No.

23 MR. RUSSELL: Otherwise, I will turn to jurisdiction.

24 THE COURT: Okay. If the parties have talked among
25 themselves, and they do not want the Court's involvement or

1 participation or efforts in a settlement conference, I'm not
2 going to force them. That's not my procedure 95 percent of
3 the time. And what I have before me right now is purely
4 injunctive, so any evidentiary rulings would be made by me.
5 So I would be even more disinclined for me personally to have
6 any kind of settlement conference. We have got two great
7 magistrate judges who could do it. We have got a raft of
8 mediators on our docket that could be involved. I'm seeing
9 Judge Mahoney this afternoon. I can twist his arm. But if
10 the parties aren't willing to do it, that's fine. I'm not
11 going to force them to do it.

12 So I appreciate that information. That's helpful.

13 So talk to me about jurisdiction.

14 MR. RUSSELL: Turning to jurisdiction, NLI
15 acknowledges that there was a FONSI, that was a finding of no
16 significant impact, that the FAA issued back in November of
17 2019. At that point, as I understand it and as reflected in
18 that environmental assessment underlying that FONSI, no rusty
19 patched bumble bee had been identified as existing on the
20 prairie.

21 THE COURT: Right.

22 MR. RUSSELL: So that wasn't known until August 8th,
23 2021.

24 So NLI also acknowledges that under the direct review
25 FAA statute, that final order from 2019 should have been

1 challenged, if that was the basis of the challenge to the
2 destruction of the prairie, within 60 days, I believe, of that
3 order; however, NLI's action is predicated on the finding of
4 the bee on August 8th.

5 THE COURT: Right.

6 MR. RUSSELL: Because, as we understand it, discovery
7 has been stayed, we are dealing with something of a black box
8 as to, of the many defendants, who is authorizing what
9 regarding the bulldozing of the prairie and what it was for.
10 Based on what we know, the FAA was not involved at all after
11 the finding of the bee, until it opened up its formal
12 consultation process months later, actually after the amended
13 complaint was filed in February of 2022.

14 THE COURT: All right. Let me pause you right there.

15 I got that. I got the 2019 FONSI, bees found on
16 August 8th, 2021. We have got a complaint filed. I know it
17 was the end of October, maybe November 1st, and I have read
18 the complaint. I have read the original complaint and the
19 amended complaint multiple times, and maybe I'm misreading it,
20 but it seems as though NLI's position is, okay, bees found;
21 you need to do a new consultation; you have got an endangered
22 species found in this location, and that any construction, any
23 work would affect the habitat of the bee, and there needs to
24 be some -- that needs to be taken into account. If I'm
25 reading you right, I understand that. It seems as though the

1 response is "Got you. We are doing a consultation now."

2 So it seems like you got what you want. So maybe I'm
3 either misunderstanding your argument or what's occurred
4 because it seems that's exactly what you were looking for, and
5 they are doing it.

6 So go ahead.

7 MR. RUSSELL: Well, so we were very concerned that
8 the bee was found, but they were still going to bulldoze on
9 November 1st. So the consultation, it is not clear whether
10 one actually occurred that the FAA triggered.

11 I want to point to the allegation in the amended
12 complaint, paragraph 117, that shows the FAA wasn't involved
13 in the consultation, whatever that consultation entailed,
14 because we don't have all the records between the U.S. Fish
15 and Wildlife Service and the Illinois Department of
16 Transportation, and it was a letter that was sent by U.S. Fish
17 and Wildlife on September 21st, 2021.

18 THE COURT: But your ultimate goal is to make sure
19 there is a proper consultation: who started it, who is
20 talking, how it is going on, so long as they do a proper
21 consultation and come up with a reasonable answer, and I don't
22 know what that answer is going to be. You can't get a
23 judgment because the FAA started it, or the FAA didn't talk
24 closely enough with Fish and Wildlife, and IDOT sent an email
25 on the wrong day. That's all procedural stuff.

1 Your ultimate goal, if I'm right, is to make sure
2 that there is a proper consultation, to make sure the
3 environment where the bee, the endangered species, has been
4 identified is properly considered under all the proper
5 regulations and statutes, both state and federal, before
6 anything can occur.

7 Do I have your ultimate goal correct?

8 MR. RUSSELL: Yes, Your Honor, but it is during the
9 consultation process where NLI is very concerned that there is
10 destruction of the prairie. That's what was the reason why we
11 filed the complaint --

12 THE COURT: I get that. I understand.

13 MR. RUSSELL: -- because there was consultation, and
14 they were still going to bulldoze it even during the
15 consultation.

16 THE COURT: Okay. Can't change the past. There has
17 been no bulldozing.

18 MR. RUSSELL: As far as we know.

19 THE COURT: Well, look, you can drive by any time you
20 want. It is my southern route on my bike. I don't like to
21 take that route, but I go by it. I haven't seen any
22 bulldozers.

23 MR. RUSSELL: Well, Your Honor, even the bulldozing
24 or construction around the prairie itself can be disruptive of
25 the habitat of the bee and the bee's existence. We don't know

1 anything -- what the impact of any of this construction has
2 had on the prairie because we have been denied access or
3 historical access to the prairie to maintain, preserve, and
4 conserve.

5 THE COURT: But during the consultation process,
6 where would NLI's right to inject itself into the process, as
7 it is ongoing, where is that right either in a statute, a
8 regulation, common law, contract?

9 Look, they have to do what they have to do as
10 required by the law, no doubt, and I will hold them to that,
11 and I fully hope that they are going to do that.

12 But tell me where NLI would have the right to be -- I
13 think the legal term is -- "officious intermediary" in the
14 process. Until they get it done, you don't even know what
15 they are doing.

16 MR. RUSSELL: Well, Your Honor, I don't know if you
17 are addressing our standing. I think we have standing.

18 THE COURT: I'm addressing all of it because I
19 understand -- again, I think I know what you are talking
20 about, and that's why I keep going what's your ultimate goal
21 with the lawsuit, and I think I have got it, and you haven't
22 told me I'm wrong yet.

23 But it seems like what you have said two, three times
24 now is there is a lack of transparency, you haven't been
25 involved. Okay. The ultimate answer is what you care about.

1 If they do it wrong, well, you will have a cause of action, if
2 there is a basis and a regulation, statute, contract, common
3 law, whatever. But in the meantime, it ain't ripe, right?

4 MR. RUSSELL: Once the prairie is gone, it's gone.

5 THE COURT: I'm not disputing that, and I think we
6 are talking past each other, so listen to what I'm saying.

7 Where is NLI's legal authority to be involved to the
8 extent you are telling me in this consultation process? Is
9 there a statute, a regulation, a contract, common law where
10 you want to get discovery, get documents, figure out who is
11 talking to who, get emails as to communications before they
12 are even done? Because we don't know what the answer is yet.

13 So answer that because that is a rightness issue, and
14 that's jurisdictional.

15 MR. RUSSELL: Right.

16 So we don't have a right to be part of the
17 consultation process, but we do have jurisdiction either in
18 this court or in the court of appeals and standing to protect
19 the Bell Bowl Prairie, which we have historically maintained
20 and which our members have enjoyed for decades from being
21 destroyed, and that's --

22 THE COURT: But it is not being destroyed. That's my
23 point is they haven't -- you keep saying you haven't seen
24 bulldozers. You don't know what's going on. You can go look
25 any time you want.

1 MR. RUSSELL: Access has been denied, Your Honor.

2 THE COURT: You can see from the roadway.

3 MR. RUSSELL: In order to monitor the welfare of the
4 rusty patched bumble bee, other flora and fauna on that site,
5 you can't do that from 100 yards away or from the roadway.

6 THE COURT: You can't see a bulldozer from 100 yards
7 away?

8 MR. RUSSELL: I'm talking about the species on the
9 prairie.

10 THE COURT: I know, but you are saying that the
11 bulldozers -- you keep saying bulldozers.

12 MR. RUSSELL: Well, any of the -- I mean, maybe I
13 shouldn't use that.

14 THE COURT: Crane. I don't care if it is --

15 MR. RUSSELL: I'm just using that as sort of
16 shorthand for --

17 THE COURT: -- okay -- a backhoe.

18 MR. RUSSELL: -- any of the construction that has
19 been abutting the prairie now for over a year, like the roads
20 that have already been built up to the -- I mean, we don't
21 even know what the identification markers are of what is the
22 prairie because I think that's in dispute, what has been
23 designated as Bell Bowl Prairie.

24 THE COURT: That ain't in your complaint. None of
25 what you are talking about now is in your complaint or even

1 remotely involved.

2 MR. RUSSELL: Of the -- well, historically, we have
3 designated what is --

4 THE COURT: You are looking for an injunction.
5 History and if there is a contract -- and I don't know what
6 the basis is for this historical thing. There is no doubt
7 that your folks were out there. Understood. But we are
8 talking about what's going to happen or what may happen in the
9 future that you are trying to stop, that hasn't even started
10 until this consultation is done.

11 MR. RUSSELL: Right, right.

12 THE COURT: Okay. So --

13 MR. RUSSELL: And I understand your point. I'm
14 trying to convey how quickly this 8,000-year-old national
15 treasure can be destroyed before -- we are not even going to
16 have notice, perhaps, before it is destroyed. Whether there
17 is a final order at the end of the consultation, we don't
18 know. Every now and then, we were given some timeline as to
19 when the consultation process is going to be over. The
20 airport has sometimes committed to a certain date, but beyond
21 that certain date, we don't know if the airport is going to
22 destroy the prairie in some way, and at that point, it will be
23 too late to seek injunctive relief.

24 THE COURT: So are you concerned that this is going
25 to be a Mayor Daley and Meigs Field, and they are going to go

1 out there with bulldozers in the middle of the night and build
2 those big Xs across the runway?

3 MR. RUSSELL: Possibly.

4 THE COURT: Okay. Let me pause you right there.

5 Are you folks going to do that?

6 Any one of you, are you planning on, without notice
7 to the plaintiff or the Court, when there is a pending action,
8 going to go out there without any notice to anybody and start
9 bulldozing the Bell Bowl Prairie?

10 MR. LESTER: The airport has previously informed the
11 Court and NLI and all the parties that it will not proceed
12 with any construction activity on the affected area, being the
13 Bell Bowl Prairie, until after the FAA concludes the Section 7
14 consultation process and issues its final decision, of which I
15 have seen correspondence where the FAA has informed
16 Mr. Russell that he will be provided with a copy of the final
17 decision as soon as it is in.

18 THE COURT: Okay. So I have got the GRAA.

19 All right. IDOT, do you plan on running out there,
20 destroying the Bell Bowl Prairie before the Section 7 is done
21 and before you give notice to the Court and to NLI?

22 MS. JONES: Your Honor, our understanding of IDOT's
23 role is that it provides an environmental species report and
24 other assessments, and then it provides funding of which is
25 only about 5 percent, and it is coming from federal funds. I

1 don't believe that IDOT would have anything to do with the
2 actual physical construction. So in that instance, no.

3 THE COURT: So the answer is no.

4 Okay. Let's go to the feds.

5 MR. COONEY: No, Your Honor. I mean, the answer, we
6 are not in charge of the bulldozers. We wouldn't be the ones
7 doing any active construction in the immediate area.

8 THE COURT: Okay.

9 MR. COONEY: What I can say is that the agencies are
10 currently in the process of doing a written reevaluation of
11 the November 2019 FONSI. That written reevaluation is going
12 to look at three things.

13 First, it is going to consider the Endangered Species
14 Act review of the rusty patched bumble bee. It is going to
15 incorporate that ESA consultation, which is currently ongoing
16 and is nearly concluded.

17 Second, it is going to look at changes in the project
18 that the airport has proposed since the last time this project
19 was permitted.

20 And, third, it is going to review environmental
21 assessment from IDNR. IDNR is currently looking at
22 state-protected species in the area, and we don't have a
23 timeline for when that review is going to be complete, and we
24 don't know what it is going to say.

25 So we are not entirely sure when our own written

1 reevaluation will be complete. It could be as early as the
2 end of September or early October, but we don't know.

3 Once that written reevaluation is done, it will
4 either result in a final determination that the project can go
5 forward, in which case there will be a new final agency action
6 that will trigger a 60-day window to review in the court of
7 appeals, or the written reevaluation will determine that a
8 supplemental environmental assessment is necessary, in which
9 case there is more environmental review to be done, and we are
10 looking at sometime stretched out certainly into 2023 before
11 the final order would issue.

12 THE COURT: Okay. That's helpful.

13 Well, IDNR is involved. There is state statutes that
14 may be involved. And if there is no federal claim -- I don't
15 know who is across the street handling civil matters now; it
16 is not Judge Doherty; maybe it is Judge Fabiano -- state stuff
17 can be handled across the street.

18 And part of the process, I know in the complaint and
19 the amended complaint and a lot of the documents, there is
20 discussion of various plants. There is a bearded plant, and
21 there is some other plant that I can't remember.

22 Is that all cooked into the mix?

23 MR. COONEY: Right, Your Honor, yes. I mean, the
24 only federally listed species under the Endangered Species Act
25 is the bee, but the IDNR scope is larger than that. Our

1 position would be that if NLI and the airport want to discuss,
2 want to mediate, or want to have any kind of discussion about
3 steps that can be taken to mitigate NLI's concerns, that's
4 fine, but we have a review that we need to complete, and there
5 is only one place it can be challenged once it's done, and NLI
6 will need to follow that process once the order issues.

7 THE COURT: Okay. All right. I appreciate that.

8 MR. COONEY: Thank you, Your Honor.

9 THE COURT: All right. I think I have got judicial
10 admissions from every defendant saying they are going to
11 complete the Section 7 consultation process. When they are
12 done, they are going to get you notice.

13 Email them the document ASAP. Get them notice in the
14 best way possible. Call them. Give them a heads up.

15 You are going to get notice, okay? So hopefully that
16 gives you some comfort.

17 Does it?

18 MR. RUSSELL: Yes, Your Honor.

19 THE COURT: Okay. All right.

20 MR. RUSSELL: And I would ask you to retain
21 jurisdiction until that decision is reached.

22 THE COURT: Well, if I don't have jurisdiction at the
23 time of filing, I don't have jurisdiction.

24 MR. RUSSELL: Well, on that point, I mean, we
25 are -- I mean, that does address our concerns, so thank you.

1 THE COURT: Okay.

2 MR. RUSSELL: I mean, we are still inevitably
3 concerned about destruction before the decision, and I think
4 you can retain jurisdiction under a line of cases, starting
5 with *Old Town Neighborhood Association v. Kauffman*, a Seventh
6 Circuit case from 2003 that I cited where you can retain
7 jurisdiction. If not, if you choose not to retain
8 jurisdiction, either we would also ask you to consider
9 transferring the case to the court of appeals directly under
10 28 USC 1631 or if you do dismiss that it be without prejudice.

11 THE COURT: Any jurisdictional dismissal has to be
12 without prejudice, so no doubt on that.

13 Okay. D.C. Circuit or Seventh Circuit?

14 MR. RUSSELL: Seventh Circuit.

15 THE COURT: Okay. All right. Well, good, we have
16 got something resolved today. That's good.

17 Go ahead. I interrupted you in the middle of your
18 flow.

19 MR. RUSSELL: No, I'm concluded, Your Honor, unless
20 you have questions.

21 THE COURT: So if the consultation is done and you
22 don't like it, you think it's not legally appropriate for
23 whatever reason, do you agree that that case should be in the
24 court of appeals, not here?

25 MR. RUSSELL: Yes, if it is a challenge to that

1 particular decision.

2 THE COURT: Fair enough.

3 So you know my next question is what else would you
4 be challenging if -- if you are challenging something, why
5 haven't you challenged it, told me what it is so far?

6 MR. RUSSELL: Well, I mean, the concern has always
7 been the destruction of any part of the prairie.

8 THE COURT: Sure. That's true.

9 MR. RUSSELL: We are uneasy by the lack of
10 information coming our way.

11 THE COURT: Okay. Well, I get there is some unease,
12 and I get in 2022 there is a general distrust of all
13 government, including the federal government, but they are
14 going through their process, right?

15 And, again, I will ask you the question for the third
16 time: Is there any legal authority for NLI to participate in
17 this consultation process that's ongoing?

18 MR. RUSSELL: No.

19 THE COURT: Okay. So I get your unease, but there is
20 no legal right for you to be in the room. Whether they want
21 you in, you can always waive your legal rights, and they can
22 bring you in and put you as part of the consultation.

23 MR. RUSSELL: Of course I understand that with the
24 federal defendants, but it is possible to mediate with the
25 airport. The airport, as I think the airport would admit, I'm

1 not -- would say that they are not technically part of that
2 consultation process. We can, theoretically, mediate with
3 them.

4 THE COURT: Okay. But they don't want to; is that
5 fair?

6 MR. LESTER: Yes, Your Honor.

7 THE COURT: Okay. All right. The doors to the
8 courthouse, to whatever judge is available, would be available
9 if that decision -- if the parties want to engage in that.

10 All right. So they are working on their
11 consultation. It's not done yet. I can't enjoin them in the
12 process. I think we can all agree on that. Once they are
13 done, it goes to a different court, not this court. But you
14 have -- and I don't want to pull up the transcript, even
15 though it is right in front of me.

16 Well, hold on. Let me try.

17 You said something that, of course, is going to cause
18 me to pause. You said if that is -- basically, you said if
19 that is all the issue is, is the Section 7 consultation.

20 If you have some other claim out there that isn't in
21 the -- that hasn't been pled, I can't do anything with a claim
22 that is cooking around in your grey matter. I need -- and
23 they can't do anything, and I certainly can't enter any relief
24 unless there is a claim in a pleading.

25 MR. RUSSELL: Right. It would only be the state law

1 claim for breach of contract.

2 THE COURT: Okay. Wouldn't that be across the street
3 then?

4 MR. RUSSELL: Yes, if you dismiss the federal claims.

5 THE COURT: Well, I think we have already established
6 that the claim would have to be in the court of appeals, not
7 here.

8 MR. RUSSELL: Yes, yes.

9 THE COURT: So what am I doing here?

10 MR. RUSSELL: Well, now, you can either dismiss
11 without prejudice or, as I asked, perhaps transfer for want of
12 jurisdiction under 28 USC 1631.

13 THE COURT: Can I transfer a case that I don't have
14 jurisdiction on?

15 MR. RUSSELL: For want of jurisdiction, that's the
16 way I understand that code provision.

17 THE COURT: But there is no Section 7 -- there is no
18 final decision yet. So I would be transferring a case to the
19 court of appeals that isn't ripe, and, look, the Seventh
20 Circuit takes jurisdiction very -- almost personal and
21 understandably so. They might look at a transfer from a
22 district court, giving them more work, on a case that isn't
23 ripe with a fisheye.

24 MR. RUSSELL: I can offer supplemental briefing on
25 that issue.

1 THE COURT: Well, if you have got some cases that
2 would allow me to transfer a case to the court of appeals when
3 the case isn't even ripe, I will be glad to see it, but it
4 just seems like a blistering opinion is going to come back
5 pretty quickly.

6 MR. RUSSELL: Understood.

7 THE COURT: Okay. All right. So at most, the only
8 thing left for me to do would be to do this transfer to the
9 Seventh Circuit currently; is that right?

10 MR. RUSSELL: Yes, yes.

11 THE COURT: Okay. I appreciate that. That's
12 helpful.

13 Okay. Mr. Lester, Mr. Noble, anything to address?

14 MR. LESTER: No, Your Honor, I think you have covered
15 it all, except that, and I believe you also indicated this,
16 there is nothing to transfer here. The case isn't ripe, and
17 if this Court doesn't have jurisdiction over the matter, then
18 I don't think it has the ability to enter an order
19 transferring the case.

20 THE COURT: Okay.

21 MR. LESTER: That is all I would add. Thank you.

22 THE COURT: All right. Thank you.

23 All right. Mr. Cooney, anything?

24 MR. COONEY: Thank you, Your Honor.

25 I would just reiterate Mr. Lester's point and also

1 add that the jurisdiction that exists in the court of appeals
2 is not the jurisdiction to appoint a special master, engage in
3 discovery, have litigants engage in civil trial-level
4 discovery on a TRO. It is a petition for review.

5 THE COURT: It is like an administrative review.

6 MR. LESTER: It is like an immigration case or
7 Social -- you know, it is a petition for review. So the
8 problem still exists. We have to issue the final agency
9 decision, which we have not done yet, and that's what the
10 plaintiffs can bring to the court of appeals and say that
11 decision is invalid for X, Y, for whatever reasons.

12 But because that decision hasn't issued yet, there is
13 nothing to bring to the court of appeals, and when that
14 decision issues, there is a 60-day window to challenge it.

15 So it doesn't make sense to bring this dispute,
16 what's here now, to the court of appeals because it is still
17 ambiguous. You know, the 2019 FONSI issued a long time ago.
18 There hasn't been a subsequent rule. So the problem still
19 exists.

20 THE COURT: Okay. All right. I appreciate that.

21 All right. Ms. Walsh, Ms. Jones, anything?

22 MS. JONES: Your Honor, there is a state law claim
23 under the Illinois Environmental Species Protection Act that
24 has been named against the state defendants, and we just
25 wanted to clarify whether or not, since that hasn't been

1 discussed here, whether the dismissal would include that claim
2 as well.

3 THE COURT: Well, if I don't have federal
4 jurisdiction, I don't have to dismiss under 1367. I should,
5 and I probably would, and then they have every
6 right -- because it would be dismissal without
7 prejudice -- they would have every right to go to the 17th
8 Judicial Circuit and file any state claims in that court, and
9 then you can litigate it in front of whatever judge is doing
10 civil injunctive.

11 Mr. Noble, Mr. Lester, who is running that courtroom
12 now?

13 MR. NOBLE: Judges Fabiano and Barch.

14 THE COURT: Okay. They are two very experienced
15 civil both attorneys and judges. I'm sure they would be
16 willing to hear you folks out.

17 So, yes, it would be a dismissal without prejudice,
18 and then they have every right, because it is without
19 prejudice, to file in state court.

20 MS. JONES: Thank you.

21 THE COURT: All right. Anything else?

22 MR. RUSSELL: No, Your Honor.

23 THE COURT: Okay. Thank you very much. It has been
24 very helpful. I appreciate it.

25 MR. RUSSELL: Thank you.

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(Which were all the proceedings heard.)

CERTIFICATE

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/Heather M. Perkins-Reiva

September 13, 2022

Heather M. Perkins-Reiva
Official Court Reporter

Date