

SMC Appeal- Part 2

Taken from:

Case # 06-523-HO

United States District Court for the District of Oregon

Oregon Natural Desert Association, et al.,

Versus

Shirley Gammo

Manager, BLM, et al.,

Lake View District

Pursuant to the APA, the court shall set aside agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); *Marsh v. Ore. Natural Res. Council*, 490 U.S. 360, 377 (1989); *Blue Mtns. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998). In determining whether an agency decision is arbitrary and capricious, courts consider “whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Marsh*, 490 U.S. at 378. “A decision is arbitrary and capricious if the agency ‘has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs

counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.’” *O’Keefe’s, Inc. v. U.S. Consumer Prod. Safety Comm’n*, 92 F.3d 940, 942 (9th Cir. 1996) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). Although review under this standard is narrow, the agency must articulate a rational connection between the facts found and the conclusions made. *Ore. Natural Res. Council v. Lowe*, 109 F.3d 521, 526 (9th Cir. 1997); *O’Keefe’s*, 92 F.3d at 942; *Env’tl. Def. Ctr. v. EPA*, 319 F.3d 398, 428 n.46 (9th Cir. 2003). Finally, an agency’s decision can be upheld only on the basis of the reasoning in that decision. *Anaheim Mem’l Hosp. v. Shalala*, 130 F.3d 845, 849 (9th Cir. 1997).