

### Ecosystem Management Coordination



### Court Decisions

1. None to report.

### Litigation Update

1. None to report.

### New Cases

1. Timber & Wildlife | Region 4

Environmental groups filed a complaint in the District of Idaho alleging the North and South Pioneer Fire Salvage and Reforestation Projects in the Boise National Forest violate the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Endangered Species Act (ESA) regarding the project's impacts on bull trout in *Wildlands Defense et al v. Seesholtz et al*.

Plaintiffs' first claim is that the Environmental Assessments (EAs) approving the project failed to take a "hard look" at the environmental consequences of the proposed actions and should have prepared an Environmental Impact Statement. Specifically, the plaintiffs claim the Forest Service: 1) "failed to fully and accurately evaluate the indirect effects and cumulative impacts of the proposed action"; 2) failed to use accurate scientific information; 3) failed to consider the projects' highly controversial effects and the degree of unknown risks on endangered and threatened species.

Plaintiffs' second claim is that the projects violate NFMA because, **according to the plaintiffs, the projects fail to demonstrate compliance with the Forest Plan standards** regarding soil processes and productivity and salvage harvesting.

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Lastly, plaintiffs charge that the Forest Service violated the ESA by using an Emergency Situation Determination for the South Pioneer Project prior to the finalized project Biological Assessment and letter of concurrence and thus **took an action which could jeopardize bull trout and its critical habitat prior to completion of lawful consultation.** (17-00408, D. Idaho)

## 2. Timber & Wildlife | Region 5

Earth Island Institute and Sequoia Forestkeeper filed a complaint in the Eastern District of California challenging the Bull Run Roadside Hazard Tree Mitigation Project in *Earth Island Institute et al. v. Elliott et al.* The project, using the timber salvage categorical exclusion (CE) as per the plaintiffs, will allow logging on 3,500 acres along 50.2 miles of road in the Cedar Fire area in the Greenhorn Mountains of the Sequoia National Forest. Plaintiffs assert the project is directly linked to the Spear Creek Roadside Hazard Tree Mitigation Project, which would log an additional 1,250 acres along 24 miles of road adjacent to the Bull Run Project, and that the Bull Run project would adversely affect California spotted owls, Pacific fishers, and the mountain yellow-legged frog.

Plaintiffs challenge the project under NEPA. According to the plaintiffs, the project “greatly **exceeds to 250 acre limitation of timber salvage CE**” and is therefore required to prepare an EA or EIS. Plaintiffs also state that because of **extraordinary circumstances**, like the effects the project would have on ESA listed species like the yellow-legged frog, and **the relation the Bull Run project has with the Spear Creek project** the Forest Service must complete further NEPA analysis. (17-00740, E.D. Cal.)

## Notices of Intent

1. None to report.

## Natural Resource Management Decisions Involving Other Agencies

### 1. Natural Gas | Bureau of Land Management (BLM)

The Northern District of California vacated the BLM’s postponement notice of compliance dates for certain sections of the Waste Preservation, Production Subject to Royalties, and Resource Conservation Rule in *State of California et al. v. BLM et al. and Sierra Club et al. v. Zinke et al.* “The Rule’s purpose was to ‘reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian leases...’” The rule’s effective date was January 17, 2017. On June 15, 2017, the BLM issued a notice in the Federal Register that it was postponing the compliance dates for certain sections of the rule citing “the substantial cost that complying with these requirements poses to operators ... and the uncertain future these requirements face...”

Plaintiffs argue the BLM violated the Administrative Procedure Act (APA) by postponing implementation of the rule after it already went into effect. BLM contended that it was allowed to postpone implementation up to the date stakeholders have to comply with the rule, in this case January 2018, due

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to provisions in the APA allowing an agency to maintain the status quo pending judicial review of a rule. The court sided with the plaintiffs. **“The plain language of the statute authorizes postponement of the ‘effective date,’ not ‘compliance dates.’”** According to the court, the postponement also doesn’t maintain the status quo “because the year leading up to [the compliance date] was intended to give operators in the oil and gas industry time they needed to adjust the operations to come into compliance.” **“After years of developing the rule and working with the public and industry stakeholders, the [BLM’s] suspension of the rule five months after it went into effect plainly did not ‘maintain the status quo.’ To the contrary, it belatedly disrupted it.”** The court further states the BLM violated the APA’s notice-and comment requirements and that **“the [BLM] entirely failed to consider the benefits of the rule,** such as decreased resource waste, air pollution, and enhanced public revenues” in its decision to postpone implementation. (17-03804, N.D. Cal.)

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