

### Ecosystem Management Coordination



### Court Decisions

#### 1. Water | Region 6

**The Ninth Circuit affirmed the District Court of Oregon’s decision in favor of the Forest Service concerning the authorization of the City of Bend, Oregon, to expand an intake facility and pipeline for withdrawing water from Tumalo Creek and Bridge Cree on the Deschutes National Forest for drinking and municipal water in *Central Oregon Landwatch, et al. v. Connaughton, et al.*** Plaintiffs contended the authorization was in violation of the Federal Land Policy Management Act (FLPMA), National Forest Management Act (NFMA), and National Environmental Policy Act (NEPA).

Plaintiffs first argument was that the expansion would prevent the Forest Service from attaining its Riparian Management Objectives (RMOs) under the Deschutes National Forest Plan and therefore in violate FLPMA and NFMA. The court, giving **“substantial deference” to the agency’s views on RMOs**, determined the Forest Service’s decision to permit the expansion was consistent with the Forest Plan.

Plaintiffs next argued the Forest Service violated NEPA by only discussing two alternatives in the expansion’s Environmental Assessment (EA): 1) implementation of the expansion, and 2) a “no action” alternative. The court found that “[w]ith an EA, an agency only is required to include a brief discussion of reasonable alternatives.” Stating that **the plaintiffs did not “establish the existence of ‘a viable but unexamined alternative’”** the court ruled that the plaintiffs failed to show that the alternatives considered were unreasonable.

Lastly, plaintiffs contended the Forest Service should have conducted a quantitative analysis of the impacts of climate change on the expansion instead of a qualitative analysis. According to the court **“NEPA provides for analysis of impacts’ in proportion to their significance’ and requires ‘only brief discussion of other than significant issues.’” As the agency described environmental impacts in qualitative terms and explained “why precise quantification was unreliable,” the court determined the agency was not required to conduct a quantitative analysis.** (15-35089, 9th Cir.)

## Litigation Update

1. None to report.

## New Cases

1. None to report.

## Notices of Intent

### 1. Beaver Creek Project | Region 1

The Friends of the Wild Swan, Swan View Coalition, Alliance for the Wild Rockies, and Native Ecosystems Council submitted a Notice of Intent to Sue (NOI) under the Endangered Species Act (ESA) regarding the **Beaver Creek logging project on the Flathead National Forest**. The NOI focuses on consultation for Canada lynx and grizzly bear.

According to the NOI the Forest Service formally reinitiated ESA consultation on Canada lynx on November 2, 2016, and then in December 2016, the Forest Service approved the implementation of the logging project located in lynx critical habitat. As **the ESA does not permit any irreversible or irretrievable commitments of resources while in consultation and “timber sales constitute per se irreversible and irretrievable commitments of resources under ESA § 7(d),”** the NOI states that the project cannot go forward until the consultation process is complete.

With regards to grizzly bear the NOI states there are seven grizzly subunits to which the Flathead Forest Plan Amendment 19’s numerical objectives now apply as a result of the Montana Legacy Project land transfer. Because these **objectives started to apply to these subunits subsequent to the last performed Biological Opinion,** the NOI states the agency must initiate and complete reconsultation for grizzly bear in the seven subunits.

### 2. Over Snow Vehicle Use Maps (OSVUMs) | Region 4

The Forest Service received three separate NOIs under the ESA from environmental groups challenging OSVUMs on the Boise, Bridger-Teton, and Payette National Forests, respectively.

For the Boise National Forest the NOI states “the Forest Service has violated the ESA by failing to consult, or reinitiate consultation, under Section 7 regarding the impacts of **Canada lynx**, and failing to conference under Section 7 regarding the impacts on **wolverine** associated with adoption of existing Over Snow Vehicle (OSV) use designations in the **Boise National Forest’s OSVUM.**”

For the Bridger-Teton National Forest the NOI alleges “the Forest Service has violated the ESA by failing to consult, or reinitiate consultation, under Section 7 regarding the impacts on **Canada lynx** and its critical habitat and on **grizzly bear**, and failing to conference under Section 7 regarding the impacts of **wolverine** associated with the adoption of existing OSV use designations through publication of the **Teton Division’s 2016 OSVUM.**”

The NOI on the Payette National Forest asserts “the Forest Service has violated the ESA by failing to consult, or reinitiate consultation under Section 7 regarding the impacts on **Canada lynx** and **norther Idaho ground squirrel**, and failing to conference under Section 7 regarding the impacts on **wolverine** associated with the adoption of existing OSV use designations through publication of the **Payette National Forest’s 2017 OSVUM.**”

## **Natural Resource Management Decisions Involving Other Agencies**

1. None to report.