

# NFS Litigation Weekly

September 8, 2017

## Ecosystem Management Coordination



### Court Decisions

1. None to report.

### Litigation Update

1. None to report.

### New Cases

1. Timber, Transportation, & Wildlife | Region 1

Several environmental groups filed a complaint in the District of Montana challenging the Beaver Creek Project on the Flathead National forest on National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), and Administrative Procedure Act (APA) grounds in *Friends of the Wild Swan, et al. v. Kehr, et al.* The Beaver Creek Project is located on the Swan Lake Ranger District, authorizes commercial and non-commercial logging, prescribed burning, temporary road construction, the opening and use of currently gated or bermed roads, and is estimated to take five years to complete. Plaintiffs challenge the agency's cumulative effects analysis for the project, the project's compliance with the Forest Plan's grizzly bear requirements, and the project's compliance with the Forest Plan's elk open road density standard.

According to the complaint, the Beaver Creek Environmental Assessment (EA) states "[t]here are no ongoing or reasonably foreseeable timber harvest activities occurring on [Forest Service] lands within the project area" and "[t]here is no ongoing or reasonably foreseeable road construction occurring in the project area." The complaint alleges that the Glacier Loon Project, located also in the Swan Lake Ranger District, including timber harvesting and road construction, and occurring contemporaneously with the Beaver Creek Project, should have been more fully discussed in the Beaver Creek EA's cumulative effects analysis or that both projects should have been analyzed in a single Environmental Impact Statement.

The project, located on lands designated as Management Situation 1 (MS-1) for grizzly bears, "does not meet the minimum habitat thresholds necessary for grizzly bears... which requires no more than 19 percent of a sub-unit to have open motorized rout density over one mile/square mile, no more than 19

percent of a sub-unit to have total motorized route density over one mile/square mile, and no less than 68 percent core habitat in a sub-unit” according to the complaint. **The plaintiffs assert the project will increase open motorized access route density over one mile/square mile to 30 percent for one of the two grizzly bear sub-units affected by the project and the other sub-unit to 31 percent.** These increases in road density, along with other project activities like helicopter ignition of prescribed burns, the plaintiffs alleges demonstrate the project EA’s failure to comply with the Forest Plan in violation of NFMA, NEPA, and the APA.

The Forest Plan contains a standard that prohibits open road density over 1.0 miles/square mile “during the elk use period” in “areas with ‘moist sites.’” **According to the complaint the project EA does not provide a map of the locations of “areas with moist sites” in the project area, nor does it disclose open road density in “areas with moist sites.”** The complaint states that, by failing to provide information to demonstrate compliance with the Forest Plan standards for road density during elk use periods in areas with moist sites, the project violates NFMA and NEPA. (17-120, D. Mont.)

## 2. Recreation & Wildlife | Region 6

The Oregon Hunters Association filed a NFMA, NEPA, and APA complaint against the Ochoco Summit Trail System Project on the Ochoco National Forest alleging the project failed properly analyze the impacts the project will have on Rocky Mountain elk in *Oregon Hunters Association v. United States Forest Service, et al.* The purpose of the project, according to the complaint, “is to create motorized recreational opportunities in the Forest for Off-Highway Vehicle (OHV) users” and will span approximately 301,580 acres.

“The Ochoco Forest Plan requires the Forest Service to protect the character of elk calving sites by minimizing disturbances from human activity during calving season.” The complaint asserts the project will decrease elk calving areas by nine percent. As such, **the plaintiff believes the project fails to provide high quality habitat for elk, protect elk calving sites, and prevent the displacement of elk in violation of NFMA.**

Plaintiff states the Forest Service violated NEPA by failing to adequately address the project’s impacts on elk. Specifically, the **plaintiff alleges the Forest Service did not adequately consider research it brought to the agency’s attention which analyzed the effects road construction has on elk habitat, and failed “entirely to consider the cumulative impacts of the proposed project in conjunction with past, present, and reasonably foreseeable future actions on elk disturbance, security and displacement.”** (17-1366, D. Or.)

## Notices of Intent

1. None to report.

## Natural Resource Management Decisions Involving Other Agencies

1. None to report.