

Ecosystem Management Coordination



Court Decisions

1. Timber | Region 4

The District of Idaho denied environmental groups' motion for a temporary restraining order (TRO) against the North Pioneer and South Pioneer projects on the Boise National Forest in *Wildlands Defense et al. v. Seesholtz*. Both Projects are within bull trout and Canada lynx critical habitat. Both projects were approved under an Emergency Situation Determination (ESD) following the Pioneer Fire due to the hazard the burned trees constituted to the public and to reforestation efforts and that delay would result in a deterioration of the trees that could jeopardize the funding of reforestation plans.

For a TRO to be ordered the party seeking the TRO must show: 1) they are likely to succeed on the merits; 2) a likelihood of irreparable harm in the absence of a TRO; 3) that the balance of equities/hardship tips in their favor; and 4) that an injunction is in the public interest.

Seeking to halt the projects, Plaintiffs argued the agency made its decision to seek an ESD on the projects before receiving the Fish and Wildlife Service's (FWS's) concurrence the projects would not adversely affect bull trout and Canada lynx in violation of the Endangered Species Act (ESA). The court, however, found the records to **show the Forest Service did not seek an ESD until two days after the FWS sent its concurrence.**

Plaintiffs next argued the projects violated the Forest Plan's soil condition standards. According to the court the projects' environmental assessments (EAs) "discussed this issue at length..." and "both concluded that [the projects comply] with the Boise national Forest Plan..." **The Forest Service's determination, according to the court, was entitled to substantial deference and thus the court determined the plaintiffs were not likely to succeed on this issue.**

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Photo credit: http://www.biologicaldiversity.org/species/plants/Huachuca_water_umbel/

Plaintiffs lastly argued that the Forest Service violated the National Environmental Policy Act (NEPA) by failing to prepare environmental impact statements due to projects' significant effects on the environment. Again looking to the projects' EAs **the court determined the agency had a lengthy discussion of the environmental impacts of the two projects and thus the court could not conclude that the plaintiffs were likely to succeed on their NEPA argument. As the court could not find plaintiffs likely to succeed on their claims, the court denied the plaintiffs' motion for a TRO.** (17-408, D. Idaho.)

Litigation Update

1. Recreation | Region 4

Winter Wildlands Alliance and WildEarth Guardians amended their original complaint first reported in the September 15, 2017 Litigation Weekly to include the Wilderness Society and Endangered Species Act claims in *Winter Wildlands Alliance et al. v. U.S. Forest Service*. The original complaint, filed in the District of Idaho, challenges the publication of Over-Snow Vehicle Use Maps (USVUM) for the Payette, Boise, and Bridger-Teton National Forests. The original complaint alleged violations of the National Forest Management Act (NFMA) and NEPA; the agency violated NFMA because the adoption of existing OSVUMs without minimizing damages caused by the expanded capability of over snow vehicles is inconsistent with the Forest Plans' requirements to protect wildlife and the agency violated NEPA because according to the Plaintiff's new environmental analysis is required for the maps due to the significant changes occurring to over-snow vehicle technology since the prior map designations. **The new complaint, in addition to the claims of the original complaint, adds ESA claims against the Forest Service adopted the existing OSVUMs without completing new ESA consultation, or reinitiating prior consultation,** to analyze impacts of current use on threatened species Canada lynx and northern Idaho ground squirrel, and without conferring about impacts to the proposed threatened species wolverine. (17-376, D. Idaho)

New Cases

1. None to report.

Notices of Intent

1. Mining & Wildlife | Region 3

Environmental groups filed a Notice of Intent to Sue (NOI) regarding alleged ESA violations through the issuance of a Record of Decision and amendment of the Coronado Land and Resource Management Plan for the Rosemont Copper Project. The NOI claim that under ESA Section 7(a)(1) the agency is required to carry out species conservation programs. According to the NOI, the Forest Service's decision to allow the mine "would not 'further the purposes' of the ESA and will not 'conserve' the endangered and threatened species affected by the Rosemont Project" such as Gila chub, Gila topminnow, desert pupfish, Chiricahua leopard frog, northern Mexican gartersnake, and Huachuca water umbel.

Natural Resource Management Decisions Involving Other Agencies

1. None to report.

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