

Ecosystem Management Coordination



Court Decisions

1. Wilderness & Transportation | Region 8

The Eastern District of Oklahoma found for the Forest Service on a case concerning the denial of a special use permit to construct a road to an entity's property surrounded by the Upper Kiamichi Wilderness in the Ouachita National Forest in *Dobbs v. U.S. Forest Service*. In February 2007 plaintiff submitted an application for a permit to construct a gravel road for motorized access to his property. The construction of the road would have resulted in 41.54 tons of sediment in the first year; "a 178% increase over the annual sediment delivered in an undisturbed watershed condition." After several years analyzing the application and issuing an Environmental Assessment (EA) the Forest Service issued a Final Decision denying plaintiff's request. In March 2016, Plaintiff filed suit claiming the agency "failed to balance the adequacy of cross-country hiking access with the reasonableness of [his] use of his property as a residence" and that the agency's decision that construction would result in lasting adverse effects was not supported by substantial evidence.

The court defined "adequate access" to property as "a route and method of access to non-Federal land that provides for *reasonable use* and enjoyment of the non-Federal land *consistent with similarly situated* non-Federal land and that minimizes damage on disturbance to National Forest System lands and resources." As noted by the court, the Regional Forester found several private inholdings in the Upper Kiamichi, but none which had been granted permits to construct roads. The only special use permit found for a road in a wilderness area in the Ouachita was only for maintenance of a road in place prior to the wilderness designation. **As the court could find on similarly situated land which was issued a special use**

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permit for road construction the court found the Forest Service did not act arbitrarily and capriciously in denying the permit.

As for plaintiff's argument that the Forest Service's findings on lasting adverse effects were not supported by substantial evidence, the court did not agree. **The court, citing the EA's findings that road construction would result in five acres of soil would be rendered unsuitable for vegetation and would result in 41.54 tons of sediment in the first year, afforded deference to the agency's conclusions as to the effects road construction would have on the wilderness character of the Upper Kiamichi Wilderness** and ruled that the agency's determination was supported by substantial evidence. (16-112, E.D. Okla.)

Litigation Update

1. Minerals | Region 9

Plaintiffs Franconia Minerals LLC and Twin Metals Minnesota LLC filed a notice to voluntarily dismiss their case in the District of Minnesota in *Franconia Minerals (US) LLC, et al. v. USA, et al.* The lawsuit challenged the Secretary of the Interior's denial of certain mineral leases on lands within the Superior National Forest. (16-3042, D. Minn.)

New Cases

1. Transportation | Region 3

Plaintiff, Sabino Canyon Tours (SCT), filed suit in the District of Columbia against the Forest Service's determination that SCT is incapable of meeting the public demands, such as for cleaner emission vehicles, as called for in the current Prospectus issued by the Forest Service seeking an operator for the shuttle services in the Sabino Canyon Recreation Area in the Coronado National Forest in *Sabino Canyon Tours, Inc., et al. v. U.S. Forest Service*. Plaintiffs have operated a shuttle service in the Sabino Canyon since 1985.

Plaintiffs claim:

- The agency is proceeding with a competitive bidding process constituting an invalid interpretation of its own policies and the Term Permit Act of 1915. SCT believes it should be given the right of first refusal to provide the shuttle services in Sabino Canyon and that SCT's bid will not be fairly evaluated due to the agency's arbitrary and capricious determination SCT is unable to meet increasing and changing public demands;
- The decision to issue a new permit with only a five year term is an abuse of discretion and a violation of the Term Permit Act because it contradicts the agency's acknowledgement that a permittee cannot feasibly meet the public's demand for new shuttle equipment under a short length permit; and
- The final EA issued by the agency concerning the Sabino Canyon Recreation Area failed to analyze the impacts of ground disturbing activities required to remove SCT's existing structures if SCT does not secure a new permit.

SCT is asking the court to suspend further actions on the prospectus. (17-2758, D.D.C.)

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Notices of Intent

1. Nothing to report

Natural Resource Management Decisions Involving Other Agencies

1. Nothing to report

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