

Ecosystem Management Coordination



Court Decisions

1. Land | Region 2

The 10th Circuit found for the Forest Service regarding an appeal from the District of Colorado's decision the Forest Service had no duty under the Freedom of Information Act (FOIA) to disclose unseen documents in the possession of third-party contractors in *Rocky Mountain Wild, Inc. v. U.S. Forest Service*. The underlying dispute arose from a FOIA request concerning the Wolf Creek Project land exchange on the Rio Grande National Forest. The Forest Service hired a third-party contractor to prepare an environmental impact statement for the proposed exchange. Rocky Mountain Wild made a FOIA request for the documents supporting the EIS. Rocky Mountain Wild and the agency were able to agree on the disclosure of all requested materials except for documents in the contractor's possession that were never shared with the agency. The agency claimed that these contractor documents were not "agency records" subject to FOIA.

"To be 'agency records,' (1) an agency must either create or obtain the requested materials and (2) the agency must be in control of the requested materials at the time the FOIA request is made." The court determined that **since: 1) the contractors created the documents and the Forest Service did not exercise sufficient control over the contractors to be able to say the agency created them; and 2) the Forest Service was never in possession of the documents and thus could not be said to control the requested materials, the documents requested could not be said to be "agency records."** (17-1119, 10th Cir.)

Litigation Update

1. Nothing to report

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New Cases

1. Grazing | Region 6

The Greater Hells Canyon Council filed a complaint in the District of Oregon challenging the Forest Service's decision to reauthorize livestock grazing on approximately 44,000 acres in the Hells Canyon National Recreation Area (HCNRA) within the Wallowa-Whitman National Forest in *Greater Hells Canyon Council v. Stein, et al.* Plaintiffs claim the reauthorization "threatens to impair the viability and recovery of the Spalding's catchfly – a federally threatened plant endemic to the HCNRA." Specifically, plaintiffs claim the reauthorization violates the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Hells Canyon National Recreation Area Act (HCNRA Act). **According to the plaintiffs the Forest Service violated NEPA by failing to evaluate an adequate range of alternatives, such as eliminating pastures in Spalding's catchfly populations or grazing in areas where they germinate, and failing to take a hard look at the full scope of probable environmental consequences.** For NFMA, plaintiffs claim the Forest Service did not comply with their land management plan, and for the HCNRA Act the plaintiffs claim the Forest authorized the grazing in a manner incompatible with the Act's objectives of preserving unique, rare and endemic plants and habitat. (18-54, D. Or.)

Notices of Intent

1. Pilgrim Creek Timber Sale | Region 1

The Alliance for the Wild Rockies (AWR) filed a Notice of Intent to Sue under the Endangered Species Act challenging the access amendment and the Pilgrim Creek project on the Kootenai National Forest. AWR is concerned over impacts to grizzly bear due to roads not being properly closed with earthen berms. AWR claims that because the berms are ineffective at preventing motorized access, the Forest Service is not in compliance with their Incidental Take Statement for the access amendments in violation of ESA, and thus the agency must reinstate consultation.

Natural Resource Management Decisions Involving Other Agencies

1. Migratory Birds Treaty Act (MBTA) | Fish and Wildlife Service (FWS)

The 9th Circuit affirmed a District of Oregon decision in favor of the FWS regarding a permit issued by the agency allowing the taking of 1,600 barred owls to study how their absence could impact the recovery of northern spotted owls in *Friends of Animals, et al. v. FWS*. Plaintiffs alleged the permit violated the MBTA as it only permits takings for scientific purposes to advance the conservation or scientific understanding of the species being taken. The court, however, found **that the MBTA delegated the Secretary of the Interior broad discretion to implement the MBTA and that nothing excluded the taking of birds to study whether their absence benefits another species.** (15-35639, 9th Cir.)

2. Wildlife | USDA Wildlife Service

The District of Idaho ruled favorably for the Idaho Director of Wildlife Service as USDA Wildlife Services by dismissing a case challenging the management program for gray wolves in Idaho in

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Western Watershed Project, et al. v. Grimm, et al. Plaintiffs claimed the defendants violated NEPA by expanding their wolf control program without considering its environmental impacts. The court, however, found the **plaintiffs lacked standing because the relief requested would not redress their injuries. The court reasoned that if it stopped Wildlife Services from killing wolves in Idaho other parties like the Idaho Department of Fish and Game would fill the void.** The court based this decision on four factors: 1) the State of Idaho is the agency responsible for managing the over-all population of wolves in Idaho, 2) the State does not contract exclusively with Wildlife Services to engage in lethal wolf removals; 3) the State has financial resources to pay for lethal control efforts; and 4) wolves are managed by the State under an adaptive approach to ensure long-term sustainability of populations and habitat. (16-218, D. Idaho)

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