

Ecosystem Management Coordination



Court Decisions

1. Recreation | Region 3

The District Court adopted the Magistrate's adverse decision on a challenge to the Agency's 2012 travel management decision for the Santa Fe National Forest in *WildEarth Guardians v. U.S. Forest Service*. Reported in the September 7, 2018 litigation weekly, the Magistrate decided that because the Forest Service retained discretion to open roads, trails, areas, and corridors under the travel management decision, the Agency must reinitiate consultation for the Jemez Mountain salamander even though it was listed as endangered after the decision was approved. (14-848, D.N.M.)

2. Land Use | Region 6

The Western District of Washington found for the Agency on one claim and reserved one claim for further briefing in a case challenging the decision to grant a special use permit to the U.S. Navy allowing the Navy to conduct electronic warfare training in the Olympic National Forest in *Forest Service Employees for Environmental Ethics v. U.S. Forest Service*.

Plaintiff first argued granting the Navy a permit to conduct training on national forest land was beyond any authority granted by Congress. The court analyzed the language of the Organic Act before holding the Agency has implied authority to permit uses of forest land that were not specifically identified in the Act. As such, the Forest Service had authority to grant a special use permit to the Navy.

Plaintiff's next argument was that the Forest Service's decision was inconsistent with the Forest Plan. In its analysis of whether the Agency's record demonstrated its conclusions that the project was consistent with the plan, the court held the Forest Service failed to provide enough reasoning for why the Navy's *The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the most complete and accurate discussion of each case.*

Photo credit: <http://www.guinnessworldrecords.com/news/2017/4/international-day-of-forests-4-620-people-set-record-for-largest-tree-hug-in-ind-467729>

training could not be accommodated on private land. The court ordered to the Agency to supplement its briefs so the court can determine whether this omission was a harmless error. (17-5747, W.D. Wa.)

3. Telecommunications | Region 3

A Magistrate Judge in the District of New Mexico found for the Agency on claims challenging the Agency's denial of a request to place new telecommunications facilities on Tesuque Peak in the Santa Fe National Forest in *CNSP Inc., v. U.S. Forest Service*. Plaintiff claimed the denial violated the Telecommunications Act by barring the plaintiff from providing interstate telecommunications and personal wireless services. Plaintiffs also claimed the Agency, by denying their request without first requiring them to complete Standard Form 299 as part of Plaintiff's application, the Agency violated the Spectrum Act through which Federal agencies may allow communications facility installations. The court found that **the sections of the Telecommunications Act cited by the plaintiff only applied to state and local governments**; as the Forest Service is an agency of the federal government distinct from a state or locality, the section cited imposed no obligations or prohibitions on the Agency. As for plaintiff's other complaint, the court notes that **nothing is barring the plaintiff from submitting Standard Form 299 to the Agency for consideration.** (17-814, D.N.M.)

Litigation Update

1. Nothing to report

New Cases

1. Recreation | Region 2

Off-road vehicle special interest groups filed a complaint in the District of Colorado challenging the Forest Service's Rico West Dolores Roads and Trails Travel Management Project's final Record of Decision (ROD) on the San Juan National Forest in *Trails Preservation, et al. v. U.S. Forest Service, et al.* Plaintiffs claim the ROD reduces trails designed for single track motorized travel by about 30 percent. This reduction, as per plaintiffs, is "unsupported by logic and contrary to law..." Specifically, plaintiffs claim the final ROD:

- Imposes arbitrary restrictions on motorized travel to enhance elk habitat, address watershed impacts, and imbue "private and/or specifically permitted interest with unique benefit";
- Failed to provide "supportable findings on a variety of site-specific criteria in making road, trail and area designations";
- "[I]mproperly considering a vague or generalized sense of user conflict...";
- Improperly restricted access to the Town of Rico by eliminating motorcycle trail connection;
- Failed to properly include the public or follow governing procedures in identifying a minimum road system;
- Failed to undergo site-specific NEPA analysis for road/trail decommissioning;
- Failed to adequately respond to public comments; and
- Is inconsistent with the Forest Plan through enhancing or exceeding relevant metrics for elk management at the detriment to plaintiffs' use of recreational trails.

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(18-2354, D. Colo.)

Notices of Intent

1. Nothing to report

Natural Resource Management Decisions Involving Other Agencies

1. Wildlife | Fish and Wildlife Service

The District Court of Montana vacated the Fish and Wildlife Service's (FWS's) Final Rule delisting the Greater Yellowstone Ecosystem population of grizzly bears in *Crow Indian Tribe, et al. v. United States of America, et al.* The court found FWS failed to consider how reduced protections in the Greater Yellowstone Ecosystem would impact the other grizzly populations and, by committing to ensure that any grizzly population estimator adopted in the future is calibrated to the estimator currently in use, illegally negotiated away its obligation to apply the best available science. (17-89, D. Mont.)

2. Minerals | Department of the Interior

The District Court of the District of Columbia ordered the Department of the Interior to reinstate Montana oil and gas leases held by Solenex LL and W.A. Moncrief in *W.A. Moncrief v. U.S. Department of Interior, et al.* The leases are in a region that is held sacred by the Blackfeet Nation located in the Badger-Two Medicine area of the Lewis and Clark National Forest.

The leases were originally granted in 1981 and were subsequently suspended to assess their effects on traditional places. In 2002 the Badger-Two area was designated as a "traditional cultural district" by the Forest Service under the National Historic Preservation Act (NHPA). Then, in 2012 the two lease locations were added. In 2014 the Forest Service determined that the lease approvals violated NHPA. The Department of the Interior cancelled the Solenex lease in March 2016 and the Moncrief lease in January 2017, saying the approvals violated the National Environmental Policy Act and NHPA.

The court found this decision to cancel the leases arbitrary and capricious under the Administrative Procedure Act (APA). **"Even if agencies have the power to rescind decisions made by their predecessors, they must still exercise that power within a reasonable amount of time... An unreasonable amount of time to correct an alleged agency error, especially where the record shows that error was readily discoverable from the beginning, violates the APA."** The court ordered the Moncrief lease be reinstated. (17-609, D.D.C.)

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