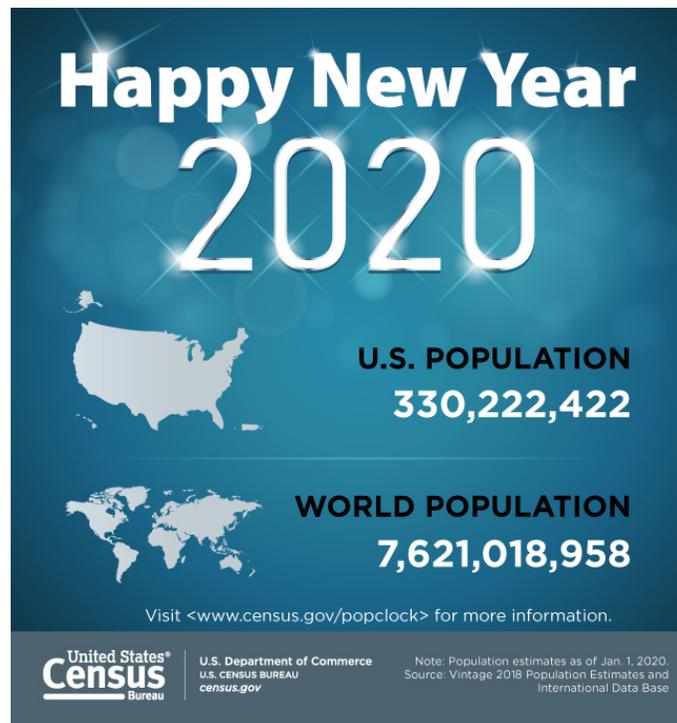


Ecosystem Management Coordination



Court Decisions

Minerals | Region 4

Idaho Conservation League and Greater Yellowstone Coalition v. U.S. Forest Service, et al. (18-504, D. Idaho) **Region 4**— On December 18, 2019, the District Court of Idaho issued a Memorandum and Order granting Motions for Summary Judgment by each party in part and remanded the case to the Forest Service to consider the **Kilgore Exploration Project on Caribou-Targhee National Forest** (a 5-year mining exploration project) impacts on (1) groundwater in the Dog Bone Ridge Area, and (2) how the groundwater from Dog Bone Ridge Drainage will impact Corral Creek and the Yellowstone Cutthroat Trout in Corral Creek.

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 post complete accurate discussion of each case.

Specifically, the district court concluded the Forest Service violated the Administrative Procedures Act, National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), and Organic Act (OA) when it failed to take a hard look at the impacts of the Dog Bone Ridge and how the project's drainage will impact Corral Creek and the Yellowstone Cutthroat Trout. The district court remanded the case to the Forest Service, limited in scope to review the concerns regarding Dog Bone Ridge, Corral Creek and Yellowstone Cutthroat Trout. The district court determined the Forest Service:

- Did not provide adequate analysis and baseline analysis of the Dog Bone Ridge in the Environmental Assessment (EA).
- Never addressed whether the lack of monitoring was proper, because its hydrogeological conditions were similar enough to the east side drainage and that east side monitoring would adequately estimate conditions on the west side.
- Environmental analysis lacked a hard look of the Yellowstone Cutthroat Trout and the impacts on Corral Creek.

For all other claims, the district court granted summary judgment in favor of the Forest Service. Specifically, the district court found the Forest Service did not violate NEPA, NFMA or the OA, by concluding the Forest Service did take a hard look at the project's impacts on:

- Grizzly bear habitat and numbers.
- Whitebark Pine.
- Columbia Spotted Frog (although it is prevalent in the project area, the Forest Service was reasonable in concluding there will be some road kill, but it would be insignificant).

The district court found the Forest Service did adequately determine the proposed roads would not pose a significant risk of landslides, slope failures or erosion and adequately evaluated the risk of fuel spills.

Background

On November 13, 2018 the plaintiffs filed a complaint in the district court against the Forest Service challenging the Kilgore Exploration Project located on the Caribou-Targhee National Forest. The plaintiffs sought declaratory and injunctive relief. The complaint focused on the level of analysis that was given to the impact of the project on several sensitive species and water quality.

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 post complete accurate discussion of each case.

The plaintiffs alleged that the EA and Finding of No Significant Impact for the project are inadequate under the NEPA, because they were “based upon unsupported assumptions, errors, and omissions which render them grossly deficient.” The plaintiffs contend that an Environmental Impact Statement should be required for the project. The plaintiffs also claimed that the Forest Service violated the Forest Plan and the NFMA by failing to comply with standards in the plan, failing to explain deviation from guidelines listed in the plan, and failing to comply with the agency’s sensitive species policy and U.S. Department of Agriculture regulation 9500-4. Finally, the plaintiffs asserted that the Forest Service violated its OA and implementing regulations, by initiating the project without minimizing impacts to, and without adequately protecting forest resources.

Litigation Update

Nothing to report

New Cases

Realty & Transportation Management | Region 1

Sandra Short, David Short, Sarah Sarbacker and Donald Short v. Federal Highway Administration, Lee Potter, United States Forest Service, William P. O’Donnell, Shannon Boem (19-00285, D.N.D)-Region 1. On December 27, 2019, Plaintiffs filed suit in the District Court of North Dakota, Western Division claiming violation pursuant to the **National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA) and Section 4(f) of the Department of Transportation Act of 1966 (Section 4f)**. Plaintiffs claim the Federal Highway Administration (FWA) violated NEPA, NHPA and Section 4f when signing the decision to approve the **Little Missouri Crossing Road and Bridge project (Project)** in Billings County, North Dakota. The United States Forest Service (FS) was named as a cooperating agency and did not sign the Record of Decision (ROD) or Final Environmental Impact Statement (FEIS) or provide written consent. The project encroaches on and crosses the **Little Missouri National Grassland of the Dakota Prairie Grassland**. The project alignment would run from Belle Lake Road to Short Road. The plaintiffs claim the alignment of the project cuts directly through the heart of the Short Ranch and will cause irreparable harm to the character, history and function of the property. They claim this damage was not meaningfully considered in the DEIS or FEIS. Plaintiffs claim they submitted comments, but were never granted formal consultation despite requesting it.

The Plaintiffs claim:

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 post complete accurate discussion of each case.

- Defendants violated NEPA because it failed to disclose and analyze all of the impacts to the Human Environment of the project, directly, indirectly and cumulatively is arbitrary, capricious and an abuse of discretion.
- FHWA's illegal imposition of a public process that substantially hindered rather than facilitated public comment and involvement violated NEPA and is arbitrary, capricious and abuse of discretion.
- Defendants violated the NHPA by failing to determine whether the Short Ranch is eligible for inclusion in the National Register of Historic Places.
- Defendants violated NHPA by excluding the Plaintiffs from formal consultation and meaningful comments on the Project.
- Defendants violated Section 4(f) of the Department of Transportation act of 1966 (49 U.S.C 303) by:
 - Incorrectly determining that Management Area (MA) 3.65, the Little Missouri River and Short Ranch are not Section 4(f) Resources.
 - Improperly categorized the Little Missouri River as non-Section 4(f) even though it's publicly owned by the State of North Dakota and is recognized as an important recreational resource.
 - Failed to recognize the Short Ranch as Section 4(f) despite the plaintiffs comments that the Ranch is "an extraordinary historic property" and has been "in continuous operation since 1902".

Plaintiffs request the Court to declare Defendants violated NEPA, NHPA, and Section 4(f), vacate the FEIS and ROD for the Project, vacate FHWA's Section 106 process and enter preliminary and permanent injunctions until compliance with NEPA, NHPA and Section 104(f).

Notice of Intent

Recreation | Region 4

NOI - On December 24, 2019, Sawtooth Mountain Ranch LLC sent two 60 Day Notices of Intent to Sue pursuant the **Endangered Species Act (ESA)** and **Clean Water Act (CWA)** regarding the construction of the Redfish to Stanley Trail (Trail) in Custer County, Idaho on the Sawtooth National Recreation Area. The Decision Memo (DM) authorizing the project was signed by the **Sawtooth National Forest (Region 4)**.

The Sawtooth Mountain Ranch indicates

- The project involves construction of a multi-use commuter trail approximately 4.4 miles long and 6.5 feet wide using hand tools and construction machinery.

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 post complete accurate discussion of each case.

- The trail will also include construction of a ‘turnpike’ section in at least one wetland area involving subgrade excavation of wetland soils and filled back with graded rock to keep the trail dry for users.
- The project area is located on National Forest System lands and on a Forest Service trail easement through private land owned in fee by the Sawtooth Ranch within the Sawtooth National Recreation Area.
- The trail will be constructed across wetland and riparian areas and streams and along lakesides that are not seasonal, but year-round with a direct hydrological connection to the Salmon River.
- The Forest Service is wrong in stating that the wetlands are separated from critical habitat in the Salmon River by “substantial distance.” The reality is the wetlands are approximately 500 feet from some areas of the Salmon River.

Endangered Species Act Claims

- The Salmon River contains critical habitat for three listed species: Upper Columbia Bull Trout, Snake River Basin Steelhead, and Snake River spring/summer Chinook salmon.
- The authorization, construction and operation of the project may negatively impact all three ESA species, result in unauthorized take and/or an adverse modification of designated critical habitat.
- There is no evidence the Forest Service and the Federal Highway Administration (FHA) consulted with either the United States Fish and Wildlife Service or the National Marine Fisheries Service, as required before it approved the DM.

Clean Water Act Claims

- Construction of the Trail will result in an unauthorized discharge into waters of the United States in violation of Section 404 (33 U.S.C. SS 1344) of the Clean Water Act (CWA).
- The U.S. Army Corps of Engineers advised the FS to obtain a wetland delineation to determine the need for a Clean Water Act Permit (letter dated May 8, 2014).
- The project was approved under a Nationwide Permit 42 (Permit) (i.e., a “Preliminary Jurisdictional Determination” that remains subject to revision). The jurisdictional determination may have been obtained through the communication of misinformation (i.e., characterization by the FS that the wetlands were “minor, essentially isolated” and admission that the map attached to the DM depicts an incorrect trail alignment and therefore, its unknown what alignment was considered if any for purpose of CWA compliance).
- Construction of the Trail may violate at least three general and regional conditions of the Permit.
 - There is no indication the FHA or the FS complied with the requirement under the Permit for considering the impacts to the ESA listed species and critical habitat or conducted any section 7 consultation. No coordination occurred with the Idaho Department of Fish and Game as is required by the Permit

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 post complete accurate discussion of each case.

- The Nationwide Permit does "not authorize any injury to the property or rights of others." As Sawtooth is the fee title owner of a section of the proposed Trail, Sawtooth does not consent to the construction on its property as construction would impose injury to the property rights and thus construction would not qualify under the Permit. The "Scenic Conservation Easement" merely gives the FS the right to burden Sawtooth with allowing public access.
- There is no evidence FHA has submitted a pre-construction notice to the district engineer prior to commencing any activity as required by the Permit.

Forest Management | Region 3

Six NOI's – On December 24, 2019, WildEarth Guardians sent six 60-day notices of intent to sue claiming the US Fish and Wildlife Service (FWS) and Forest Service (FS) failed to comply with Sections 7 and 9 of the Endangered Species Act (ESA) concerning the **effects of continued implementation of Forest Plans on the Apache-Sitgreaves, Cibola, Coconino, Coronado, Kaibab and Prescott National Forests on Mexican spotted Owl and designated critical habitat**. Although similar in many respects, the claims are more specifically detailed as follows:

Apache-Sitgreaves National Forest 2015 Forest Plan

1. The 2015 Biological Opinion (BO) is not based on best available science (FWS leaves out more recent data; relies on favorable studies or results without explanation; does not consider climate change or cumulative impacts; relies on flawed assumptions including lack of range-wide monitoring, impacts of vegetation management and threats from wildfire).
2. No substantial evidence for no jeopardy and no adverse modification findings (nothing in the Forest Plan commits the FS to implement the 2012 Recovery Plan; no basis for Plan components to help minimize adverse effects of site-specific actions including landscape level stand-replacing fire improving forest conditions).
3. The BO is based on fictional FS management approach to Mexican spotted owl conservation and recovery, and not the management approach that the FS implements (e.g., Forest Plan relies on 2012 Recover Plan but noting in the Forest Plan commits the FS to implementing the Recovery Plan).
4. FWS reverses its prior position without adequate explanation (departure from range-wide population monitoring as required in the 2012 Recovery Plan).
5. FWS's findings and conclusions contradict each other (FWS recognizes impacts from logging and fire, but then concludes practices under the plan will have long-term benefits).
6. FWS fails to analyze key aspects of the Mexican spotted owls' analysis (abandonment of range-wild monitoring and adverse effects of logging/fire suppression).

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 post complete accurate discussion of each case.

7. The scope of analysis misrepresents the health of the Mexican spotted owl (fails to consider cumulative impacts including climate change and Tribal timber management programs).
8. FWS's incidental take statement violates the ESA (incidental take attributed to PAC levels (harassment/habitat degradation) does not allow for reinitiation of consultation; terms and conditions fail to minimize harm or consider/track cumulative impacts).
9. Mitigation measures are ineffective or too uncertain (not reasonably specific, certain to occur, capable of implementation or enforceable).
10. FWS fails to provide for the recovery of Mexican spotted owl (range-wide monitoring is essential to delisting).

Cibola National Forest 1985 Forest Plan

1. The 2019 BO is not based on best available science (FWS leaves out more recent data; relies on favorable studies or results without explanation; relies on flawed assumptions including lack of range-wide monitoring and impacts of vegetation management and threats from wildfire).
2. No substantial evidence for no jeopardy and no adverse modification findings (nothing in the Forest Plan commits the FS to implement the 2012 Recovery Plan; no basis for Forest Plan components to help minimize adverse effects of site-specific actions including landscape level stand-replacing fire improving forest conditions; no basis that critical habitat units will continue to serve the function and conservation role of critical habitat).
3. The BO is based on fictional FS management approach to Mexican spotted owl conservation and recovery, and not the management approach that the FS actually implements (ignoring FS historic practices of failing to implement range-wide monitoring; Forest Plan relies on 2012 Recover Plan, but noting in the Forest Plan commits the FS to implementing that Recovery Plan; recognizes the 2012 Recover Plan is not enforceable).
4. FWS reverses its prior position without adequate explanation (does not exempt incidental take even though prior BO's included incidental take statements; departure from range-wide population monitoring as required in the 2012 Recovery Plan).
5. FWS's findings and conclusions contradict each other (FWS recognizes impacts from logging and fire, but then concludes practices under the Forest Plan will have long-term benefits).
6. FWS fails to analyze key aspects of the Mexican spotted owls' analysis (abandonment of range-wild monitoring and adverse effects of logging/fire suppression/minerals, grazing).
7. The scope of analysis misrepresents the health of the Mexican spotted owl (fails to consider cumulative impacts including climate change, future federal actions and Tribal timber management programs).
8. FWS fails to include a quantifiable incidental take limit or an acceptable surrogate to retrigger consultation (i.e., FWS's reliance on future site-specific consultation to omit an incidental take statement in this instance is arbitrary and capricious).

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 post complete accurate discussion of each case.

9. Mitigation measures are ineffective or too uncertain (not reasonably specific, certain to occur, capable of implementation or enforceable; lack specific measurable goals or a schedule).
10. FWS fails to provide for the recovery of Mexican spotted owl (range-wide monitoring is essential to delisting).

Coconino National Forest 2018 Forest Plan

1. The 2017 BO is not based on best available science (FWS leaves out more recent data; relies on favorable studies or results without explanation; does not consider climate change or cumulative impacts; relies on flawed assumptions including lack of range-wide monitoring, impacts of vegetation management and threats from wildfire; fails to provide evidence that reduced wildfire will protect the species and its habitat, that owls prey species will benefit from constructed water sites, that guidelines to maintain/restore riparian soils functionality will restore hydrologic conditions and reduce sediment).
2. No substantial evidence for no jeopardy and no adverse modification findings (nothing in the Forest Plan commits the FS to implement the 2012 Recovery Plan; no basis for Forest Plan components to help minimize adverse effects of site-specific actions including landscape level stand-replacing fire improving forest conditions; no rational basis that adverse impacts for the Forest Plan will be short-term, but positive impacts will occur in the long-term; no basis that critical habitat units will continue to serve the function and conservation role of critical habitat).
3. The BO is based on fictional FS management approach to Mexican spotted owl conservation and recovery, and not the management approach that the FS implements (ignoring FS historic practices of failing to implement range-wide monitoring; Forest Plan relies on 2012 Recover Plan but noting in the Forest Plan commits the FS to implementing the Recovery Plan).
4. FWS reverses its prior position without adequate explanation (does not exempt incidental take even though prior BO's included incidental take statements; departure from range-wide population monitoring as required in the 2012 Recovery Plan).
5. FWS's findings and conclusions contradict each other (FWS recognizes impacts from logging and fire, but then concludes practices under the Forest Plan will have long-term benefits).
6. FWS fails to analyze key aspects of the Mexican spotted owls' analysis (abandonment of range-wild monitoring and adverse effects of logging/fire suppression/minerals, grazing – focuses on long-term impacts from fire suppression; fails to identify cumulative impacts).
7. The scope of analysis misrepresents the health of the Mexican spotted owl (fails to consider cumulative impacts including climate change and Tribal timber management programs).
8. FWS fails to include a quantifiable incidental take limit or an acceptable surrogate to retrigger consultation (i.e., To the extent that FWS relies on the definition of a "framework programmatic action" as set forth at 50 C.F.R. 402.02 and 402.14(i)(6) to claim an incidental take statement is not required for the 2018 Coconino Forest Plan, that argument is unreasonable, arbitrary and capricious, and plainly erroneous.).

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 post complete accurate discussion of each case.

9. Mitigation measures are ineffective or too uncertain (science and actual plans for logging and wildfire suppression are too uncertain to rely on as mitigation; lack specific measurable goals or a schedule; relies on guidelines of the plan as opposed to standards; ignores how activities such as sedimentation, soil compaction and alterations in hydrologic conditions/water quality disrupt owls and their habitat).
10. FWS fails to provide for the recovery of Mexican spotted owl (range-wide monitoring is essential to delisting; conservation recommendations are too vague).

Coronado National Forest 2018 Forest Plan

1. The 2017 BO is not based on best available science (FWS leaves out more recent data; relies on favorable studies or results without explanation; relies on flawed assumptions including lack of range-wide monitoring and impacts of vegetation management and threats from wildfire; no scientific basis for conclusion that reducing wildfire will provide long-term benefits or that critical habitat units will continue to serve the function and conservation role of critical habitat).
2. No substantial evidence for no jeopardy and no adverse modification findings (blanket conclusion that there can be no jeopardy or adverse modification under a Forest Plan represents a complete reversal in the agency's approach).
3. The BO is based on fictional FS management approach to Mexican spotted owl conservation and recovery, and not the management approach that the FS implements (Forest Plan relies on 2012 Recover Plan but noting in the Forest Plan commits the FS to implementing the Recovery Plan).
4. FWS reverses its prior position without adequate explanation (does not exempt incidental take even though prior BO's included incidental take statements; departure from range-wide population monitoring as required in the 2012 Recovery Plan).
5. FWS's findings and conclusions contradict each other (FWS recognizes impacts from logging and fire, but then concludes practices under the Forest Plan will have long-term benefits).
6. FWS fails to analyze key aspects of the Mexican spotted owls' analysis (abandonment of range-wild monitoring and adverse effects of logging).
7. The scope of analysis misrepresents the health of the Mexican spotted owl (fails to consider cumulative impacts including climate change and Tribal timber management programs).
8. FWS fails to include a quantifiable incidental take limit or an acceptable surrogate to retrigger consultation (i.e., To the extent that FWS relies on the definition of a "framework programmatic action" as set forth at 50 C.F.R. 402.02 and 402.14(i)(6) to claim an incidental take statement is not required for the Forest Plan, that argument is unreasonable, arbitrary and capricious, and plainly erroneous.) - FWS's reliance on future site-specific consultation to omit an incidental take statement in this instance is arbitrary and capricious).
9. Mitigation measures are ineffective or too uncertain (actual plan for wildfire suppression and logging are too uncertain to rely on them for mitigation – past management has been

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 post complete accurate discussion of each case.

ineffective in minimizing effects to the owl or its habitat; no measurable goals or a schedule).

10. FWS fails to provide for the recovery of Mexican spotted owl (range-wide monitoring is essential to delisting).

Kaibab National Forest 2014 Forest Plan

1. FS and FWS have violated the ESA by failing to reinitiate consultation under Section 7 despite (1) significant new information, and (2) changes to the implementation of the 2014 Kaibab Forest Plan that reveal the plan may affect Mexican spotted owl and its critical habitat in a manner or to an extent not previously considered in the 2013 Biological Opinion (i.e., abandonment of range-wide population monitoring).
2. The Forest Service is in violation of Section 7 (d) of the ESA by implementing the 2014 Kaiba Forest Plan before adequate and lawful reinitiation of consultation is complete.

Prescott National Forest 2015 Forest Plan

1. The 2017 BO is not based on best available science (FWS leaves out more recent data; relies on favorable studies or results without explanation; does not consider climate change or cumulative impacts; relies on flawed assumptions including lack of range-wide monitoring, vegetation management should reduce threats from wildfire; fails to provide an explanation that logging and prescribed burning will increase sustainability and resiliency of the species and its habitat; fails to provide scientific basis for assumption that habitat units will continue to serve the function and conservation role of critical habitat).
2. No substantial evidence for no jeopardy and no adverse modification findings (nothing in the Forest Plan commits the FS to implement the 2012 Recovery Plan; no basis for assumption that reducing the potential for stand-replacing fire will improve forest conditions and sustainability and the risk of high severity fire will benefit owl habitat; no basis that critical habitat units will continue to serve the function and conservation role of critical habitat).
3. The BO is based on fictional FS management approach to Mexican spotted owl conservation and recovery, and not the management approach that the FS implements (ignoring FS historic practices of failing to implement range-wide monitoring; Forest Plan relies on 2012 Recover Plan but noting in the Forest Plan commits the FS to implementing the Recovery Plan).
4. FWS reverses its prior position without adequate explanation (departure from range-wide population monitoring as required in the 2012 Recovery Plan; no details about the pilot study mentioned in the BO – its failure to discuss range-wide monitoring, time periods or next steps).
5. FWS's findings and conclusions contradict each other (FWS recognizes impacts from logging and fire, but then concludes practices under the Forest Plan will have long-term benefits).

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 post complete accurate discussion of each case.

6. FWS fails to analyze key aspects of the Mexican spotted owls' analysis (abandonment of range-wide monitoring and adverse effects of logging – focuses on long-term impacts from fire suppression; ignores cumulative impacts).
7. The scope of analysis misrepresents the health of the Mexican spotted owl (fails to consider cumulative impacts including climate change and Tribal timber management programs).
8. FWS fails to include a quantifiable incidental take limit or an acceptable surrogate to retrigger consultation (incidental take attributed to PAC levels (harassment/habitat degradation) does not allow for reinitiation of consultation; terms and conditions fail to minimize harm or consider/track cumulative impacts).
9. Mitigation measures are ineffective or too uncertain (science and actual plans for logging and wildfire suppression are too uncertain to rely on as mitigation; lack specific measurable goals or a schedule).
10. FWS fails to provide for the recovery of Mexican spotted owl (range-wide monitoring is essential to delisting).

Forest Management | Region 1

NOI-On December 6, 2019, Alliance for the Wild Rockies (AWR) and Friends of the Clearwater (FOTC) sent a 60-day Notice of Intent to Sue pursuant to the Endangered Species Act (ESA) for alleged violations on **the Idaho Panhandle National Forest (Region 1)**, concerning the **Brebner Flat Project**. The AWR/FOTC claims the Forest Service:

- Did not prepare a Biological Assessment (BA) for the project and the U.S. Fish and Wildlife Service (FWS) did not issue a Letter of Concurrence (LOC) or Biological Opinion (BO) based on best available science.
- By not preparing a BA for grizzly bears or the Lynx, the Forest Service's conclusion that the project will have "no effect" is arbitrary and capricious and an abuse of discretion.
- Acted unlawfully by not requesting the most current species list from the FWS.

The AWR/FOTC claims the project will reduce security, security habitat, and travel corridor habitat, thus meeting the low, "may affect" threshold not the "no effect" conclusion of the Forest Service. The AWR/FOTC also claims the Forest Service did not address the removal of some of the last best hiding cover in the area in the Wildlife Report, Environmental Assessment or Decision.

The AWR/FOTC indicates the Brebner Project allows clearcutting on 1,719 acres, construction of two miles of new permanent road and additional one mile of illegal road into the Forest Service road system; and allows an additional 4 miles of temporary road, 3 miles of existing "stored" roads, a combination of road reconstruction and maintenance on an additional 36 miles of road. The Forest Service approved the project through a Decision Notice, Environmental Assessment, and Finding of No significant Impact.

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 post complete accurate discussion of each case.