

### Ecosystem Management Coordination



### Court Decisions

#### 1. Wildlife | Region 6

The Forest Service received a favorable ruling in the District of Oregon concerning livestock grazing in the Fremont-Winema National Forest in *Oregon Wild et al. v. Cummins et al.* The plaintiffs alleged the Forest Service violated the Endangered Species Act (ESA), the National Forest Management Act, (NFMA), and the National Environmental Policy Act (NEPA) by issuing grazing permits authorizing livestock use on federal lands. Plaintiffs believed the grazing activities threatened the Lost River sucker and the shortnose sucker.

In their first claim, Plaintiff's challenged the 2014 re-consultation's conclusion **that grazing is not likely to adversely affect suckers' critical habitat** in violation of the ESA. The court found plaintiff's **ESA claim moot since the Forest Service has to complete a new ESA consultation prior to any livestock grazing in 2017.**

Plaintiff's NFMA claim centered on the contention that the Forest Service "ignored widespread evidence of riparian problems." The court disregarded this claim because the court found that the **Forest Service reasonably gathered and evaluated data** and issued the challenged permits on that basis.

Regarding Plaintiff's first NEPA claim that the Forest Service violated NEPA in issuing its 2009 EA, the court found that **the plaintiffs failed to exhaust their administrative remedies** and thus could not bring this claim in the first place.

Lastly, Plaintiffs alleged that the Forest Service had a duty under NEPA to supplement their analysis due to newly designated habitat and changing conditions. The court found **nothing in the analysis** attached to the newly designated habitat or the changing conditions **identified grazing as a significant threat** to suckers. Thus, the court concluded, the Forest Service did not need to supplement its NEPA analysis.

#### 2. Wildlife & Recreation | Region 3

The District Court for the District of Arizona ruled in favor of the Forest Service in a case on the Kaibab National Forest in *Center for Biological Diversity et al. v. United States Forest Service*. Plaintiffs had filed a **Resource Conservation and Recovery Act** claim against the Forest Service seeking "judicial review, as well as declaratory and/or injunctive relief" **to stop the disposal of lead ammunition** on public lands and **"to protect wildlife species threatened by exposure to spent lead ammunitions** in the foraging range within [Forest Service] land in Arizona."

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The Forest Service, along with several intervenors, filed a motion to dismiss this claim for failure to state a claim upon which relief could be granted. The court ended up dismissing this case, however, on justiciability grounds.

Article III, Section 2 of the United States Constitution limits the federal judicial power to **questions capable of resolution through the judicial process and that do not intrude into areas committed to other branches of government**. The court here believed that **the “prohibition of lead ammunition in national forests is a matter over which the USFS has control”** and “is a matter on which the USFS has knowledge and expertise. The court, therefore, concluded that it was not in any position “to supplant the USFS’s authority, knowledge, and expertise on this matter” and dismissed the case.

## Litigation Update

### 1. Wildlife | Region 5

The District Court for the District of Columbia granted in part and denied in part the Forest Service’s motion to dismiss Federal Advisory Committee Act (FACA) and Administrative Procedures Act (APA) claims brought by the Center for Biological Diversity challenging an advisory committee established to create a conservation strategy for the California spotted owl for the Sierra Nevada Region in *Center for Biological Diversity v. Tidwell et al.*

The plaintiff stated two claims for relief under FACA:

1. The Forest Service violated FACA by failing to have a committee that was fairly balanced in terms of points of view, failing to open the committee’s meetings to the public, and not making the committee’s documents available to the public; and
2. The Forest Service has engaged “in a pattern and practice of violating FACA.”

Due to the court finding that **the committee no longer existed** and that there **was no evidence that wrongful conduct was likely to reoccur**, however, the court dismissed the plaintiff’s FACA claims as moot.

Although the court dismissed the FACA claims, the plaintiff’s APA claims survived to the extent they seek relief for the Forest Service’s failure to comply with FACA’s document disclosure provision. Under FACA, the government is required to make certain materials available to the public as a matter of course, unless certain exceptions apply. **Documents that were made available to or prepared for or by each advisory committee are required to be disclosed**. The plaintiff, the court concluded, made a viable claim under the APA that the committee was regulated by FACA before it ceased to exist and that **the Forest Service failed to disclose materials prepared for and by the committee**.

## New Cases

1. No new cases.

## Notices of Intent

1. No new notices of intent.

## Natural Resource Management Decisions Involving Other Agencies

1. No new decisions.

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