



## Court Decisions

### 1. Wildlife | Region 4

The District Court for the District of Idaho found favorably for the Forest Service on a National Environmental Policy Act (NEPA) challenge claiming that the Forest Service was required to issue a special use permit for a “predator derby” to take place in the Salmon-Challis National Forest and other public or private lands near Salmon, Idaho in *WildEarth Guardians et al. v. United States Forest Service et al.* The predator derby was “a private competition involving the hunting of coyotes, wolves, and other wildlife.”

The Plaintiffs contended that the Forest Service violated NEPA by deciding that a special use permit was not required for the derby and for failing to take a “hard look” at the derby’s impacts on the environment. After reviewing what type of events would require a special use permit, the court determined that **the Forest Service’s decision that a permit was not necessary was valid.** The court found that the major activity in the event, namely the awarding of prizes and the makings of donations, did not take place on the forest and that hunting was a legal activity that each of the derby’s participants could have pursued on forest land if they chose to do so independent of the derby. Additionally, the court found that **the Forest Service was not required to undertake any NEPA analysis because the nature of the activities was not “qualitatively or quantitatively different from the activities of hunters in any other year on the same Forest lands, in any way that might implicate NEPA.”** (14-00488, D. Idaho)

### 2. Wildlife | Region 4

The District Court for the District of Nevada granted in part and denied in part the plaintiffs’, the Forest Service’s, and the Bureau of Land Management’s (BLM) Motions for Summary Judgment challenges to the BLM’s and Forest Service’s decisions to amend their resource management plans to provide greater protection to the greater-sage grouse in *Western Exploration, LLC et al. v. U.S. Department of the Interior et al.* The plaintiffs, consisting of the State of Nevada, nine counties, three mining companies, and a ranch, sought to enjoin the agencies from implementing the plans in Nevada and that the plans be remanded to the agencies for further consideration. However, after addressing whether the plaintiffs had standing upon which to bring this case, the court found that only two of the counties offered sufficient evidence to support their claims.

At issue before the court were several claims stating that the agencies had violated NEPA, the Federal Land Policy and Management Act (FLPMA), and the National Forest Management Act (NFMA). The court denied plaintiffs’ NFMA and FLPMA claims finding that the agencies complied with their respective regulations. However, the court did determine that **the agencies violated NEPA by making substantial changes between the draft and final environmental impact statement** by designating 2.8 million additional acres of sage-grouse focal areas in Nevada.

*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://m.mlb.com/images/6/2/2/158634622/OD\\_qcg57hgg.jpg](http://m.mlb.com/images/6/2/2/158634622/OD_qcg57hgg.jpg).

The court decided that the appropriate remedy for this NEPA violation was to remand the record of decision (ROD) to prepare a supplemental environmental impact statement, but refused to vacate the RODs due to the interest in protecting the greater-sage grouse. (15-00491, D. Nev)

### 3. Land Use | Region 5

**The District Court for the Eastern District of California vacated a prior decision and granted the Forest Service's Motion for Summary Judgment on a National Historic Preservation Act (NHPA) claim regarding the Coonrod Cultural Site in *Winnemem Wintu Tribe et al. v. United States Forest Service*.** The Winnemem Wintu Tribe, a tribe not federally recognized as an Indian tribe, filed suit against the Forest Service stating that the Forest Service violated the NHPA by granting permits allowing cattle to graze on the Coonrod site "without properly consulting the Tribe." Under NHPA an **agency must invite for consultation "all state historic preservation officers, Indian tribes, local government representatives, and the project applicant"** to the agency's NHPA review as well as **"other individuals and organizations with a demonstrated interest in the undertaking" but only if they request participation in writing.** The court in this case found that, **as the plaintiffs were "a non-federally recognized Indian tribe" and as there was no indication of the plaintiffs' requested consulting party status in writing,** the Forest Service did not violate NHPA. (09-01072, E.D. Cal.)

## Litigation Update

### 1. Wildlife | Region 4

**Plaintiffs filed an amended NFMA complaint in the District Court for the District of Idaho against the Salmon-Challis National Forest for authorizing livestock grazing in the Copper Basin area of the Big Lost River watershed in *Western Watersheds Project v. U.S. Forest Service*.**

The plaintiffs state that **the Forest's Land and Resource Management Plan (Forest Plan) includes standards to protect fish, known as the INFISH aquatic conservation strategy, which sets quantifiable riparian conservation goals** towards which the Forest Service must progress. The complaint states that the Forest Service has failed to consider the impact of grazing on these goals and whether the authorized grazing complies with INFISH.

Additionally, the complaint states **the Forest Plan places limits on activities that contribute to sediment where fine sediment levels are over 30 percent. The complaint notes that fine sediments exceed 30 percent in several streams in the Copper Basin allotments.**

Lastly, the complaint states the Forest Service has "failed to modify and correct grazing practices when these practices result in mismanagement and overuse." According to the complaint **there is a track record of permit violations in the grazing areas at issue and the Forest Service "has refused to take corrective action,** and instead has maintained and even increased grazing" in the Copper Basin allotments. (15-00218, D. Idaho)

## New Cases

### 1. Grazing & Land Use | Region 5

**Plaintiffs filed suit in the Eastern District of California challenging the authorization of cattle grazing on the Bell Meadow, Eagle Meadow, and Herring Creek allotments in the Stanislaus National Forest in *Central Sierra Environmental Resource Center et al. v. Higgins et al*.** Plaintiffs claim these authorizations violate the Clean Water Act, California's Porter Cologne Act, the Rescissions Act, NEPA, and NFMA.

- **Clean Water Act:** The complaint states that the Forest Service is required to comply with State requirements respecting the control and abatement of water pollution in the state, including those set

*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.*

forth in California's Porter-Cologne Water Quality Control Act. According to the complaint, the authorized livestock grazing has caused violations of state water quality standards for fecal coliform bacteria.

- **NFMA:** The complaint alleges that the continued authorization of grazing violates the Stanislaus National Forest LRMP (Forest Plan) by allowing higher levels of livestock browsing on hardwood seedlings, disturbance of streambanks and shorelines, and the destruction of special aquatic features in the allotments. According to the complaint, **the Forest Service is required to monitor the browsing, disturbances, and aquatic features in the allotments for damage caused by livestock, but has not done so.** As such, the complaint asserts the Forest Service is violating NFMA.
- **The Rescissions Act: The Rescissions Act, according to the complaint, requires the National Forests to develop a schedule for each NFS unit for the completion of NEPA analysis and documentation** on allotments where NEPA analysis is needed. The complaint states that the Forest Supervisor's August 29, 2016, **decision to withdraw a draft ROD for the allotments at issue violates the schedule set for NEPA compliance and that no other schedule was in place at the time of withdrawal for NEPA compliance for the allotments.**

(E.D. Cal.)

## 2. Wildlife | Region 9

**Challenging the NorthMet Mining Project and Land Exchange (NorthMet Mine) on the Superior National Forest, Plaintiffs filed Endangered Species Act (ESA) claims against the Forest Service and the U.S. Fish and Wildlife Service (FWS) in *Center for Biological Diversity et al. v. Zinke et al.*** The project would involve the exchange of federal land with PolyMet Mining Inc. to be used for an open-pit mine. **In February 2016, FWS completed a Biological Opinion (BO) for the project which asserts that the proposed activities "are likely to adversely affect [Canada] lynx, [gray] wolf, critical habitats for lynx and wolf, and the northern long-eared bat." Despite this finding, according to the complaint, the FWS concluded that the mine is not likely to jeopardize the continued existence of the northern long-eared bat, gray wolf, or Canada lynx, and is also not likely to destroy or adversely modify critical habitat.** The complaint, however, states that the project "would result in the long-term, and in most areas, permanent loss of lynx habitat . . . and contribute to habitat fragmentation."

The plaintiffs make the following claims against FWS and the Forest Service:

- FWS's BO for the proposed NorthMet Mine violated the ESA for the following reasons:
  - **Failing to analyze or consider the effects** of the mine on the recovery of Canada lynx;
  - **Failing to consider or address the mine's permanent destruction of critical habitat;**
  - **Failing to use the best scientific data** available in making its findings and determinations; and
  - **Determining that the mine is not likely to adversely modify the designation of critical habitat** for the Canada lynx or gray wolf.
- **The Forest Service's ROD on the NorthMet Mining Project violated the ESA by relying on FWS's BO.** The Forest Service has a duty, according to the complaint, to insure that the authorization and implementation of the mine is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. The complaint states the Forest Service cannot meet this duty by relying on a BO that is legally flawed.

(17-00914, D. Minn.)

## 3. Land Use | Region 9

**Alleging FLPMA violations for appraising federal lands for their timber value instead of for mining, plaintiffs filed a complaint against the NorthMet Mining Project and Land Exchange on the Superior National Forest in the District Court of the District of Minnesota in *Minnesota Center for Environmental Advocacy et al. v. Tidwell et al.*** The purpose of the land exchange, according to the complaint, is "to resolve a conflict between the Forest Service and PolyMet concerning PolyMet's right to conduct open-pit mining on lands for which it controls the subsurface

*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.*

mineral rights.” Under the exchange 6,650 acres of federal land will be exchanged for 6,690 acres of non-federal lands.

FLPMA allows exchanges of public lands if the public interest will be served by the exchange and the value of the lands to be exchanged is equal to the value of the private lands to be acquired. **In appraising the value of the lands to be exchanged the appraisal must use the value of the “highest and best use” of the lands.** The value of the federal lands to be exchanged were appraised on the value of timber. According to the complaint this valuation violates FLPMA because, **the plaintiffs contend, the highest value for the land would be that of mining,** which would appraise much higher. (17-00905, D. Minn.)

#### 4. Land Use | Region 9

Plaintiffs filed Weeks Act and NEPA claims challenging the issuance of the NorthMet Mining Project and Land Exchange Decision by the Forest Service on the Superior National Forest in *Save Our Sky Blue Waters et al. v. United States Forest Service et al.* The complaint states the following claims:

- **NEPA:** Plaintiffs contend that the Forest Service violated NEPA by committing resources before the issuance of a final decision. **NEPA requires that no action concerning a proposal be taken that would have an adverse environmental impact or limit the choice of reasonable alternatives until an agency issues a ROD.** According to the complaint, the decision to complete the land exchange portion of the decision would be completed before a final decision would be issued, which would have an adverse environmental impact and/or limit the choice of reasonable alternatives in violation of NEPA.
- **NEPA:** Additionally, plaintiffs claim that during the public comment period they requested the Forest Service to “consider several other reasonable alternatives” in addition to the two “action” alternatives and the “no-action” alternative; however **the Forest Service did not consider these other proposed alternatives.** The plaintiffs believes this to be a violation of NEPA.
- **Weeks Act:** The Weeks Act was enacted to authorize the Forest Service to purchase or trade lands to add to the Forest Service system. **Forest Service regulations prohibit the agency from accepting lands “in which there are reserved or outstanding interest that would interfere with the use and management of the land** by the United States.” Plaintiffs allege that private parties in this exchange would retain the mineral rights to the lands that would be conveyed to the federal government and that this represents an interference with the use of the lands for Forest Service purposes.

(17-00909, D. Minn.)

## Notices of Intent

### 1. No new notices of intent

## Natural Resource Management Decisions Involving Other Agencies

### 1. No new decisions

*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.*