

Ecosystem Management Coordination



Court Decisions

1. Timber & Wildlife | Region 1

The District Court of Montana dismissed with prejudice *Swan View Coalition et al. v. Weber et al.* The order comes after both parties moved to dismiss the complaint on the grounds that the Forest Service had withdrawn the decision notice for the Cold Jim Fuel Reduction and Forest Treatment Project in the Flathead National Forest. The Forest worked with the Washington Office to withdraw the decision after Fish and Wildlife Service changed the decision for bull trout from “not likely to adversely affect” to “likely to adversely affect” the species and the critical habitat. The Forest will issue a new decision before project implementation. Each party will pay its own costs. (16-00153, D. Mont.)

2. Timber & Wildlife | Region 1

On appeal from the District of Montana, the 9th Circuit held that the construction of 4.7 miles of new roads in connection to the Pilgrim Creek Timber Sale Project on the Kootenai National Forest does not violate the National Forest Management Act (NFMA), Endangered Species Act (ESA), or the National Environmental Policy Act (NEPA) in *Alliance for the Wild Rockies v. Bradford et al.*

In 2011, the Kootenai Forest Plan was amended by the Forest Plan Amendments for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones (Access Amendments). In developing the Access Amendments the Forest Service consulted with the Fish and Wildlife Service (FWS) on grizzly bear. As part of this process FWS issued an Incidental Take Statement which permitted incidental taking of grizzly bears as long as the total linear miles of road in specified areas remained below a baseline limit. The plaintiff contended that the Pilgrim Creek Project would create a net increase in linear miles in violation of the Access Amendments and would therefore (1) violate NFMA by failing to comply with the Access Amendments to the Forest Plan; (2) violate the ESA by failing to comply with the Incidental Take Statement’s mandate; and (3) violate NEPA by incorrectly stating that the Project will comply with the Access Amendments.

Looking at the Access Amendments the court found that “[The Amendments] expressly permits ‘[t]emporary increases in linear miles of total roads’ so long as the roads are ‘closed immediately upon completion of activities’ with a ‘berm, guardrail or other measure that effectively prevents motorized access.’” **As the Forest Service included as part of its Record of Decision approving the project a stipulation that all new permanent road**

segments constructed for the project will be made impassable to motorized vehicles through the installation of earthen barriers, rocks, or other barriers after the project's completion, the court determined that the Forest Service is not in violation of the Access Amendments and so the plaintiff cannot prevail on its NFMA, ESA, and NEPA claims. (14-35786, 9th Cir.)

Litigation Update

1. Timber | Region 3

The Board of County Commissioners of the County of Otero filed a petition for writ of certiorari to the U.S. Supreme Court against the United States of America challenging a 10th Circuit ruling that the County violated the Property Clause of the United States Constitution when the County authorized logging of standing trees in the Lincoln National Forest without the Forest Service's permission in *Board of County Commissioners of the County of Otero v. United States of America*.

In the petition the County argues that the county, in cutting down trees on Forest Service land without permission, was seeking to exercise its police power "to protect the lives and property of its residents on non-federal land" and that the property clause, which grants the federal government plenary power over federal lands, does not preempt this power. The petition states that, while the federal government may occupy the field of law with respect to federal property under Congressional enactment and the Property Clause, it should not be the case where the enactment requires coordination between federal and state agencies in the management of federal lands. The County asserts that, where federal law granting a federal agency power over federal lands specifically contemplates cooperation between state and federal agencies and where the federal legislation preserves some state powers, federal law and the property clause does not completely pre-empt state power and action on federal land. (16-1351, U.S.)

New Cases

1. None to report.

Notices of Intent

1. None to Report.

Natural Resource Management Decisions Involving Other Agencies

1. None to Report.