

# NFS Litigation Weekly

July 7, 2017

## Ecosystem Management Coordination



### Court Decisions

1. None to Report.

### Litigation Update

1. Wildlife | Region 9

**Environmental groups submitted an amended complaint in the Southern District of Ohio adding Endangered Species Act (ESA) claims to National Environmental Policy Act (NEPA) claims against the Bureau of Land Management's and Forest Service's authorization of oil and gas leasing in the Wayne National Forest's Marietta Unit in *Center for Biological Diversity et al. v. U.S. Forest Service et al.*** The new ESA claims assert that both agencies relied heavily on a 2005 Biological Opinion (BO) which plaintiffs claim is out of date due to new conditions and listed species at the lease sites. **Relying on an outdated BO, as per the complaint, means the agencies cannot ensure that the leases will not likely jeopardize threatened or endangered species** and therefore the plaintiffs assert the agencies must reinstate consultation with the Fish and Wildlife Service (FWS) to address new information and species that have been listed since the 2005 BO. (17-372, S.D. Ohio)

### New Cases

1. FOIA & Timber | Region 10

**Public Employees for Environmental Responsibility (PEER) filed a complaint in the D.C. District Court alleging violations of the Freedom of Information Act (FOIA) in *Public Employees for Environmental Responsibility v. United States Forest Service.*** PEER claims that on April 7, 2017, as a result of concerns about the mismanagement of commercial stewardship timber sales on the Tongass National Forest, the plaintiffs submitted a FOIA request asking for: 1) a news release allegedly issued by the agency related to commercial stewardship timber sales in the Tongass; and 2) records detailing how the agency addressed issues raised in an internal review of its timber sale administration. **According to PEER the Forest Service is currently in violation of FOIA because the agency has yet to respond to PEER's FOIA request despite being required to do so within 20 working days from its receipt.** (17-1277, D.D.C)

## Notices of Intent

### 1. North & South Pioneer Fire Salvage and Restoration Projects | Region 4

WildLands Defense, Inc. submitted a Notice of Intent to Sue (NOI) related to the North and South Pioneer Fire Salvage and Restoration Projects on the Boise National Forest. The NOI claims these projects violate the ESA for both Canada lynx and bull trout. For Canada lynx the NOI asserts that, because both projects contain lynx habitat and Canada lynx has been ordered to undergo re-consultation, the project cannot go forward until that consultation process is complete. For Bull Trout, the NOI states that the Forest Service glossed over the impacts the projects would have on already at-risk population and habitat conditions. WildLands Defense believes the agency should have issued a 'likely to adversely affect' determination, instead of a 'not likely to affect' determination, and entered formal consultation with FWS to comply with the ESA.

### 2. Martin Basin Rangeland Project | Region 4

Martin Basin Permittees submitted a request to reinitiate consultation and a NOI concerning a 2016 Martin Basin Biological Opinion (BO) and the agency's authorization of livestock grazing on the Santa Rosa Ranger District of the Humboldt-Toiyabe National Forest. The request and NOI concern a conflict between the 2016 Martin Basin BO and the 2017 Jarbridge BO. Permittees claim both BOs are "functional equivalents" since both implicate threatened Lahontan cutthroat trout fish management upon grazing, but apply opposite terms and conditions "without any rational or legal basis to do so." According to the Permittees the 2016 BO imposes a stream alteration term and condition while the 2017 BO does not.

## Natural Resource Management Decisions Involving Other Agencies

### 1. None to Report.