

Ecosystem Management Coordination



Court Decisions

1. Wildlife | Region 5

The Court of Appeals for the District of Columbia reversed a favorable decision for the Forest Service on a challenge to the 2013 management plan for the Devil's Garden Wild Horse Territory on the Modoc National Forest in *American Wild Horse Preservation Campaign, et al. v. Perdue, et al.*

In 1975 the Forest Service issued its first Devil's Garden Wild Horse Territory Plan. The plan consisted of two separate areas of land totaling approximately 236,000 acres. This did not include a parcel of land of approximately 23,000 acres, known as the Middle Section, which conjoined the two separate tracts. In 1991 the Forest Service issued a Forest Plan for the Modoc National Forest. In the plan the agency acknowledged that it was "legally obligated to manage horses within a 258,000-acre wild horse territory" and announced that "[t]he Forest has one wild horse territory of about 258,000 acres." In 2013 the agency released a Final Environmental Assessment (FEA) to accompany a proposed revision to the size of the Wild Horse Territory. The FEA labeled the inclusion of the middle section "[a]n administrative error," and "propose[d] to return to the management of wild horses within the [Wild Horse Territory] boundary" to as it was in 1975. Plaintiffs claimed this change was not adequately explained by the agency. The court agreed with the plaintiffs.

According to the court, "[t]he formal and published 1991 Forest Plan along with at least two decades of official Wild Horse Inventory Reports and the management activities they document together demonstrate that **for twenty years the Service officially treated portions of the Middle Section as part of a single, contiguous Devil's Garden Wild Horse Territory.**" The inclusion of the Middle Section, as such, was not an administrative error. The court found, "A central principle of administrative law is that, **when an agency decides to depart from decades-long past practices and official policies, the agency must at a minimum acknowledge the change and offer a reasoned explanation for it.**" "Accordingly, if the Service wishes now to formally revert to the 1975 territorial lines, it must acknowledge that it is actually changing course and explain its reasons for doing so." (15-5332, D.C. Cir.)

Litigation Update

1. None to report.

New Cases

1. None to report.

Notices of Intent

1. Minerals & Land Use | Region 3

Save the Scenic Santa Ritas, Center for Biological Diversity, Arizona Mining Reform Coalition, and the Sierra Club and its Grand Canyon Chapter filed a Notice of Intent to Sue (NOI) for alleged violations of the Clean Water Act (CWA) in the Forest Service's issuance of a Record of Decision and Amendment (ROD) of the Coronado Land and Resource Management Plan for the Rosemont Copper Project. According to the NOI the Forest Service is in violation of the National Environmental Policy Act (NEPA) and the CWA "by failing to ensure that the project complies with all applicable CWA requirements, state and federal water quality standards, regulations, protections, and requirements. Some of the more specific allegations are:

1. The agency has not ensured that all instream uses and water quality of the affected local streams will be maintained as required by the CWA;
2. "By contributing to a loss of beneficial uses in aquatic life and its supporting habitat, and/or by directly violating stream standards, the project violates the stream standards and the antidegradation policy" of the CWA and Arizona's antidegradation requirements;
3. The plan lacks adequate analysis of the impacts to ground water, surface water, and their dependent resources in violation of NEPA;
4. The project cannot be approved without first obtaining CWA Section 401 certification;
5. There is no analysis of the effectiveness of listed mitigation measures in violation of NEPA; and
6. The agency failed to conduct any quantitative assessment of the cumulative impacts from other actions/activities that may adversely affect water quality in waters effected by the project.

Natural Resource Management Decisions Involving Other Agencies

1. None to Report.