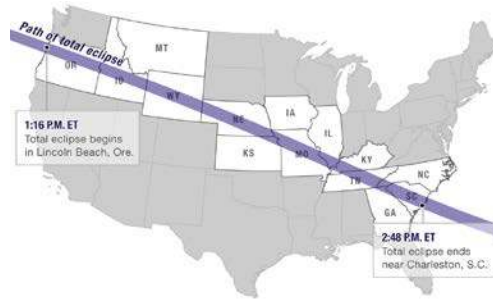


Ecosystem Management Coordination



Court Decisions

1. Wildlife | Region 5

The Eastern District of California ruled favorably for the agency on the use of a Farm Bill Categorical Exclusion (CE) to authorize the Sunny South Insect Treatment Project in the Tahoe National Forest in *Center for Biological Diversity, et al. v. Eli Ilano, et al.* As part of the 2014 Farm Bill, Congress amended the Healthy Forests Restoration Act to address “[t]he outbreak of the pine bark beetle afflicting states across the nation....” Congress created a two-step process excluded from the requirements of the National Environmental Policy Act (NEPA) for approving projects to counter infestations and disease: the first step is to designate large swaths of forest facing heightened risks of harm as landscape-scale areas, and the second step is to approval of treatment projects within those areas. The Forest Service used this new process to designate 5.3 million acres of National Forest System land in California and then to initiate the Sunny South Insect Treatment Project involving 2,700 acres within this area. Plaintiffs claimed the Forest Service was required to conduct a NEPA analysis before designating the 5.3 million acres as a landscape-scale area and also that the project required further NEPA analysis due to its potential harm to California spotted owl. The court found for the agency on both claims.

Regarding the designation of the landscape-scale area, the court found that Congress did not intend NEPA review to apply. The court reasoned that area designation “says nothing about the projects that will be conducted within those areas” so **any potential effects of a designation cannot be meaningfully evaluated.** It also stated that in the 2014 Farm Bill **Congress clearly intended to create an expedited process for insect and disease treatment and to require NEPA analysis for area designations “would resurrect the very problems that Congress sought to eliminate.”**

Plaintiffs’ next challenge to the project on the grounds of its effect on California spotted owls was also rejected by the court. Looking at the Forest Service’s extraordinary circumstances analysis, the court concluded **the agency “thoroughly considered the potential effects of the project on the spotted owl” and “took care to ensure that the most important parts of the spotted owl’s habitat would not be disturbed by the project.”** The court concluded “scientists might disagree about the [project’s] conclusion about the

project's effects on the spotted owl, but it was supported by the Forest Service's careful explanation, as well as the evidence in the record." (16-2322, E.D. Cal.)

Litigation Update

1. None to report.

New Cases

1. Telecommunications | Region 3

Plaintiff CNSP, Inc., dba NMSURF filed a complaint in the District of New Mexico challenging a decision by the Forest Service prohibiting the construction of a 30 foot minitower/communications hut on Tesuque Peak on the Santa Fe National Forest in *CNSP, Inc., dba NMSURF v. United States Forest Service et al.*

Plaintiffs say they are forced to lease space from an industry competitor, Tesque Radio Company (TRC), which has an exclusive agreement to be the only commercial facility on the mountain. Plaintiff's claims include:

- **Violation of the Telecommunications Act – Removal of Barriers to Entry** – 47 U.S.C. § 253 – Denial of plaintiff's request prohibits or has the effect of prohibiting the ability of plaintiff to provide telecommunications service as plaintiff is forced to lease space from a competitor – effectively prohibiting plaintiff from providing service;
- **Violation of 47 U.S.C. § 332(c)(B) – Unreasonable Discrimination** – Actions and decisions of the agency are discriminatory because they have granted site access to other federal and local agencies without the requirements that their equipment be placed upon the infrastructure of TRC's facility ; and
- **Violation of 47 U.S.C. § 1455(b) – Federal Right of Way** – The Santa Fe NF improperly denied Plaintiff's request for site access by not following the directive in the Forest Service Handbook regarding application procedures and not giving due deference to the findings and laws of the Federal Communications Commission prior to its denial.

(17-814, D.N.M.)

Notices of Intent

1. Moose Creek Vegetation Project, Helena – Lewis & Clark

Native Ecosystem Council and Alliance for the Wild Rockies submitted a Notice of Intent to Sue (NOI) under the Endangered Species Act (ESA) regarding the Moose Creek Vegetation Project on the Helena – Lewis and Clark National Forest. Supporting documentation for the Moose Creek Project asserts that the project "would not occur in occupied grizzly bear habitat," however, the NOI claims that there has been a **confirmed sightings of a 3-year-old grizzly bear in the project area** and as such the Forest Service must pull its decision and re-initiate consultation to include grizzly bears. The NOI also claims "the [project] will **add to past removal and degradation of lynx habitat...** and will cumulatively increase existing movement barriers and loss of prey habitat for lynx." The project therefore, as per the NOI, impedes the recovery of a threatened species in violation of the ESA.

Natural Resource Management Decisions Involving Other Agencies

1. None to Report.