

Ecosystem Management Coordination



Court Decisions

1. Wildlife | Region 2

The District of Wyoming ruled favorably for the Forest Service on a National Forest Management Act (NFMA) claim against the Medicine Bow National Forest in *Biodiversity Conservation Alliance v. Jiron, et al.* At issue before the court was the agency's interpretation of "viability" as it pertained to bighorn sheep.

There are three herds of bighorn sheep on the Medicine Bow NF; the Laramie Peak herd, the Douglas Creek herd, and the Encampment River herd. When the Forest Service revised the Medicine Bow's Forest Plan the Forest Service determined that the maintenance of all three herds was "unlikely under current direction." The agency, as a result, decided to promote domestic sheep grazing over bighorn sheep habitat in the Encampment River herd habitat due to that herd having the lowest population of the herds and their habitat already having a higher concentration of domestic sheep allotments than the other bighorn sheep herds.

NFMA requires to Forest Service to issue regulations to "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives." Pursuant to this authority, the Forest Service promulgated the following regulation in 1982: "Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area." Plaintiff claimed the decision to emphasize domestic sheep over the Encampment River herd failed to comply with this viability mandate while the agency argued it still maintained the viability of the species in the planning area through the remaining two herds.

The court, after looking at the ambiguity of the regulation's language and the agency's past interpretations, determined that **deference to the agency's decision concerning bighorn sheep viability would be given only if the agency had the power to persuade** the court that its decision was justified **based**

upon “the thoroughness evident in its consideration, the validity of its reasoning, and its consistency with earlier and later pronouncements.” The court was persuaded by the Deputy Under Secretary’s interpretation of the relevant regulations and by the Regional Forester’s “thoroughness evident in [his] consideration, the validity of [his] reasoning,” his “specialized experience and broader investigations and information available to [him]” to give deference to the agency’s decision on bighorn sheep viability. (12-73, D. Wyo.)

Litigation Update

1. None to report.

New Cases

1. None to report.

Notices of Intent

1. None to report.

Natural Resource Management Decisions Involving Other Agencies

1. None to Report.