

Ecosystem Management Coordination



Court Decisions

1. Wildlife & Grazing | Region 6

The District of Oregon made a favorable recommendation to a challenge over grazing in pastures along the Malheur River and North Fork Malheur River corridors on the Malheur National Forest in *Oregon National Desert Association, et al. v. United States Forest Service, et al.* Plaintiffs claimed grazing was causing the degradation of riparian habitat for bull trout. The court, however, sided with the Forest Service.

Specifically, the court found:

- **Forest Plan standards** were narrative and qualitative and essentially aspirations and **not judicially enforceable**;
- **The agency did not fail to comply with INFISH Riparian Management Objectives (RMO)** as they are not rigid standards – failure to attain RMOs in an individual stream does not necessarily show a NFMA violation. In reference to a 2012 Biological Assessment (BA) which indicated that bull trout and bull trout habits were in jeopardy; “the BAs did not find that livestock grazing is causing the decline in bull trout population or habitat. Instead, the Bas generally found that grazing as currently managed by the Forest Service had little or no harmful effect on the bull trout habitat population, and FWS concurred in that determination. I conclude that Plaintiffs have not shown that the Forest Service’s decision to authorize livestock grazing has caused the decline of the bull trout population or its habitat in the allotments here.”;
- **The Forest Service acted reasonably in its oversight of livestock grazing**, using scientifically based monitoring and analysis; and
- **The agency reasonably determined that grazing did not “substantially interfere with public use and enjoyment”** of esthetic, scenic, historic, and scientific values under the Wild and Scenic Rivers Act.

(03-00213, D. Or.)

Litigation Update

1. None to report.

New Cases

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the most complete and accurate discussion of each case.

Photo credit: <http://m.mlb.com/assets/images/6/8/4/247428684/cuts/320x180/cut.jpg>

1. Land Use | Region 8

The Florida Defenders of the Environment filed a complaint in the Middle District of Florida challenging the maintenance of the Kirkpatrick Dam/Eureka Lock on the Ocala National Forest in *Florida Defenders of the Environment, et al. v. United States Forest Service*. Plaintiffs seek to compel the agency to enforce the terms of the special use permit governing the Dam's expiration. Originally issued in 1994, expired in 1998, and then extended to 2002, the special use permit issued to the State of Florida was to allow for restoration work. Plaintiffs claim the dam is "left over infrastructure from the abandoned Cross Florida Barge Canal that was halted by President Nixon in 1971 and de-authorized by Congress in 1990. Plaintiffs claim the State is occupying land in violation of its permit. They also claim the occupation is in violation of the Federal Land Policy and Management Act (FLPMA), the National Forest Management Act (NFMA), and the Administrative Procedures Act (APA). Specifically, Plaintiffs seek from the court:

- A violation of FLPMA by allowing the State to continue to occupy a portion of the dam and federal lands without a valid special use permit;
- A declaration that Florida's application to renew the special use permit was finally determined and lapsed in 2010;
- A declaration that the Forest Service's continuing failure to enforce the terms and conditions of the expired permit constitutes agency action that is in violation of the APA;
- A declaration the Forest Service's continuing failure to enforce its own regulations triggered by the termination of a permit constitutes agency action unlawfully withheld or unreasonably delayed under the APA; and
- A mandatory injunction compelling the Forest Service to enforce the terms and conditions of the permit and its regulations.

(17-01128, M.D. Fla.)

Notices of Intent

1. None to report.

Natural Resource Management Decisions Involving Other Agencies

1. None to report.

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