

Ecosystem Management Coordination



Court Decisions

1. Grazing | Region 5

The Eastern District of California ruled on the Forest Service's motion to dismiss claims challenging the cattle grazing program in three livestock allotments in the Stanislaus National Forest in *Central Sierra Environmental Resource Center, et al. v. Stanislaus National Forest, et al.* The Court has yet to rule on the merits of the case however. The three allotments cover approximately 52,000 acres of land on the Summit Ranger District in Tuolumne, California. Plaintiffs brought claims under the Clean Water Act, the National Forest Management Act (NFMA), the Rescissions Act, and the Endangered Species Act (ESA).

Clean Water Act: Plaintiffs argued the Agency continues to graze without a discharge permit and is exceeding State water quality control standards for fecal coliform. The Government argued the Court did not have jurisdiction under the Clean Water Act (i.e., Section 313 of the Clean Water Act gives the Government sovereign immunity for suit). The Court found otherwise stating, "*The Ninth Circuit has not squarely addressed the contours of the waiver of sovereign immunity ..., but it has repeatedly entertained claims alleging that the Forest Service has violated Section 313 by authorizing certain third-party actions [as applied here by granting of permits to graze]... This Court will not unsettle three decades of Ninth Circuit case law and hold that APA claims based on Section 313 apply only to polluting activities directly undertaken by the federal government*". Ultimately, although the court did dismiss the plaintiffs' claim with respect to authorizing grazing without first obtaining a permit or waiver from the State, it did allow plaintiffs to amend their argument.

NFMA: Plaintiffs alleged the Agency is not following a number of standards in the Forest Plan. After the Government made numerous arguments for dismissing the NFMA claim, the Court ruled for plaintiffs (i.e., claim was not rooted in a withdrawn draft Record of Decision; **claims are subject to review under the APA and are specific as to what they challenge in the Forest Plan**).

Rescissions Act: Plaintiffs claimed the Agency violated the Rescissions Act due to unreasonable delay. The Court ruled for the Government, stating: "*Plaintiffs may be frustrated that the environmental analysis*

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... has stretched across three presidential administrations ... But the statutory framework grants the Forest Service discretion to set the timing of individual allotments...”

ESA: In their amended complaint, plaintiffs claimed the Agency failed to consult with the U.S. Fish and Wildlife Service to obtain its opinion concerning livestock grazing. In their Opposition to the Motion to Dismiss, plaintiffs voluntarily dismissed these ESA claims. (17-441, E.D. Cal.)

2. Recreation | Region 3

The Court for the District of Columbia ruled against the plaintiff on a request for a preliminary injunction (PI) seeking to enjoin the bidding process for a five-year permit to run a shuttle service in the Sabino Canyon Recreation Area in the Coronado National Forest in *Sabino Canyon Tours, Inc., et al. v. U.S. Forest Service*. Sabino Canyon Tours (SCT), the company currently running a shuttle service in the canyon, claimed:

- SCT had a right to first refusal to provide the shuttle services;
- the decision to issue a permit for only five years is an abuse of discretion as it is not feasible to meet the public’s demands for cleaner and quieter shuttle equipment under that length; and
- The Forest Service’s environmental assessment (EA) looking into how to improve the shuttle service failed to analyze the impacts of ground disturbing activities required to remove SCT’s existing structures if SCT does not secure a new permit.

The Court, however, determined SCT failed to show it was likely to succeed on the merits of its claims or suffer any irreparable harm in the absence of an injunction and as such denied plaintiffs motion for a PI. Specifically, the court determined:

- **There was no right in SCTs expiring permit which provided SCT a right to renewal** of the permit or a right to first refusal;
- While SCT indicates that it cannot buy equipment under a 5-year plan to meet new public demands that does not mean others can’t. The court further states that **“it cannot be the case that as a matter of law every government proposal must be one that every company has a chance of meeting”** and no legal authority prevents the agency from selecting a five-year term; and
- Under the National Environmental Policy Act (NEPA) a plaintiff must demonstrate a “concrete injury that is ‘tethered to’ the [agency’s] decision to authorize” the underlying action. The court noted that **while the owner of SCT might have an individual concern for the Sabino Canyon environment he failed to articulate how the agency’s potential ground-disturbing activities would injure his enjoyment of the area.**

(17-2758, D.D.C.)

Litigation Update

1. Wilderness | Region 8

Plaintiff appealed to the 10th Circuit a favorable decision by the Eastern District of Oklahoma regarding the denial of a special use permit (SUP) to construct a road in the Upper Kiamichi Wilderness in the Ouachita

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National Forest in *Dobbs v. U.S. Forest Service, et al.* The district court found the Forest Service acted appropriately in denying the plaintiff a special use permit since it was adequately shown that no similarly situated land was ever granted a SUP for road construction and that there was ample evidence of the damage road construction would have on the wilderness character of the Upper Kiamichi Wilderness. (16-112, E.D. Okla.)

2. Timber | Region 5

The Karuk Tribe has voluntarily dismissed its ESA and NFMA claims in a case challenging the Westside Fire Recovery Project on the Klamath National Forest in *Karuk Tribe, et al. v. Grantham, et al.* Plaintiffs, after several failed attempts concerning a preliminary injunction, have agreed to drop the case after agreeing to a letter documenting Agency actions rather than a formal court settlement. (16-1079, N.D. Cal.)

3. Wildlife | Region 4

The District of Idaho ruled in part and denied in part a stay of judgment pending appeal for the Idaho Department of Fish and Game (IDFG) concerning the destruction of collected data on a challenge to elk collaring/monitoring in the Frank Church River of No Return Wilderness on the Salmon-Challis National Forest in *Wilderness Watch, et al. v. Vilsack, et al.* In the court's earlier decision the court ruled the Forest Service and IDFG violated NEPA and the Wilderness Act stating "the Agency essentially allowed the IDFG to get away with slicing its long-term helicopter collaring project into a one-year sliver of a project to mitigate cumulative effects." The court enjoined the Forest Service and IDFG from using the collected data in further project proposals and further ordered the State to destroy all collected data. In the current decision **the court found that the destruction of data could irreparably injure IDFG if IDFG ultimately prevails on the appeal**, "[T]he likelihood that IDFG would prevail on appeal and obtain a removal of the destruction order is perhaps helped by the lack of guiding precedent for that remedy – while the court is confident in its ruling, the circuit may disagree and would not be bound to affirm by any precedent." **The court still held that the State could not use the collected data.** (16-12, D. Idaho.)

New Cases

1. Wildlife | Region 1

Cottonwood Environmental Law Center in Montana filed a complaint and Motion for Immediate Temporary Restraining Order and Preliminary Injunction in response to a Native American tribe's Notice of Intent to Hunt Yellowstone Bison in *Cottonwood Environmental Law Center v. Zinke et al.* It seeks to enjoin enforcement of the Interagency Bison Management Plan. The Plan restricts bison to certain zones within Yellowstone National Park in an effort to prevent disease transmission to cattle. In the past, governmental officials have used helicopters to try to keep bison within the boundaries of Yellowstone National Park. Enjoining the Plan would allow bison to roam free, beyond the boundaries of the National Park.

Plaintiffs say **"too many hunters are concentrated in too small an area near the northern boundary of the park,"** which poses a public safety risk to their members that recreate in the same area.

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The complaint alleges that **the tribe's NOI constitutes significant new information** to the Interagency Bison Management Plan, and **seeks a supplement to the Plan's EIS that would analyze the public safety effects of increased hunters in the small area.** (D. Mont.)

Notices of Intent

1. Nothing to report

Natural Resource Management Decisions Involving Other Agencies

1. Department of Defense | Clean Water Act (CWA)

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