

Ecosystem Management Coordination



Court Decisions

1. Land Use | Region 1

The District of Montana ruled for the Agency on a quiet title action related to a patented mining claim in the Helena-Lewis and Clark National Forest in *Montana Mine Land Holdings, LLC, et al. v. U.S. Department of Agriculture, et al.* Two of plaintiffs' mining claims on the national forest are served by the Montana Gulch Road, which is closed to public motorized use. **"The Travel Plan requires that when in-holders need to use closed roads in the National Forest, they must obtain Special Use Permits (SUPs)."** Plaintiffs challenged the requirement that they must apply for a SUP to access their mining claims asserting they are entitled to use the road by virtue of a right-of-way and express easement conferred under the General Mining Act of 1872. Plaintiffs argue that because there is a road drawn on the original plat they have received an express grant of an easement across all federal and private property leading to their claim. The court found this claim conclusory; "the fact that a road is drawn on the plat cannot provide an implied or express easement as a matter of law." **"In a public grant nothing passes by implication, and unless the grant is explicit with regard to the property conveyed, a construction will be adopted which favors the sovereign..."** As the court found nothing expressly granting plaintiffs a right-of-way or easement, the court concluded that the SUP permitting process is the proper mechanism for the plaintiffs to access their property. (17-65, D. Mont.)

Litigation Update

1. Nothing to report

New Cases

1. Timber | Region 1

Plaintiff Alliance for the Wild Rockies (AWR) filed National Forest Management Act (NFMA), National Environmental Policy Act (NEPA), and Endangered Species Act (ESA) claims against the Agency regarding the

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authorization of the Pilgrim Creek Timber Sale project on the Kootenai National Forest in *Alliance for the Wild Rockies v. Savage, et al.*

After the Pilgrim Creek project was authorized in May 2013, AWR filed suit stating that the project violated the Forest Plan Access Amendments Standard II(B); specifically that “the miles of roads behind earthen berms should be included in the calculation of linear miles of total roads in Bears Outside the Recovery Zone (BORZ) polygons on the forest.” The ninth circuit held that **the miles of roads behind earthen berms don’t count in the linear miles of total roads in BORZ areas, but that “any closure that fails to effectively prevent motorized access also fails to comply with Standards II(B) of the Access Amendments.”**

Following the ninth circuit’s decision, **AWR conducted a survey of berm-closure effectiveness in the project area and found a number of berms failed to prevent motorized access.** AWR also adds that its **investigators discovered numerous roads that were unaccounted for in the Forest Service Road databases of linear miles of total roads in the BORZ polygons.** Because of the claimed ineffectiveness of the berms and additional roads, AWR claims the forest service is in violation of the Access Amendments and thus in violation of NFMA and NEPA. AWR also states that these findings require a new Incidental Take statement under ESA Section 9 and reinitiation of consultation under Section 7 for the Access Amendment and the Pilgrim Creek project. (18-67, D. Mont.)

Notices of Intent

1. Nothing to report

Natural Resource Management Decisions Involving Other Agencies

1. Nothing to report

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