

Ecosystem Management Coordination



Court Decisions

1. Grazing | Region 6

The District of Oregon adopted a Magistrate Judge's recommendation in favor of the Forest Service regarding challenges to the allowance of grazing 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.* The magistrate's opinion was reported in the October 13, 2017 Litigation Weekly.

Essentially Plaintiffs claimed grazing was causing the degradation of riparian habitat for bull trout and the agency was failing to comply with INFISH management objectives. **The court, however, afforded the agency deference in its interpretation of its statutes and found the Forest Service's administrative record evidenced the agency adequately considered relevant data in allowing grazing to continue.** (03-213, D. Or.)

Litigation Update

1. Nothing to report

New Cases

1. Minerals & Heritage | Region 3

The Tohono O'odham Nation, Pascua Yaqui Tribe, and Hopi Tribe filed suit in the District of Arizona challenging the Agency's approval of the Rosemont mine on the Coronado National Forest in *Tohono O'odham Nation, et al. v. USFS, et al.* Collectively, the Tribes state, "development of the Rosemont mine would irreparably sever the Tribes' connection to the Santa Rita Mountains and devastate a rich, continuous cultural and historical tradition." Specific claims include:

- **Organic Act:** The Forest Service's decision to permit the mine was based on a factually-unsupported and **legally-flawed conclusion the mine proponents had a statutory right to locate its waste rock piles, tailings, and other mining-related facilities on public lands** where it has unpatented claims.

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- **National Environmental Policy Act (NEPA):** The Forest Service:
 - Failed to adequately consider a **reasonable range of alternatives**, including non-dismissal of the “no-action” alternative, and failed to analyze mitigation measures.
 - Violated its obligations to determine **whether each alternative would achieve the requirements of other environmental laws** like the Organic Act and the Clean Water Act.
 - Failed to take a **“hard look” at the cultural impacts** the mine would have on the Tribes because of the destruction of jaguar habitat and the long term impacts on cultural and traditional resource gathering areas.
 - Failed to analyze the **cumulative impacts of the destruction of cultural resources** on the tribes due to past projects in the area.
- **National Historic Preservation Act:** The Forest Service **tainted its consultation with the Tribes and hindered the Tribes’ ability to minimize or mitigate the harm the Rosemont mine would inflict** through the Forest Service’s representation that the agency could not reject the use of the claims for mine-related purposes.

(18-189, D. Ariz.)

2. Grazing | Region 3

The Neighbors of the Mogollon Rim filed suit in the District of Arizona challenging the Forest Service’s authorization of grazing in the Bar X allotments in the Tonto National Forest claiming the agency unlawfully reintroduced cattle into areas without performing the appropriate analysis or authorizing the proper term grazing permits in *Neighbors of the Mogollon Rim, Inc. v. USFS*. Areas in the allotment that have been closed to grazing since 1979, according to the complaint, were re-opened in 2015 without any environmental analysis and are being authorized again in 2018 still with no environmental analysis or capability determination. Plaintiffs also claim that the annual authorizations issued in 2012-2018 directly conflict with the permits, allotment management plan, and the Tonto Forest Plan.

Due to damage caused by overgrazing the Forest Service in 1979 closed portions on the Bar X allotment to grazing and drastically reduced the number of cattle permitted overall. In the 1981-1985 allotment management plan the capacity was kept the same. An environmental analysis conducted in 1985 evidenced improved range conditions on the allotment due to the decreased cattle use. Then, in 2006 the Forest Service issued a ten-year term permit which increased the number of cattle allowed in the allotments while keeping closed the portions of the allotment that were closed in 1979. In 2015 the Forest Service authorized grazing levels beyond those allowed in the permit “based on the addition of the use of pastures outside of the existing allotment boundaries [.]” This included grazing in the areas closed in 1979. According to the complaint, the Forest Service states that the formerly closed areas were opened for a 1-2 year trial period and that NEPA analysis would shortly follow. **The complaint says the Forest Service renewed the Bar X permit in 2017 at the same level as the 2006 permit, is still continuing authorize grazing above the permitted level under the 1-2 year trial period explanation, and has yet to complete the**

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promised NEPA analysis or determine the capacity of the re-opened areas in violation of the Federal Land Policy and Management Act, the National Forest Management Act, and NEPA. (18-1111, D. Ariz.)

Notices of Intent

1. Wildlife | Region 3

The Center for Biological Diversity (CBD) filed a notice of intent to sue the Forest Service alleging the need to reinitiate consultation on the Mount Graham Red Squirrel for the issuance of Special Use Permits (SUPs) for the Columbine recreational summer cabins on the Coronado National Forest. CBD claims that fires in the squirrels' critical spruce/fir habitat have caused the squirrels' populations to disperse and decline dramatically. They claim only 35 squirrels are left. As the Forest Service recognized the need to remove the cabins in 1988 to protect Mount Graham Red Squirrel habitat, according to CBD, the recent population and habitat loss necessitates the need to reinitiate Endangered Species Act consultation before issuing new SUPs for the cabins.

Natural Resource Management Decisions Involving Other Agencies

1. Nothing to report

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