

### Ecosystem Management Coordination



### Court Decisions

1. Nothing to report

### Litigation Update

1. Nothing to report

### New Cases

1. Recreation & Wildlife | Region 5

The Center for Biological Diversity (CBD) filed suit in the Central District of California claiming the Bureau of Land Management (BLM) and the Forest Service are in violation of the Wild and Scenic Rivers Act for the failure to prepare River Management Plans for segments of eight rivers in *CBD v. BLM, et al.* At issue for the Forest Service are segments of the Piru Creek (Los Padres National Forest); Owens Headwaters and Cottonwood Creek (Inyo National Forest); North Fork San Jacinto River, Fuller Mill Creek, Palm Canyon Creek, and Bautista Creek (San Bernardino National Forest). CBD claims Congress designated segments of these rivers under the Wild and Scenic Rivers Act in 2009 with a deadline for the completion of plans in 2012. According to CBD the Forest Service has not yet prepared River Management Plans for these segments and thus are in violation of the act. (18-2448, C.D. Cal.)

### Notices of Intent

1. Nothing to report

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Photo credit: <http://www.asatours.com.au/app/uploads/2014/08/The-Red-Vineyard-Van-Gogh-Pushkin-Museum-Moscow-Russia.jpg>

## Natural Resource Management Decisions Involving Other Agencies

### 1. BLM | National Environmental Policy Act (NEPA)

**The District of Montana found both for and against the BLM on six NEPA claims filed by environmental groups challenging the approval of Resource Management Plans (RMPs) for two adjacent field offices in the Powder River Basin in *Western Organization of Resource Councils, et al. v. BLM, et al.***

The first claim challenged BLM's decision to not study an alternative that would decrease the areas open for leasing. The RMPs, the court determined, considered a total of nine alternatives which "maintained the same acreage available for leasing," "'carried forward' the results of previous coal screening," and "failed to consider the impacts of climate change." BLM argued the scope of the agency's NEPA analysis deserved "considerable discretion," that each alternative reflected different management approaches, and that "no provision of NEPA required them to consider alternatives that identified less area for coal leasing." The court rejected these arguments. While BLM may have discretion to establish the scope of its analysis, the court ruled this does not absolve BLM of its duty to "look at every reasonable alternative." **BLM's failure to recognize climate change concerns and its reliance on previous coal screenings, the court concluded, foreclosed it from considering reasonable alternatives** such as foreclosing development on additional acreage.

"Plaintiffs next argued NEPA required BLM to consider an alternative RMP that considered imposing mandatory methane mitigation measures for future lessees." The court determined that such requirements would exceed what NEPA requires.

Plaintiffs next alleged BLM failed "to consider the indirect effects of downstream combustion of resources extracted from the planning areas." Plaintiffs asserted that "resources developed under the RMPs will be used for foreseeable purposes that generate emissions capable of estimation." BLM, the court noted, "estimated that coal mining and oil and gas production would produce annual emissions equivalent to 164,210 tons of carbon dioxide." **In light of the foreseeable combustion of the minerals extracted and the specificity of information BLM already had, the court decided BLM should have considered the downstream combustion of the coal, oil, and gas resources open to development under the RMPs.**

The fourth claim was that BLM should have addressed the foreseeable cumulative climate impacts of fossil fuel development at both the regional and national level. Plaintiffs offered that BLM could have used a "social cost of carbon protocol" as the standard by which to measure cumulative climate impacts. **Finding no case law to support the assertion NEPA requires an agency to perform a cost analysis of climate change impacts outside the geographic reach of the RMPs, the court concluded BLM did not violate NEPA.**

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Plaintiffs' fifth claim argued BLM violated NEPA by failing to quantify the magnitude of methane pollution by using outdated science. BLM, the court noted, **failed to respond to concerns raised over the data it used and this failure constitutes a violation of NEPA's requirement** to provide "a full and fair discussion of significant environmental impacts" based on "high quality" information and "accurate scientific analysis."

Finally, plaintiffs claimed "BLM violated NEPA by failing to consider impacts at levels at or below the National Ambient Air Quality Standards under the Clean Air Act (NAAQS)" and by failing to consider the cumulative impacts on air quality for all federal mineral development. **In its analysis BLM concluded that activities related to the RMPs would not violate the NAAQS or Wyoming Ambient Air Quality Standards and the court found this analysis sufficient under NEPA.** (16-21, D. Mont.)

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