

June 29, 2018

## Ecosystem Management Coordination



### Court Decisions

1. Nothing to report

### Litigation Update

1. Nothing to report

### New Cases

1. Nothing to report

### Notices of Intent

1. Nothing to report

## Natural Resource Management Decisions Involving Other Agencies

1. Bureau of Land Management (BLM) | Wild Horses and Grazing

Two wild horse advocate groups and the Western Watersheds Project filed a complaint in the District Court for the District of Columbia claiming the BLM violated the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), the Federal Land Policy and Management Act (FLPMA), and the Wild Free-Roaming Horses and Burros Act (WHA) when BLM decided “to round up and permanently remove all wild horses from over 700,000 acres of public lands called the Caliente Herd Area Complex” in *American Wild Horse Campaign, et al. v. Zinke, et al.* According to the complaint the HA consists of about 911,892 acres of public lands within a forty-mile radius of Caliente, Nevada, and has been managed for wild horses since 1971. The Complex encompasses nine horse management areas (HMA) and twenty-six grazing allotments.

In 2005 the BLM undertook a FLPMA planning process for the Complex and in 2008 finalized a decision to permanently remove all wild horses from eight of the nine HMAs. Then in 2009 the BLM issued a

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Photo credit: <https://www.stanley-ley.co.uk/acatalog/judges-full-bottom-wigs.html>

preliminary environmental assessment (EA) on the proposed action of removing the horse populations. On April 26, 2018, the BLM issued a final EA adopting the proposed action from the preliminary EA.

Seeking to enjoin BLM from removing any wild horses from the Complex, plaintiffs claim BLM:

- “[V]iolated its obligations under the WHA to ‘protect and manage’ these ‘wild and free-roaming’ horses as ‘living symbols of the historic and pioneer spirit of the West’ in the agency’s decision to remove the horses”;
- Failed to analyze in its final EA **the impacts of livestock grazing on the availability of forage, water, and other resources shared with horses** on the Complex;
- Failed “to consider and analyze **reasonable alternatives** to removing all wild horses in Caliente Complex, including the reduction of livestock”; and
- Failed “to **respond to public comments** – including those explaining that the BLM must analyze the impacts of livestock grazing in the Caliente Complex before making a determination about how many wild horses can be deemed ‘excess’ horses subject to removal...”

(18-1529, D.D.C.)

## 2. BLM | Twin Metals Lease Renewal

**Several businesses, property owners, and recreation groups filed a challenge to BLM’s decision reinstating two leases for a copper-nickel sulfide ore mine in the Boundary Waters Canoe Area Wilderness on the Superior National Forest in *Voyageur Outward Bound School, et al. v. United States, et al.*** The Forest Service did not consent to renew leases for the mine in 2016 out of concerns for water quality, human health, and biodiversity. BLM then did not renew the leases under the position BLM retained a discretionary right to renew the leases. Earlier this year, BLM reversed its decision to not renew the leases concluding the mining company (Twin Metals) had an automatic right to renew.

BLM claims the initial decision not to renew the lease was based on a legal error. The lease was originally issued in 1966, and renewed in 1989 and 2004. Twin Metals applied for a third renewal in 2012, and requested BLM look at extrinsic evidence to determine if the agency had a discretionary right to renew. **BLM concluded in 2016 that, because the lease was not ambiguous, it did not need to consider such evidence, and based on the language in the lease, it could choose not to renew. In 2017, BLM reversed course, finding the lease was ambiguous, and based on extrinsic evidence, gave BLM no discretion over whether to renew. By this time, the leases had expired.**

Plaintiffs argue that the reinstatement of the leases exceed BLM’s authority under the Administrative Procedures Act. Specifically, **plaintiffs claim the agency has no authority to reinstate expired leases, and erroneously relied on extrinsic evidence to interpret the leases.** Plaintiffs also claim BLM failed to consider plaintiffs’ reliance interests, such as investments and capital expenditures made under the assumption that the area would not be mined. Finally, plaintiffs claim they face physical and economic harm from mining. Plaintiffs seek to enjoin the reinstatement of the leases. (18-1463, D.D.C.)

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