

NFS Litigation Weekly

August 24, 2018

Ecosystem Management Coordination



Court Decisions

1. Recreation | Region 4

The Ninth Circuit ruled favorably for the Forest Service concerning a challenge to the Agency's allowance of a hunting derby to partially take place on the Salmon-Challis National Forest in *WildEarth Guardians, et al v. Mark, et al.* The court found the district court did not have jurisdiction to decide the claims as the derby had already taken place by the time of the district court's ruling, thus rendering the issue moot. As there were no other pending special use permit applications for any future hunting derbies, the court found plaintiff's claims against future derbies not yet ripe. If hunting derbies are scheduled in the future without seeking a permit or environmental review the court said the plaintiffs may then seek a temporary restraining order or preliminary injunction in federal district court. (17-35461, 9th Cir.)

2. Timber | Region 4

The Ninth Circuit affirmed in part and reversed in part a favorable decision by the District of Idaho regarding the Lost Creek Project on the Payette National Forest in *Alliance for the Wild Rockies, et al. v. U.S. Forest Service, et al.*

Reversing the district court, the 9th Circuit held the 2014 Record of Decision (ROD) for the project improperly eliminated a management prescription category within the project area and replaced it with another. The court determined that this switch resulted in the loss of a binding standard under the existing Forest Plan which imposed new desired vegetative conditions inconsistent with the Forest Plan.

The Court affirmed the district court's determination the project's minimum road system designation was fully explained by the Forest Service in its decision. (16-35829, 9th Cir.)

Litigation Update

1. Nothing to report

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Photo credit: <https://www.nps.gov/pinn/learn/nature/condor.htm>

New Cases

1. Recreation | Region 5

Los Padres Forestwatch filed National Forest Management Act (NFMA) and Endangered Species Act (ESA) claims against the Forest Service and the Fish and Wildlife Service (FWS) concerning “unrestricted recreational target shooting” in the Los Padres National Forest in *Los Padres Forestwatch v. United States Forest Service, et al.* According to the complaint the Forest Service in 2005 “adopted mandatory language in its Forest Plan closing all areas of the Forest to target shooting except specific designated areas.” Plaintiffs state that this has yet to be done. Then in 2013, as per the complaint, FWS issued a biological opinion (BO) which relied on the closing of areas to target shooting in its conclusion of no jeopardy to several threatened or endangered species, including California condor. The plaintiff conclude that the Forest Service’s failure to close the Los Padres National Forest to recreational target shooting as required in its Forest Plan is in violation of NFMA. The plaintiff also concludes FWS’s 2013 BO is in violation of the ESA as it relies on the Forest Service having actually closed the Forest to unrestricted recreational target shooting. As a result of these failures, plaintiff states the Forest Service must reinitiate ESA consultation. (18-6958, C.D. Cal.)

Notices of Intent

1. Nothing to report

Natural Resource Management Decisions Involving Other Agencies

1. Nothing to report

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