

### Ecosystem Management Coordination



### Court Decisions

#### 1. Timber | Region 1

**The District of Montana ruled against the Agency's motion to dissolve an injunction against the Fleecer Mountains Project on the Beaverhead-Deerlodge National Forest in *Native Ecosystems Council, et al. v. Krueger, et al.*** The Forest Service argued the Agency complied with the court's remand instructions related to the issuance of the injunction. **While the court agreed the Agency fully complied with three of the court's instructions on remand, the court found the Agency must complete forest-wide consultation on Canada lynx before the injunction may be lifted.**

In its remand order, the court instructed the Forest Service "to consider whether lynx 'may be present' in the forest" and complete any necessary consultation as a result of that determination. According to the order, the Forest Service developed a biological assessment in which the Agency determined the project "may affect, but is not likely to adversely affect" lynx. However, plaintiffs pointed to the Fish and Wildlife Service's (FWS') determination that lynx "may be present" across the entire forest to state the Agency needed to undergo forest-wide consultation on the Forest Plan itself and not just for the project. The court agreed with the plaintiffs, finding the FWS determination was new information. **As multiple provisions in the Forest Plan "may affect" lynx outside of areas already protected under the Lynx Amendment which did go through consultation and because lynx may be present throughout the forest, the court concluded the Agency needs to complete forest-wide consultation.**

The court did rule for the Agency, however, on the last three remand instructions before it. The court found **the Agency complied with instructions clarify its analysis on: 1) administrative and permitted roads; 2) temporary roads and why they are not included in open motorized road and trail densities; and 3) the impacts temporary roads would have on elk during the project's lifetime.** For administrative and permitted roads, the court accepted the Agency's clarification of its treatment of these roads by

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Photo credit: <https://www.npr.org/2018/10/17/658140053/after-50-years-on-sesame-street-the-voice-of-big-bird-and-oscar-is-retiring>

amending the definition of open motorized road and trail density. For temporary roads, the court accepted the Agency's argument to their non-inclusion in road and trail densities because temporary roads are obliterated after a project's completion, whereas administrative and permitted roads are not. Lastly, for elk the court concluded the Agency's supplemental analysis adequately proves elk are not likely to feel any impact from disruptions related to the project. (12-27, D. Mont.)

## Litigation Update

1. Nothing to report

## New Cases

1. Nothing to report

## Notices of Intent

1. Wildlife | Region 4

**The Idaho Conservation League and the Greater Yellowstone Coalition sent the Agency a notice of intent to sue (NOI) under the Endangered Species act for the Agency's authorizing the Kilgore Mine Exploration Project on the Caribou-Targhee National Forest.** According to the NOI, the project would allow the building of over 10 miles of new roads and extensive drilling operations in suitable grizzly bear habitat over the next five years. This area, the NOI states, is part of an important expansion area and corridor linking the Greater Yellowstone (GYE) grizzly population with other grizzly bear populations in the Northern Rockies.

When the Agency approved the project the GYE grizzly were not listed under the Endangered Species Act (ESA), but ESA protection has been restored to GYE grizzly in light of *Crow Indian Tribe, et al. v. U.S.*, (17-89, D. Mont.). **The Forest Service is thus now in violation of ESA, as per the NOI, for: 1) failing to consult with FWS over the effects of the project to GYE grizzly bears and other grizzly bears in the Northern Rockies; and 2) causing an irreversible or irretrievable commitment of resources by allowing the project to proceed.** The NOI also claims the Forest Service is violating the National Environmental Policy Act because this change in status for the grizzly in light of the court decision constitutes new information which has not been considered by the Agency when it approved the project.

## Natural Resource Management Decisions Involving Other Agencies

1. Nothing to report

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