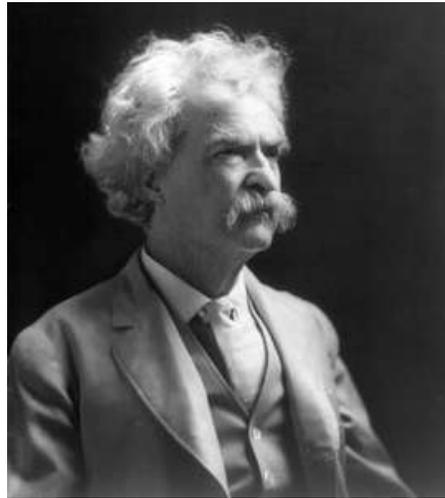


### Ecosystem Management Coordination



### Court Decisions

#### 1. Timber | Region 1

The District Court of Montana granted summary judgement in favor of the Forest Service on challenges to the Moose Creek Vegetation Project on the Helena-Lewis and Clark National Forest in *Native Ecosystem Council, et al. v. Marten, et al.* The project was approved under a Healthy Forest Restoration Act (HFRA) categorical exclusion. Plaintiffs claimed the Agency violated the National Forest Management Act (NFMA) and the National Environmental Policy Act by failing to consider the project's cumulative impacts as well as failing to perform NEPA analysis on the Agency's landscape designation under HFRA of almost five million acres in Montana as threatened by insect and disease. The court ruled the landscape designation did not constitute final agency action, and thus no NEPA analysis was required, because the nature and extent of any future, individual projects to be performed under the designation are speculative. The court also ruled, consistent with the District of Oregon's decision in *Greater Hells Canyon Council v. Stein* (17-843, D. Or.), that Congress excluded any extraordinary circumstances review from HFRA projects and as such the Agency did not have to perform any such review under NEPA. (17-153, D. Mont.)

#### 2. Timber | Region 10

The 9th Circuit held against the Agency in regards to four timber sales on the Tongass National Forest in *Greenpeace, Inc. et al. v. Stewart, et al.* The 9<sup>th</sup> Cir held that the Agency's reliance on the VolStrata classification system and deer multiplier was in violation of the National Forest Management Act (NFMA) as it did not accurately measure forest structure and was too unreliable in use for ensuring species viability. The court also found the Agency violated the National Environmental Protection Act

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(NEPA) by declining to supplement its NEPA documents when its project analysis revealed below-guideline deer habitat capabilities. (17-35945, 9th Cir.; 08-162, D. Alaska)

## Litigation Update

1. Nothing to report

## New Cases

1. Lands | Region 4

**Local landowners filed quiet title claims to water diversions, ditches, and assorted rights within the Sawtooth National Forest in *Carstensen et al., v. United States of America* (18-515), *Arrow A Ranch LLP v. United States of America* (18-517), *Fisher Creek Partners LLC et al., v. United States of America* (18-518), *Christianson et al., v. United States of America* (18-519), *Western Sky Two LLC v. United States of America* (18-520).** These complaints all contain relatively similar allegations and claims with some variation depending on the specific plaintiff. Plaintiffs allege a concern that “the United States may assert the right to control Plaintiff’s use of water on Plaintiff’s land under Plaintiff’s water rights by exercising dominion and control over the point of diversion and ditches that cross Defendant’s land, contrary to law.”

Each complaint states an initial claim that the court may provide declaratory judgement concerning Plaintiff’s rights under 28 U.S.C. § 2201, that there is a real conflict with the United States regarding Plaintiff’s rights to the diversions/ditches, and that a judicial determination of these rights is necessary and proper. The second claim of each complaint requests an order quieting title to the right of way for ingress, egress, water conveyance, repair and maintenance of diversions/ditches acquired through the Mining Act of 1866 (RS 2339). For the third claim in each complaint, plaintiffs ask for quiet title to diversions/ditches under either the Homestead Act, Desert Land Entry Act, or both. Finally, each complaint contains a request for an award of attorneys’ fees. (D. Idaho)

## Notices of Intent

1. Nothing to report

## Natural Resource Management Decisions Involving Other Agencies

1. Nothing to report

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