

Ecosystem Management Coordination



Court Decisions

1. Wildlife | Region 1

Friends of the Wild Swan, et al. v. Kehr, et al. (17-00120, D. Mont.; 18-35612, 9th Cir.)-- On May 10, 2019 the 9th Circuit Court of Appeals issued a memorandum affirming the District Court of Montana's (July 16, 2018) order granting summary judgement in favor of the Forest Service concerning the **Beaver Creek Project (Project) on the Flathead National Forest (FNF)**. Plaintiffs' originally sued to enjoin the Forest Service's Project arguing that it was inconsistent with the FNF Plan. On July 16, 2018 the District Court of Montana granted summary judgement to the FS and plaintiffs' appealed.

2. Recreation | Region 8

Bailey v. United States of America, et al. (17-0090, E.D. Ky.)--On April 30, 2019 the District Court of Kentucky issued an order in favor of the Forest Service concerning amenities at the **Marsh Branch Boat Launching Facility on the Daniel Boone National Forest (DBNF)**. On June 27, 2018, the 6th Circuit Court of Appeals reversed the district court's dismissal of the plaintiff's complaint, and remanded the case back to the district court, and ordered parties to provide evidence about the designations of the facility. The Plaintiffs had sought to compel the Forest Service to repair a broken security light and place picnic tables at the facility on the DBNF under the Federal Lands Recreation Enhancement Act (FLREA).

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Upon the district court's review of the administrative record, the court determined that it is clear the Forest Service's charge of an expanded amenity fee for the use of the facility acted within their discretion in declining to provide the requested amenities. The court determined that there is nothing to suggest that the Forest Service is required to install a security light and picnic tables despite their willingness to do so voluntarily and concluded the facility is an expanded amenity site. The court granted the Forest Service's motion for summary judgement in the case.

3. Wildlife | Region 4

Utah Native Plant Society and Grand Canyon Trust v. United States Forest Service, et al. (17-4074; 10th Cir.; 16-0056, D. Utah) — On May 7, 2019 the 10th Circuit of Appeals affirmed the District Court's decision in favor of the Forest Service. The case concerns the State of Utah's release of mountain goats on state lands near a portion of a designated Research Natural Area (RNA) on the Manti-La Sal National Forest (MLSNF). The appeals court upheld the District Court's dismissal of this case concerning the State's release of mountain goats on state land near a Forest Service RNA on the MLSNF in Utah. Following their release on state land, the goats crossed onto the MLSNF and occupied the Mount Peale RNA creating damage as defined by plaintiffs. Plaintiffs were claiming a failure to act under the APA and failure to prohibit special uses without a permit or respond to the State of Utah's proposal for a special use permit (NFMA violations). Other claims included a failure to protect the RNA (Organic Act/NFMA/Regulations). Lastly, they were claiming NEPA violations for a failure to comply with NEPA with the introduction of mountain goats. Environmental groups sued to attempt to force the Forest Service to take action.

4. Travel Management | Region 3

WildEarth Guardians, et al. v. Provencio, et al. (16-8010, D. Ariz.; 17-17373, 9th Cir.) — On May 6, 2019 the 9th Circuit Court of Appeals issued a corrected order, withdrawing the March 13, 2019 order. Both orders affirmed the District Court of Arizona's (December 26, 2017) summary judgement decision by granting the Forest Service's motion for summary judgement concerning plaintiffs challenge to the travel management plans implemented by the Forest Service to permit limited motorized big game retrieval on three Ranger Districts on the Kaibab National Forest (KNF).

The Department of Justice (DOJ) on behalf of the Forest Service, filed a request for correction with the 9th Circuit on April 26, 2019. The request pointed out two inaccuracies in the March 13, 2019 opinion and respectfully requested they be deleted. The inaccuracies discussed the minimization criteria in 212.55(b) of the Travel Management Rule. Compliance with these minimization criteria is mandatory.

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The DOJ claimed that the statement is only partially accurate. The factors listed in 212.55(a) include “public safety” and “conflicts among uses” that apply to roads. The DOJ pointed out that the minimization criteria set forth only apply to “trails” and “areas” and not to roads. The Forest Service’s decisions at issue in this case designated only roads, not trails or areas. The minimization criteria have no application here.

The request was to delete the unnecessary references to 212.55(b) and minimization criteria. The 9th Circuit re-issued their opinion on May 6, 2019 and removed those references as requested. Under 28 USC 2101, appeal may be made to the Supreme Court within 60 days of the order; the plaintiff has until July 5, 2019 to appeal.

5. Grazing | Region 1

Gallatin Wildlife Association v. United States Forest Service, et al. (15-0027, D. Mont.) — On May 07, 2019 the District of Montana dismissed a complaint filed in 2015, concerning the Allotment Management Plans (AMP) on 7 domestic sheep allotments, on the Beaverhead Deerlodge National Forest (BDNF). In 2016, the district court issued partial summary judgement in favor of the Forest Service regarding the use of course filter or habitat by proxy methodology in the 2009 BDNF Forest Plan final Environmental Impact Statement (EIS). The Forest Service completed a supplemental EIS on January 26, 2018 and determined amendment of the 2009 Forest Plan is not required and reaffirmed the 2009 revised Forest Plan Record of Decision (ROD). The Forest Service issued another ROD on October 26, 2018. The plaintiff’s appealed the order granting partial summary judgment and jointly agreeing to move the district court to enter final judgement. The district court entered final judgment, denied all other requested relief and dismissed the action.

Litigation Update

None to Report.

New Cases

1. Timber | Region 8

Georgia Forestwatch, et al. v. United States Forest Service, et al (19-0077, N.D. Ga.) — The plaintiffs filed a complaint in the District Court of Georgia challenging the Cooper Creek Project on the Chattahoochee-Oconee National Forest for violations of the Forest Management Act (NFMA), and National Environmental Policy Act (NEPA) under the Administrative Procedure Act. Specifically, that the Forest Service violated NFMA by treating prescriptions unsuitable for timber production as if they were suitable and violated NEPA by refusing to consider an alternative that would avoid timber

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production in unsuitable prescriptions and not assessing and disclosing the impact of the project on roadless areas (Duncan Ridge and Board Camp).

Plaintiffs' Claims

The plaintiffs indicated that during the environmental review and decision process they asked the Forest Service to consider their alternative that fulfilled the project's purpose, but would have avoided timber production in prescriptions designated unsuitable for timber production. The plaintiffs prepared and presented the Forest Service with a detailed alternative to consider. Plaintiffs' claimed that the Forest Service rejected their alternative, violating NEPA. The plaintiffs also had requested the Forest Service disclose the effects the project would have on two areas (Duncan ridge and Board Camp) that are un-fragmented by roads, utility corridors, and past logging, and are eligible for inclusions in the next potential wilderness inventory (roadless areas). Furthermore, the plaintiffs' claim NEPA requires the Forest Service to disclose to the public the effect of the project on these unique areas and whether the project would preclude these area from being considered in the future for designation as wilderness.

2. Timber | Region 10

Southeast Alaska Conservation Council, et al. v. United States Forest Service, et al. (19-0006, D. Alaska) — On May 7, 2019 the plaintiffs filed a complaint in the District Court of Alaska against the Forest Service concerning the Prince of Wales Landscape Level Analysis Project (Project) on the Tongass National Forest (TNF). The complaint alleges violations pursuant to Administrative Procedures Act (APA), National Environmental Policy Act (NEPA), the Alaska National Interest Lands Conservation Act (ANILCA), and the National Forest Management Plan (NFMA). The claims relate to the Forest Service's Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) signed on March 16, 2019 concerning the decision to allow extensive old-growth and second-growth logging in the TNF.

Notices of Intent

1. Grazing | Region 4

NOI received (April 24, 2019, and dated April 22, 2019) by Western Watersheds Project (WWP) alleging the Humboldt-Toiyabe National Forest (HTNF) Grazing Allotment livestock (cattle) authorizations in the Upper Reese River Watershed (Washington, Tierney Creek and Marysville Allotments) violated sections 7 and 9 of the Endangered Species Act (ESA).

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WWP states they plan to pursue litigation unless the FS initiates and completes new consultation with the USFWS over impacts from grazing to the Lahontan Cutthroat Trout (LCT). USFWS is aware the FS intended to initiate formal consultation for these allotments in the fall of 2020 after further data gathering.

2. Grazing | Region 1

NOI received (May 1, 2019, and dated April 3, 2019) by WildEarth Guardians and Western Watersheds Project (WEG and WWP) alleging the U.S. Fish and Wildlife Service (FWS) and the Forest Service (FS) violated the ESA pertaining to the Flathead National Forest's (FNF) 2018 revised Forest Plan. WEG and WWP allege the FWS violated ESA in preparing the November 22, 2017 Biological Opinion (BO) concerning the revised Forest Plan. WEG and WWP allege the FS violated ESA by relying on a legally flawed 2017 BO violating the FS's duty to ensure that the revised Forest Plan is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.

WEG and WWP plan to initiate litigation over the FS's and FWS's ESA violations unless the Forest Service undertakes new consultation with the FWS to fully analyze whether the FNF revised Forest Plan will jeopardize grizzly bear, Canada lynx, bull trout, or proposed wolverine, or destroy or adversely modify Canada lynx and bull trout designated critical habitat, and prevents any irreversible or irretrievable commitment of resources from occurring until consultation is completed.

Natural Resource Management Decisions Involving Other Agencies

Sage Grouse | BLM

Western Watershed Project v. Schneider et al. (16-83, D. Idaho) BLM— On April 19, 2019 the plaintiffs (Western Watersheds Project, WildEarth Guardians, Center for Biological Diversity and Prairie Hills Audubon Society) filed a motion for preliminary injunction (expedited decision request) in the District Court of Idaho. On March 27, 2019 the plaintiffs filed in the court a supplement to their original February 25, 2016 complaint, which seeks emergency relief on an expedited basis to maintain status quo while plaintiff's original complaint and supplemental complaint are considered. Plaintiffs claim immediate implementation of the Bureau of Land Management's (BLM) March 2019 Amendments to the 2015 Greater Sage-Grouse (GSG) Plans will have immediate and irreparable consequences on the GSG and GSG Habitat.

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Herrera v. Wyoming (17-532, U.S.)-- On May 20, 2019, the United States Supreme Court ruled against the State of Wyoming on a case involving interpretation of an 1868 Treaty concerning hunting rights on “unoccupied lands of the United States” An 1868 treaty between the United States and the Crow Tribe promised that in exchange for most of the Tribe’s territory in modern-day Montana and Wyoming, its members would “have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon . . . and peace subsists . . . on the borders of the hunting districts.” The Supreme Court found the Crow Tribe’s hunting rights under the 1868 Treaty did not expire upon Wyoming’s statehood. Bighorn National Forest did not become categorically “occupied” within the meaning of the 1868 Treaty when the national forest was created. The Supreme Court limited its decision by: 1) Holding that Bighorn National Forest is not categorically occupied, not that all areas within the forest are unoccupied. 2) It would not address, an issue that Wyoming could regulate the exercise of the 1868 Treaty right “in the interest of conservation.”

Agency Involvement: In October, 2017, The Department of Justice (DOJ) requested an Agency position in this case for its briefings with the Supreme Court. DOJ wanted to know what the implication would be if tribal members continued to hunt/fish/gather products under treaty rights on National Forest land. The Agency stated it had no identifiable negative implications to programs, resources or policies associated with Tribal treaty rights as currently managed.

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