

Ecosystem Management Coordination



Sawtooth Mountains

Court Decisions

1. Range-Wildlife | Region 6

Concerned Friends of the Winema, et al. v. Douglas McKay, et al. (19-00516, D. Or.) Region 6— On July 9, 2019 the District Court of Oregon issued an order in favor of the Forest Service denying the plaintiffs motion for preliminary injunction (PI) concerning the **ten-year grazing permit on Antelope Allotment on the Fremont-Winema National Forest** (FWNF). The district court concluded that the Forest Service had imposed sufficient limitations and safeguards to render the risk to the Jack Creek Oregon Spotted frog (listed as threatened under the ESA) population as speculative, rather than imminent, for the 2019 grazing season. The district court determined that the plaintiffs failed to sufficiently show a likely, imminent, or irreparable harm to the frog from the proposed grazing. The district court also determined that with respect to the fens, the district court could not conclude that plaintiffs made the necessary clear showing of irreparable harm in the absence of preliminary relief.

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Litigation Update

Nothing to report

New Cases

1. Wildlife-Forest Management | Region 4

Wildlands Defense, Alliance for the Wild Rockies, and Native Ecosystem Council v. Mel Bolling (19-00245, D. Idaho) **Region 4:** On July 1, 2019 the plaintiffs filed a complaint in the District Court of Idaho against the Forest Service concerning the **Rowley Canyon Wildlife Enhancement Project** on the **Caribou-Targhee National Forest** (CTNF). The Forest Service plans to “pre-fell,” thin, and burn trees and shrubland habitat in two areas of the forest. The Decision Record (DR) was signed on June 17, 2019. The project activities would occur on approximately 1,666- 3,955 acres to promote elk and deer winter habitat.

Plaintiffs bring suit under the Administrative Procedure Act (APA) and National Environmental Policy Act (NEPA) regarding the Decision Memorandum (DM) and Categorical Exclusion (CE) for the Project claiming the DM and related authorization was lacking analysis, arbitrary and capricious, abuse of discretion and not in accordance with law.

Notice of Intent

1. Forest Management : Region 1

Alliance of the Wild Rockies and Native Ecosystem Council (AWR and NEC) filed a Notice of Intent to Sue on June 16, 2019 alleging the U.S. Fish and Wildlife Service (FWS) and the Forest Service violated the Endangered Species Act (ESA) pertaining to the **Willow Creek Vegetation Management Project** (project) on the **Helena - Lewis and Clark National Forest** (HLCNF) **Region 1**— The project was approved through a Decision Memorandum (DM) with use of the 2014 Farm Bill Healthy Forest Restoration Act (HFRA) Categorical Exclusion (CE). The AWR and NEC allege the Forest Service and Fish and Wildlife Service violated ESA pertaining to the wolverine and the Canada lynx and grizzly bears.

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Preceding Complaint Filed – June 16, 2019

Alliance for the Wild Rockies and Native Ecosystems Council v. Leanne Marten, et al. (19-00102, D. Mont.)—On June 16, 2019 the plaintiffs filed a complaint in the District Court of Montana regarding authorizations and analyses pertaining to the DM and CE for the project on the HLCNF. The plaintiffs allege the decisions violate the National Environmental Policy Act (NEPA) and Administrative Procedures Act (APA).

Natural Resource Management Decisions Involving Other Agencies

1. Lands: Region 2 (BLM with Forest Service Cooperating Agency)

Wildearth Guardians, High Country Conservation Advocates, Center For Biological Diversity, Sierra Club and Wildnerness Workshop v. David Bernhardt, et al (19-1920, D. Colo.) **Region 2**-- This is a Department of Interior (DOI) case. Although, the Forest Service is NOT directly named as a party in the suit, it was extensively involved in the decision-making and in earlier litigation.

On July 2, 2019, plaintiffs filed a complaint in the District Court of Colorado against the DOI concerning the West Elk Mine expansion, alleging the approval by the Bureau of Land Management (BLM), violates the National Environmental Policy Act (NEPA). The mine underlies the **Grand Mesa, Uncompahgre and Gunnison National Forests**. Plaintiffs claim the mine expansion would have significant impacts violating NEPA regarding methane pollution. Plaintiffs allege there was no documentation in support of the Supplemental Final EIS, did not adequately look at cumulative impacts or impacts to water resources.

Related case from earlier when the Forest Service was named as a party.

High Country Conservation Advocates et al., v. U.S. Forest Service et al., (17-3025, D. Colo.) Region 2 – The District Court of Colorado ruled for the Forest Service in a challenge to a coal mining lease modification approval in the **Sunset Roadless** area under the **Grand Mesa-Uncompahgre-Gunnison National Forest**. The modifications allow exploration activities, including road construction, and are aimed at expanding the mine. Plaintiffs brought two NEPA challenges against the Forest Service in this lawsuit.

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First, Plaintiffs challenge a 2016 rule that exempted the **North Fork Roadless Area** from the Colorado Roadless Rule (CRR) to allow the mining operations. The exception had been in the rule previously, but was vacated in a 2014 lawsuit (High Country Conservation Advocates v. USFS) because the rulemaking did not consider adverse economic considerations of mining such as social cost of carbon. In 2016, the Forest Service re-implemented the **North Fork exception to the CRR**, being sure to incorporate that analysis. Here, plaintiffs challenge the North Fork exceptions' supplemental EIS for failing to consider alternatives. The Court did not find evidence that the Forest Service decision was arbitrary or capricious, thereby **rejecting the plaintiffs claim**. Second, plaintiffs challenge the SEIS for failure to disclose and consider information in the **baseline assessment** and the **greenhouse gas emission analysis**. The court found for the Forest Service regarding the baseline assessment, saying the plaintiffs did not supply adequate evidence to show the supplement or the original FEIS were inadequate. The court found for the Forest Service regarding the North Fork exception's impacts on climate change analysis, characterizing the plaintiffs' arguments as a disagreement as opposed to a failure of the agencies' to disclose information. The Court also found for the Forest Service regarding the greenhouse gas analysis in BLM's (with FS concurrence) ROD approving the lease modifications, which relied on the North Fork Exception SEIS. Plaintiffs had argued that the tiering was improper because the Exception SEIS would be out of date if the EPA repealed its Clean Power Plan as it has proposed. The court found the reliance on the analysis in the SEIS was not an abuse of discretion.

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