

## Ecosystem Management Coordination



Happy 103<sup>rd</sup> Birthday, August 25<sup>th</sup>. Fee free day!

### Court Decisions

#### Timber & Minerals | Region 6

**Animal Legal Defense Fund, et al. v USA, et al. (18-1860, D.OR.) Region 6**—On July 31, 2019 the District Court of Oregon issued an opinion and order in favor of the United States in which the Department of Agriculture is a party concerning **commercial logging and mineral extraction contribution to climate change**. This is the second climate change case that was filed after the *Juliana v. United States* (15-1517, D. OR., 18-36082, 9<sup>th</sup> Cir.). The Federal Government urged the district court to restrain “from dictating environmental policy by creating a “right to wilderness” and argued that the plaintiffs lacked standing to bring such a broad claim.” Alternatively the Federal Government requested the district court to “stay this case pending the 9<sup>th</sup> Circuit resolution of the pending appeal in the *Juliana v. United States* case.

The district court ruled in favor of the Federal Government’s Motion for Summary Judgment dismissing the case with prejudice (which bars plaintiffs from bringing a new case on the same basis as this case). The district court determined the plaintiffs’ harm is not individualized and therefore the plaintiffs lack standing; lower courts are bound by rule of law and are not the forum for “revolutionary” thinking, no “right to wilderness” exists is enumerated in the constitution or found in Supreme Court precedent so the plaintiffs failed to state a claim upon which relief could be granted. Due to the plaintiffs’ lack of standing, the district court granted the Government’s motion to dismiss.

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## Litigation Update

Nothing to report

### New Cases

Recreation | Region 4

**Sawtooth Mountain Ranch LLC et al. v. United States Forest Service et al.** (19-00118, D. Idaho) **Region 4**— On August 8, 2019, plaintiffs filed an amended complaint in the District Court of Idaho against the Forest Service concerning plans to construct the **Redfish to Stanley Trail** (Trail) on the **Sawtooth National Recreation Area (Sawtooth National Forest)**. Plaintiffs claim the Trail, as proposed:

- A. Violates the Conservation Deed and Easement (Plaintiffs seek Quiet Title)
- B. Violates the Sawtooth National Recreation Area Act
- C. Violates the National Forest Management Act
- D. Violates the National Environmental Policy Act

On April 9, 2019, plaintiffs filed their original complaint in the district court. On June 13, 2019, the district court concluded plaintiffs had not demonstrated they were likely to succeed on the merits of their claims. After reviewing the Record, the district court concluded the Forest Service clearly reached its conclusions through extensive analysis. Further, the balance of hardships did not tip decidedly in favor of plaintiffs. Several of the original claims were brought under the Administrative Procedures Act where they were clearly Quiet Title actions. The district court could not consider preliminary injunctive relief in that situation.

## Notice of Intent

Wildlife | Region 1

NOI (dated August 16, 2019 and received August 20, 2019) by **Neighbors Against Bison Slaughter** (NABS) alleging the Forest Service and National Park Service (NPS) violated the Yellowstone National Park Act (YNPA), National Forest Management Act (NFMA), Multiple-Use Sustained Yield Act (MUSYA), National Environmental Policy Act (NEPA), and Interagency Bison Management Plan (IBMP) by **not imposing reasonable restrictions on the migrating and hunting of wild bison in Beattie Gulch on the Custer-Gallatin National Forest (CGNF) -- Region 1**. The NABS allege the Forest Service and NPS have arbitrarily, capriciously, and unreasonably managed the movement of hundreds of wild bison out of Yellowstone National Park. They state the Agencies approved the hunt through the Interagency Bison Movement Plan (IBMP), a plan that has not been updated or amended for nearly twenty years and included no formal consideration of the health, safety, and environmental impacts of wild bison hunting in Beattie Gulch.

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The NABS also state that the IBMP has failed to protect local restrictions and ignored them in favor of its own interests and chose to do nothing to limit the hunt as local residence have been forced to flee the area for months at a time. NABS also claim that Agencies have violated the YNPA, NFMA, MUSYA, and NEPA. They claim that Agencies have physically invaded, taken easements, and constructively evicted local Bettie Gulch residents from their private homes and businesses for several months every year, by allowing these hunting activities to occur.

### Natural Resource Management Decisions Involving Other Agencies:

#### Pipeline | Region 8 & 9

**Wild Virginia, et al. v. U.S. Department of Interior, et al.** (19-1866, 4<sup>th</sup> Cir.)-**Region 8 and 9**—On August 12, 2019 the petitioners filed a request for appeal with the 4th Circuit Court of Appeals concerning the **Mountain Valley Pipeline** on the **Monongahela, George Washington and Jefferson National Forests**. The petitioners are appealing pursuant to the Administrative Procedures Act, 5 U.S.C. 702, Section 19(d)(1) of the Natural Gas Act to review the U.S Fish and Wildlife Service’s Biological Opinion (BO) and Incidental Take Statement (ITS) dated November 21, 2017 for the **Mountain Valley Pipeline**. The petitioners additionally requested the U.S. Fish and Wildlife Service to stay their BO and ITS, because construction is already occurring and harming alleged identified habitat and species based on new data and science.

#### Mining | Region 1

**Nez Perce Tribe v. Midas Gold Corp, et al** (19-307, D. Idaho)-**Region 1**— On August 8, 2019 the plaintiff filed a complaint in the District Court of Idaho against the defendants (Midas Gold Corp., Midas Gold Idaho, Inc., Idaho Gold Resources Company, LLC, and Stibnite Gold Company) concerning the **Stibnite Gold Project** on the **Payette National Forest**. Plaintiff’s complaint alleges violations under the citizen enforcement provision of the Federal Water Pollution Control Act (Clean Water Act-CWA). An initial Notice of Intent was sent to the defendants on June 5, 2019.

Specifically, the plaintiffs claim:

- The defendants are responsible for unpermitted discharges at multiple point sources within the proposed project site area into the East Fork South Fork Salmon River and its tributaries. The plaintiff provides documentation that show discharges are negatively impacting the health and habitat of aquatic and terrestrial specials within the Salmon River watershed. The East Fork South Fork Salmon River is located within the Tribe’s aboriginal homeland and the discharges harm culturally-significant and Treaty-reserved resources.

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- Federally listed, threatened species such as the Snake River spring/summer Chinook salmon, Snake River steelhead, bull trout (and an extensive list of other species) are in danger. Listed species in the area are experiencing population declines, habitat loss and risk of extinction. The plaintiff details and further allege harm to listed species have been occurring since 2009, when Midas Gold's corporate precursors began acquiring patented and unpatented mining claim(s), when they conducted exploration activities, while extensively studying the site, including its water resources.

The plaintiff indicates that since 2012, Midas Gold has held an interest in all the patented and unpatented mining claims including all lands where the point source discharges are located. And that in 2016, Midas Gold submitted a proposal to the Forest Service, the State of Idaho, and other regulatory agencies to obtain approval for the project. Currently the Forest Service, working with the State and other regulatory agencies and the proponent (Midas Gold) to complete the environmental review of the project.

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