

Ecosystem Management Coordination



Be careful with this heatwave. Stay safe outdoors

Court Decisions

Recreation | Region 1

Friends of the Crazy Mountains, et al. v. Mary Erickson, et al. (19-0066, D. Mont.) **Region 1**— On July 29, 2019 the District Court of Montana ruled in favor of the Forest Service, denying the plaintiffs' motion for preliminary injunction to enjoin the Agency from constructing the **Porcupine Ibex Trail**. The case concerns **four National Forest System (NFS) trails that provide access to the Crazy Mountains on the Custer Gallatin National Forest (CGNF)**.

The district court concluded that the plaintiffs are not likely to win on the merits in this case. Specifically:

- NEPA—the district court concluded the plaintiffs did not raise serious questions about whether the Forest Service took the necessary hard look at the environmental impacts of the Porcupine Ibex Trail.
- NFMA—the district court concluded that because plaintiffs did not argue the Forest Service is inconsistently managing the portions of the Porcupine Lowline and Elk Creek Trails over which the Forest Service has a recorded interest, the plaintiffs do not raise serious questions going to the merits of their NFMA claim.

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The district court found that the plaintiffs did show irreparable harm as actual and likely. The new trail construction would involve removal of trees and creating a 24' wide path through several miles of the CGNF.

The district court concluded that the public interest of the trail far outweighs the potential hardship the plaintiffs would experience if the trail were developed. Specifically, the district court states: *"In a sense, the Defendants are attempting to trade uncertain property rights for secure property rights, whereas the Plaintiffs are attempting to preserve uncertain property rights at the risk of losing secure property rights. Weighing these interests, the Court finds the balance of hardships between the parties leans towards the Defendants because an injunction may result in losing permanent public access rights to preserve what is only a potential easement interest in the trail."*

Finally, the courts concluded that the plaintiffs' motion for a preliminary injunction be denied, because although they showed irreparable harm, the plaintiffs did not raise serious questions going into the merits of the case and the balance of hardship and public interest was heavily in the favor of the Forest Service.

Grazing | Region 5

Central Sierra Environmental Resource Center, et al. v. Stanislaus National Forest, et al. (17-00441, E.D. Calif.), **Region 5** – On August 6, 2019, the Court for the Eastern District of California ruled favorably for the Forest Service on all claims associated with cattle grazing in three livestock allotments on the **Stanislaus National Forest** (Bell Meadow, Eagle and Herring Creek). The Court found:

1. Clean Water Act Claims
 - a. Violation of REC-1 Standard (fecal coliform bacteria in waters for recreational purposes): *"...given the ongoing, working regulatory relationship between the Forest Service and the Regional and State Boards and the Forest Service's efforts to reduce potential water quality violations, issuing the challenged grazing permits and AOIs was not arbitrary, capricious, or contrary to law."*
 - b. Failure to file a report with state board concerning discharges of livestock waste, and, failure to obtain a permit or waiver from the state for ongoing/new discharges of waste: *"... as plainly stated in the MAA [Management Agency Agreement between the State Board and Forest Service], the Forest Service is not required to obtain a permit or file notices of discharge."*
2. NFMA – Failure to comply with three Forest Plan standards and guides (S&Gs) # 50 (protection of hardwood regeneration in grazing allotments), # 117 (assess hydrologic function of meadow habitats and other special aquatic features) and #118 (prohibit or mitigate ground-disturbing activities that adversely affect hydrological processes): *"... the interpretation of the S&Gs and the scientific judgment driving its execution are matters*

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within the Forest Service’s discretion, and it does not appear that the Forest Service has acted arbitrarily or capriciously.”

Related to the NFMA claims the Court concluded:

- a. *“The Forest Service is entitled to rely on its own expertise when it has properly considered the relevant factors.”*
- b. *“The Forest Service is entitled to craft the adaptive management program that it deems appropriate ... as long as it has reasonably interpreted its Forest Plan and used its scientific judgment while considering the proper factors.”*

Litigation Update

Mining | Region 3

Center for Biological Diversity, et al. v. U.S. Fish and Wildlife Service, et al. (17-00475, 17-00576, 18-00189, D. Ariz.) **Region 3**— On July 31, 2019 the District Court of Arizona issued a consolidated cases (17-00475, 17-00576, and 18-00189) order for the U.S. Fish and Wildlife Service and the Forest Service concerning the **Rosemont Copper Company’s** (Rosemont) **large scale pit-mining operation** within the boundary of the **Coronado National Forest** (CNF). The three cases were filed by the Center for Biological Diversity, Save the Scenic Santa Rita’s, and the Tohono O’odham Nation. The district court vacated the Forest Service’s Final Environmental Impact Statement (FEIS) and Record of Decision (ROD). All preliminary injunctions were denied, because the FEIS and ROD were vacated, and there no longer exists urgent circumstances justifying immediate injunctive relief.

Forest Management | Region 1

Native Ecosystem Council and Alliance for the Wild Rockies, v. Leanne Marten, et al. (17-00153, D. Mont.; 18-36067, 9th Cir.) **Region 1**— On July 19, 2019 the 9th Circuit Court of Appeals denied the appellants’ motion for injunction pending appeal. The case concerns the **Moose Creek Project** on the **Helena-Lewis and Clark National Forests** (HLCNF). The HLCNF utilized the **Healthy Forest Restoration Act (HFRA) - 2014 Farm Bill - Categorical Exclusion** (CE) for the environmental review and approval of the project.

On October 10, 2017 the plaintiffs filed suit in the district court of Montana challenging the Moose Creek Project on the HLCNF. The court held that the Montana Landscape Designation (designation) does not constitute final agency action and NEPA review is not required, because the nature and extent of future, individual projects under the designation are speculative. Consistent with the reasoning provided by the District of Oregon, treatment projects that meet HFRA (see 16 U.S.C. § 6591b) requirements are excluded from “extraordinary circumstances” review; thus the Forest Service was not required to

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undertake such review. And the plaintiffs' insistence that no old growth can be removed under HFRA is not consistent with the statute. On November 19, 2018 the district court granted summary judgement to the Forest Service on all claims.

New Cases

Timber | Region 5

Mountain Communities for Fire Safety; Los Padres Forestwatch; and Earth Island Institute, v. Kevin Elliott and U.S. Forest Service (19-6539, D. C. Cal.) **Region 5**—On July 29, 2019 the plaintiffs filed a complaint in the Central District Court of California against the Forest Service concerning the **Cuddy Valley Forest Health/Fuels Reduction Project** on the **Los Padres National Forest** (LPNF). The Project was analyzed and authorized under a 36 C.F.R. § 220.6(e)(6) categorical exclusion (CE) for timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. The purpose of the project is to mitigate damage done by the Ips bark beetle and reduce wildfire fuels on a 1,200 acre project area in the **Mt. Pinos Place Management Area** under the **Los Padres Land and Resource Management Plan** (LRMP). The project proposes to reduce stand density, competing vegetation, and fuels on an estimated 1,200 acres with the management area.

The plaintiffs claim the Forest decided to limit its National Environmental Policy Act (NEPA) analysis by inappropriately choosing the “timber stand and/or wildlife habitat improvement activities” CE (36 C.F.R. § 220.6(e)(6)), which does not fit the type of commercial logging activities proposed in the Cuddy Valley Project. Subsequently, the project violates NEPA because it exceeds the CE limits for commercial timber sales. The plaintiffs claim the project is a timber sale project that involves thinning, which would harvest trees from up to 601 acres. As such, the project greatly exceeds the 70 acre limitation of the small thinning CE in 36 C.F.R. § 220.6(e)(12), and also exceeds the 250 acre limitations of the timber salvage and sanitation CEs in 36 C.F.R. §§ 220.6(e)(13) and (14).

Notice of Intent

Wildlife / Grazing | Region 5

On July 17, 2019, Western Watersheds filed an NOI claiming the Forest Service is violating the ESA by failing to reinstate consultation regarding impacts of its grazing management on listed fish (shortnose sucker and the Lost River sucker) and their designated critical habitat, and by continuing to authorize grazing activities in the Devil's Garden and Doublehead Ranger Districts in the **Modoc National Forest** under an outdated consultation. Both species were designated as endangered in 1988 and critical habitat was designated in 2012. A Biological Opinion was completed in 1996.

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