

Ecosystem Management Coordination



In honor and memory of 9/11

Court Decisions

Nothing to report

Litigation Update

Nothing to report

New Cases

Forest Management | Region 1

Alliance for the Wild Rockies v. Jeannie Higgins et al. (19-0332, D. Idaho) **Region 1**— On August 29, 2019 the plaintiff filed a complaint in the District Court of Idaho against the Forest Service regarding **the Hanna Flats Good Neighbor Project** on the **Idaho Panhandle National Forest (IPNF)**. The plaintiff claims the Forest Service failed to demonstrate compliance with the IPNF Forest Plan 2015 Access Amendment (baseline total and open road miles requirements) in violation of the Forest Plan, National Forest Management Act, National Environmental Policy Act (NEPA), 2014 Farm Bill—Healthy Forest Restoration Act (HFRA), and the Administrative Procedures Act. Specifically the plaintiff claim the Forest Service:

- Failed to establish that the project is in the “wildland urban interface” (WUI) as defined by HFRA; therefore the Forest Service has not established that it may be categorically excluded from NEPA analysis and administrative review.
- Failed to conduct NEPA analysis for the Bonner County Community Wildfire Protection Plan, WUI definition, and/or WUI map before using the documents as the basis for the Hanna Flats project constitutes illegal tiering under NEPA.

The NFS Litigation Weekly Newsletter is provided to Forest Service employees for internal, informational purposes and is not intended to provide a legal/policy opinion or interpretation of its subject matter. Information presented in the Litigation Weekly is publicly available via official court records. Official court records should be consulted for the post complete accurate discussion of each case.

The Decision Memo for the project was signed on October 11, 2018 and utilized three categorical exclusions (CE):

- The Insect and Disease provision of the 2014 Farm Bill—HFRA (16 U.S.C. 6591b).
- Category 1 – construction and reconstruction of trails (36 CFR 220.6(e)(1)).
- Category 20 – activities that restore, rehabilitate, or stabilize lands occupied by non-system roads and trails (36 CFR 220.6(e)(20)).

The decision authorized 2,352 acres of vegetation treatments and prescribed burning; as well as 0.5 miles of temporary roads, 26 miles of road maintenance, elimination of motorized use on 16 miles of roads, storage of 2 miles of system roads, and 10 miles of cross-country ski and snowshoe trail maintenance.

Notice of Intent

Forest Management | Region 1

Notice of Intent (NOI), dated August 30, 2019, by **Alliance for the Wild Rockies** and **Native Ecosystems Council** (AWR and NEC) alleging the U.S. Fish and Wildlife Service (FWS) and the Forest service violated the Endangered Species Act (ESA), concerning the **North Bridger Project** on the **Custer Gallatin National Forest**, as it pertains to the Canada lynx and its critical habitat (**Region 1**).

Specifically, the AWR and NEC allege:

- The Forest Service’s Biological Assessment (BA) is arbitrary and capricious regarding the determination of “may affect, not likely to adversely affect Canada lynx and fails to adequately and fully address all relevant habitat standards for Canada lynx, and to address cumulative effects.
- Forest Service’s BA fails to address the effects of interrelated actions on Canada lynx including the direct and indirect effects of the project with the effect of other projects that have been categorically excluded from the National Environmental Policy Act through the use of the 2014 Farm Bill—Healthy Forest Restoration Act.
- The FWS’s concurrence is arbitrary and capricious for the same reasons discussed above.
- The Forest Service and FWS failed to adequately and fully address all relevant habitat standards, cumulative effects, interrelated actions, primary constituent elements, individual significance of the project area, significance based on court findings that there may be a more significant impact on population jeopardy than previously considered.

This NOI is the Second NOI notice filed by AWR and NEC under the ESA. The initial filing was dated June 5, 2019 and concerned Wolverine ESA claims.

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Forest Management | Region 1

Notice of Intent (NOI), dated August 26, 2019 by Alliance of the Wild Rockies and Native Ecosystem Council (AWR and NEC) 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 use of the 2014 Farm Bill Healthy Forest Restoration Act (HFRA) Categorical Exclusion (CE), and concerns the HLCNF Forest Plan's Amendment 19 road closure requirements. The AWR and NEC allege the FWS violated ESA for the following reasons:

- The December 2018 amendments to the HLCNF Forest Plan abandon longstanding Forest Service commitment to limit road development in important Grizzly bear habitat and to limit human use and access to Grizzly bear habitat.
- The December 2018 amendments allow new road construction in Grizzly bear habitat without commensurate removal of existing roads and allows proliferation of roads on the landscape as long as a barrier is placed on a road.
- FWS failed to acknowledge threat of road proliferation and associated human disturbance of Grizzly bear habitat allowed by the amendments.
- FWS violated ESA by failing to conduct a rational analysis and determination of whether the weakened road allowances will jeopardize the threatened Grizzly bear

This NOI is the Second NOI notice filed by AWR and NEC under the ESA. The initial filing was dated June 14, 2019 and concerned Wolverine ESA claims.

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