

Ecosystem Management Coordination



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Court Decisions

Timber | Region 3

WildEarth Guardians v. United States Fish and Wildlife Service, et al (13-00151, D. Ariz.)
Region 3- On September 12, 2019 the District Court of Arizona granted the plaintiff's Motion for Summary Judgment in part and denied in part concerning the **2012 Biological Opinions (BO)** and **Forest Plans** for the **Lincoln, Santa Fe, Cibola, Carson, and Gila National Forests** in New Mexico, and the **Tonto National Forest** in Arizona. The court concluded that the U.S. Fish and Wildlife Service's (FWS) no-jeopardy opinion is arbitrary and capricious and that the Forest Service' reliance upon the jeopardy opinion in the 2012 BOs concerning the Mexico Spotted Owl constitutes a substantive violation of its Endangered Species Act (ESA) Section 7 duties. The court determined that the Forest Service timber management actions in Region 3 has caused irreparable harm. The court ordered the Forest Service to cease timber management

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actions on six national forests (listed above) in Region 3 pending reinitiation of formal consultation under Section 7(a)(2) concerning the Mexican Spotted Owl. Furthermore, the court indicated that the consultation must reassess the jeopardy analysis and the effect of the Forest Plans on the recovery of the Mexican Spotted Owl.

In addition, on September 23, 2019 the district court granted the Forest Service's Motion to clarify the district court's September 12, 2019 order. The motion clarified that the order only pertains to the Lincoln, Santa Fe, Cibola, Carson, and Gila National Forests in New Mexico, and the Tonto National Forest in Arizona.

Timber | Region 10

Southeast Alaska Council, et al., v. United States Forest Service et al. (19-0006, D. Alaska) **Region 10**—On September 23, 2019 the District Court of Alaska granted the Plaintiffs' preliminary injunction against the Forest Service concerning the **Twin Mountain Timber Sale** that is part of the **Prince of Wales Landscape Level Analysis Project** (project) on the **Tongass National Forest** (TNF).

The district court enjoined the Forest Service from allowing any cutting of trees, road construction, or other ground-disturbing activities implementing the 1,156 acre Twin Mountain Timber Sale authorized in the Record of Decision (ROD) until further order of the district court. The Forest Service is further enjoined from opening any bids or awarding any contracts for the Twin Mountain Timber Sale until further order of the district court.

Forest Management & Timber | Region 5

Conservation Congress v. United States Forest Service (18-02404, D. E. Cal.) **Region 5**—On September 18, 2019 the District Court of Eastern California issued an order granting the Forest Service's motion for Summary Judgment on all claims on the case concerning the Agency's Emergency Situation Determination (ESD) regarding its decision to authorize the **Cove Fire Salvage Project** on the **Modoc National Forest** (MNF).

Litigation Update

Nothing to report

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New Cases

Forest Management | Region 5

Earth Island Institute, Sequoia Forestkeeper, Green Peace Inc., and James Hansen v. Kimberly Nash (HUD), Janice Waddell (Cal. Housing and Community Development-HCD) and United States Forest Service (19-05792, N.D. Cal.) Region 5— On September 16, 2019 the plaintiffs filed a complaint in the Northern District Court of California against the HUD, HCD and Forest Service. The plaintiffs claim HUD violated the National Environmental Policy Act (NEPA) when authorizing **relief funds** to the Forest Service for **clear cutting activities** and construction of a **new biomass power plant utilizing the timber as feedstock** following the **2013 Rim Fire** on the **Stanislaus National Forest**. Plaintiffs allege violation of NEPA, HUDs regulations government environmental review of HUD funded projects, the Disaster Relief Appropriations Act of 2013, P.L. 113-2, 127 Stat.4 and the Administrative Procedures Act.

Specifically, the plaintiffs claim:

- HUD/HCD Failed to address or consider new information and changed circumstances on the ground as is required by NEPA.
- HUD/HCD Accepted unchanged and outdated Environmental Impact Statements (EIS) prepared by the Forest Service in 2014 and 2016 claiming substantial changes between the nature and magnitude of the logging proposed in 2014 and 2016 versus the current project.
- Forest Service failed to supplement the EISs from 2014 and 2016.
- Plaintiffs presented new information (Conifer regeneration, presence of wildlife, new information regarding natural regeneration, impact to human health of applying glyphosate) to HUD, HCD and Forest Service, but the agencies refused to address or consider it.
- HUD failed to analyze direct, indirect, and cumulative impacts of the biomass plant.

The plaintiffs seek a declaration that HUD and HCD violated NEPA and failed to supplement the EISs, a declaration that the Forest Service violated NEPA by failing to supplement the 2014 and 2016 EISs, a declaration that the proposed clear cutting activities are not eligible for disaster relief funds, and an injunction that all logging activities cease until NEPA is completed.

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Notice of Intent

Range & Wildlife | Region 3

NOI (Dated September 13, 2019)-**Region 3: By Center For Biological Diversity and Maricopa Audubon Society (CBD/MAS)** alleging the Fish and Wildlife Service (FWS) and the Forest Service violated Endangered Species Act (ESA) and Administrative Procedures Act (APA) concerning the **Agua Chiquita and Sacramento Allotments** on the **Lincoln National Forest (LNF)**. The CBD/MAS allege the mismanagement of cattle on the allotments has resulted in destruction and modification of New Mexico Meadow Jumping Mouse (Jumping Mouse) critical habitat, and their loss in a manner and extent not considered in the biological opinion (BO) and letter of concurrence. The CBD/MAS request reinitiation of ESA Section 7 consultation, enjoinder of further adverse modification on the allotments and for the Forest Service to obey its ‘duty to conserve’ the Jumping Mouse on the LNF.

The CBD/MAS further allege new evidence demonstrating anticipated incidental take has been exceeded, the authorized cattle grazing is being modified causing effects to the Jumping Mouse and its habitat that was not considered, and there is ongoing unauthorized taking or harming of the Jumping Mouse in violation of the anticipated and approved take by the FWS.

Specifically challenged is:

- FWS’ April 28, 2017 concurrence for the Agua Chiquita Allotment, FWS’ October 14, 2017 concurrence for the Bounds Allotment, FWS’ October 5, 2018 BO for the Sacramento Allotment.
- Forest Service reliance on the FWS’ April 28, 2017 concurrence for the Agua Chiquita Allotment and FWS’ October 5, 2018 BO for the Sacramento Allotment.
- Failure of FWS and Forest Service to reinitiate ISA Section 7 consultation on the implementation of the Agua Chiquita Allotment and Sacramento Allotment cattle grazing.
- Forest Service failure to carry out a conservation program for the Jumping Mouse on the LNF.
- Exceeding of the incidental take on the Sacramento and Agua Chiquita allotments.

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- Destruction and adversely modification of the Jumping Mouse critical habitat in the Silver Springs Creek, Upper Penasco, Middle Penasco, Wills Canyon/Mauldin Springs and Agua Chiquita Creek Critical Habitat Units.
- Cattle grazing actions that have been modified in a manner that is destroying critical habitat not considered and anticipated.
- Jeopardizing of the continued existence of the Jumping Mouse.

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