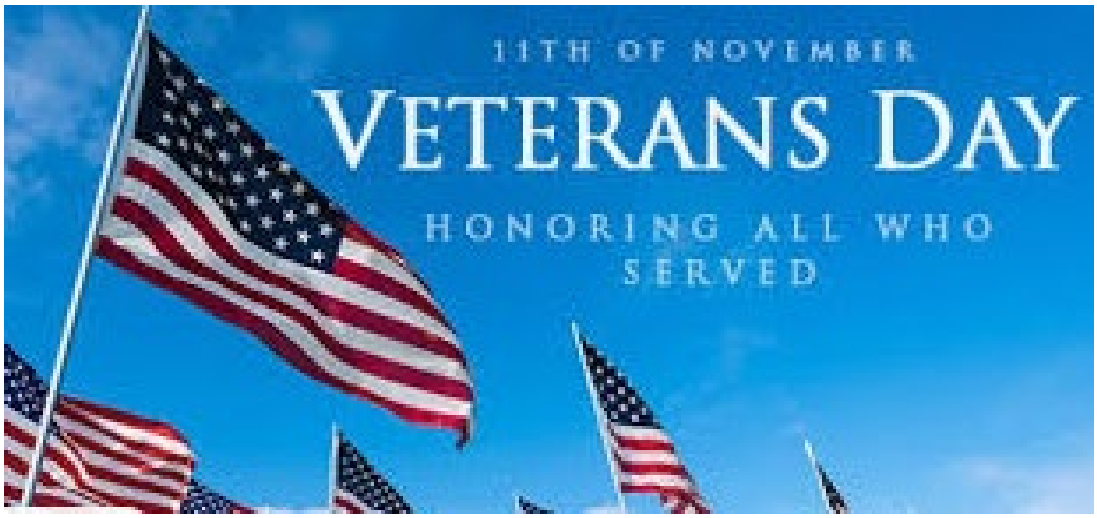
Ecosystem Management Coordination



Court Decisions

Minerals | 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. – Consolidated Cases), **Region 3** – On October 28, 2019, the District Court of Arizona denied the **Rosemont Copper Company's** (Rosemont) motion for consideration pursuant to "Rule 59 motion to alter or amend the judgement." The case concerns the **Rosemont Copper Mine** on the **Coronado National Forest** (CNF). The district court found no basis to reconsider, stating reconsideration is appropriate where (1) new information is discovered (2) the court committed clear error or the initial decision was unjust or (3) there is an intervening change in controlling law. The district court stated, "[m]ere disagreement with a previous order is an insufficient basis for reconsideration".

Background: On August 30, 2019, Rosemont filed a motion to amend/alter the District Court of Arizona's recent judgment on their large scale copper pit-mining operation within the boundary of the CNH. Rosemount filed the motion to address three issues:

1. It was improper for the district court to conduct its own validity assessment of Rosemont's unpatented mining claims.
2. The district court lacked jurisdiction to opine on whether Rosemont's claims were properly located in accordance with the Mining Law at the exclusion of the claims alleged by Plaintiffs.
3. The district court erred in vacating the final Environmental Impact Statement (EIS).

On July 31, 2019, the district court vacated the Forest Service's final EIS and Record of Decision (ROD). Further, all preliminary injunctions were denied, because the final EIS and ROD were vacated, and there no longer exists urgent circumstances justifying immediate injunctive relief. The district court determined: (1) The Forest Service abdicated its duty to protect the CNF from degradation and preserve the Forest from destruction when it failed to consider whether Rosemont held valid unpatented mining claims. The court states: "*the Forest Service's application of its regulations to mining operations cannot grant rights outside the bounds of the Mining Law of 1872. Defendants' remedy lies with the Congress, not the courts.*" and (2) The Forest Service implemented the wrong regulations, misinformed the public and failed to adequately consider reasonable alternatives.

Timber/Forest Management | Region 5

Sequoia Forestkeeper and Earth Island Institute v. Teresa Benson, et al. (19-00134, E.D. Cal.) **Region 5—** On October 28, 2019, the District Court for the Eastern District of California granted a Joint Stipulation of both parties to dismiss the case for the **Pier Fire Roadside Hazard Tree Mitigation Project** (Pier Project) on the **Sequoia National Forest** (logging of 1,636 acres along 25 miles of road). In their complaint, filed on January 30, 2019, plaintiffs claimed the Forest Service violated the National Environmental Policy Act by categorically excluding the project from further analysis using a road maintenance categorical exclusion (CE). More specifically, they alleged the Agency improperly used the road maintenance CE, rather than applying a CE for commercial timber sales which contains a limit for logging of 250 acres.

The case was dismissed as a result of an unfavorable ruling on similar litigation filed by the same plaintiffs challenging the **Bull Run Roadside Hazard Tree Mitigation Project** (*Earth Island Institute et al. v. Elliott*, 17-1320, E.D. Cal.) and a subsequent loss on appeal in the Ninth Circuit (18-16354) when that Court found the plaintiffs request was "moot" (i.e., plaintiffs should have sought an immediate stay pending appeal of the challenged tree removal activities). In the Bull Run litigation, the District Court ruled against plaintiffs, finding the removal of roadside hazard trees fell within the scope of the road-maintenance CE, that deference should be given to the Agency's interpretation of its own regulations, and the Forest Service explained potential impacts which did not rise to extraordinary circumstances.

Timber Management / Wildlife | Region 1

Alliance for the Wild Rockies v. Christopher Savage, et al. (9-160, D. Mont., and 19-35035, 9th Cir.) **Region 1**— On November 4, 2019, the 9th Circuit Court issued an Order affirming in part and remanding in part the appeal of the Alliance for the Wild Rockies of the district court's 2018 order dissolving the permanent injunction against the **Miller West Fisher Project** (Miller Project) on the **Kootenai National Forest** (KNF), and certain of the district court's rulings in its 2010 summary judgment order. The conclusion of the Forest Service and the Fish and Wildlife Service (FWS) that the Miller Project "may affect, but is not likely to adversely affect" grizzly bears in the Cabinet-Yaak recovery zone was not arbitrary and capricious. After the FWS issued a biological opinion and incidental take statement for the Forest Plan Amendments for Motorized Access Management, the Agencies concluded that the Miller Project's effects fell within the range analyzed within the Endangered Species Act (ESA) documents. Therefore, the Forest Service was not required to obtain a biological opinion specific to the Miller Project's activities that will occur in the Cabinet- Yaak recovery zone.

The case was remanded to the district court for the limited purpose of reconsidering whether the Miller Project complied with the ESA in the Cabinet Face BORZ. The 9th Circuit rejected the plaintiff's argument that the Forest Service's analysis of the Miller Project did not comply with the National Environmental Policy Act. In preparing the environmental impact statement (EIS) and supplemental EIS for the Miller Project, the Forest Service aggregated the impacts of road closure breaches into its analysis of the environmental baseline, and concluded that road closure breaches were not a fundamental factor. Therefore, the Forest Service could reasonably conclude it was not required to provide a separate analysis of the cumulative impacts of road closure breaches.

Litigation Update

Mining / Wildlife | Region 1

Ksanka Kupaqa Xa' ʾŁ, et al. v. U.S. Fish and Wildlife Service, et al. (19-0020, D. Mont.) **Region 1**— On October 10, 2019, the District Court of Montana issued an order concerning the **Rock Creek Mine Project** on the **Kootenai National Forest** (KNF). On July 12, 2019 the Federal defendants filed a motion on the pleadings, claiming the plaintiffs lacked standing and ripeness on their Endangered Species Act (ESA) consultation claims. The district court denied the defendants' motion for judgement on the pleadings regarding ESA consultation, on plaintiffs' standing, and ripeness. The case will continue in the district court.

Background: On January 25, 2019 the plaintiffs filed a complaint in the district court alleging that the U.S. Fish and Wildlife Service's and the Forest Service's decision to approve the Rock Creek Mine Project

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in the KNF fails to comply with Endangered Species Act. The decision authorizes the mining of copper and silver in the Cabinet Mountains of Northwest Montana on the KNF. The plaintiffs' complaint alleges deficiencies in the Rock Creek Mine Project record of decision (ROD) and violations of the ESA pertaining to the endangered grizzly bear and bull trout. The plaintiffs' request the ROD for the Rock Creek Mine Project be set aside, the decision be enjoined, and any take of grizzly bears or bull trout be prohibited.

New Cases

Realty | Region 2

McCluskey and Oxenberg v. U.S. Forest Service et al. (19-03019, D. Colo.) **Region 2** – On October 22, 2019, the plaintiffs filed a complaint in the District Court of Colorado against the Forest Service concerning **property between private land owners** and the **White River National Forest** (WRNF) in Aspen Colorado. The plaintiffs seek declaratory judgement and judicial review of final agency decision by the Forest Service and actions by the Department of Interior for equitable relief as applicable, including preliminary and permanent injunctive relief through the **Administrative Procedures Act**, **Quiet Title Act**, Rule 65, Fed. R. Civ. Proc., **Equitable Relief**, and 28 U.S.C. SS2251, **All Writs Act**. The plaintiffs' claim the defendants "have failed to recognize Plaintiff's right, title, interest, and related rights of ownership, domain and usage as to the Property and have thus prevented Plaintiffs from their fundamental and Constitutionally-protected right to…enjoyment and…use of the property".

The plaintiffs claim seven major mistakes occurred in deed conveyances between 1937 and 1941. The plaintiffs indicated they filed the complaint out of abundance of caution to preserve their rights should discussions with local Aspen-area Forest Service officials not produce a definitive resolution.

The plaintiffs request a Declaratory Judgment as the true and lawful owners of the property in suit, relief under the Administrative Procedures Act through entry of orders and directives as are reasonably necessary to relieve Plaintiffs from the adverse effects of prior actions and inactions of the Forest Service, Quiet Title of the property establishing Plaintiffs right to the property, an order of equitable relief as provided by Rule 65 of Federal Rules of Civil Procedure and All Writs Act, derived from Judiciary Act of 1789.

Travel Management / Recreation | Region 5

Back Country Horsemen of America, Backcountry Horsemen of California, Gold Country Trails Council, Forest issues Group, and The Wilderness Society v. **United States Forest Service** (19-01015, E.D. Cal.). **Region 5--**On October 23, 2019, the plaintiffs filed a complaint in the District Court of the Eastern District of California against the Forest Service concerning **the allowed use of Class 1 e-bikes on non-motorized trails** on the **Tahoe National Forest** (TNF). The plaintiffs' complaint includes the TNF's webpage that indicates the allowance of Class 1 e bikes on 132 miles of non-motorized trail in 2019.

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The plaintiffs claim:

1) The decision to allow Class 1 e-bikes on non-motorized trails on the TNF violates the Travel Management Rule. Specifically, unless and until the specific trails are designated for e-bike use through the process set forth in the Travel Management Rule, e-bike use on non-motorized trails is prohibited under the Travel Management Rule at 36 CFR 212.50 (a) and 261.13.
2) The decision to allow Class 1 e-bikes on non-motorized trails on the TNF without public notice and opportunity for comment violates the Travel Management Rule.
3) The Forest Service failed to comply with National Environmental Policy Act (NEPA) in allowing e-bikes on non-motorized trails on the TNF. Specifically, the Forest Service violated NEPA, because the Agency did not prepare an environmental assessment or an environmental impact statement, nor formally concluded that its decision to allow Class 1 e-bikes on the TNF is not a major federal action that will have a significant effect on the human environment.

The plaintiffs request the district court declare the above claims are a violation of the Administrative Procedures Act, Travel Management Rule and NEPA, in allowing Class 1 e bikes on non-motorized trails on the TNF, without following the process set forth in the Travel Management Rule, nor providing public notice and comment, or analyzing the environmental impacts of the decision.

Notice of Intent

Wildlife | Region 6

NOI (Dated October 21, 2019) by Alliance for the Wild Rockies (AWR) alleging the Forest Service violated the Endangered Species Act (ESA) concerning the **Mission Restoration Project "non-ARBO II activities"** on the **Okanogan-Wenatchee National Forest** (OWNF). ARBO II is the National Marine Fisheries Service (NMFS) Aquatic Restoration Biological Opinion (July 2013) for aquatic restoration activities in the States of Oregon, Washington and potions of California, Idaho and Nevada. The AWR alleges:

- The Forest Service's determination of "may affect, not likely to adversely affect" for the – Columbia River Bull Trout and designated critical habitat (DCH); Upper Columbia River steelhead DPS and DCH; Upper Columbia River Spring-Run Chinook ESU and DCH – did not analyze the following (road and trail erosion and decommissioning, fish passage restoration, riparian vegetation treatment (controlled burning) and beaver habitat restoration in the Mission Project biological assessment (BA)), because "design and implementation would be consistent with design criteria in ARBO II. The National Marine Fisheries Service (NMFS) concurred with the Forest Service's determination. Subsequently, the Forest Service's biological opinion and NMFS's concurrence is arbitrary and capricious and an abuse of its discretion.
- The Agencies failed to adequately and fully address all relevant habitat standards for the listed species and their DHC. The Agencies failed to adequately address: the primary constituent elements, individual significance of the project, and cumulative effects.

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- The Forest Service's determination in the project environmental assessment (EA) and the selected alternative (Alternative 3) "may affect, and would likely adversely affect, steelhead, bull trout species and their critical habitat."
- The Agencies failed to adequately and fully address all projects impacts on Canada lynx and lynx critical habitat. The project BA failed to adequately analyze the impacts of 2,132 acres of silviculture and fuels reduction treatment within lynx critical habitat. The BA failed to utilize best available science regarding conservation measure for lynx and lynx critical habitat and further failed to disclose the reasons for the Forest Service's departure from the best available science. Therefore, the analysis of the project's impacts on lynx and lynx critical habitat is inadequate and the conclusion drawn from this analysis are arbitrary capricious and an abuse of power.

Background

Alliance for the Wild Rockies v. United States Forest Service, et al. (19-00350, E. D. Wash.)- Region 6— On October 16, 2019, the plaintiff filed a complaint in the Eastern District of Washington against the Forest Service concerning the recently approved Mission Restoration Project and Forest Plan Amendment #59 (Project) which authorized extensive logging, burning, and road building in the Methow Valley Ranger District of the OWNF. The plaintiff claims the Forest Service violated the National Environmental Policy Act, Administrative Procedure Act and National Forest Management Act by approving the project and issuing a finding of no significant impact. The plaintiff claims there will be significant adverse impacts to water resources and fish, vegetation, soils and wildlife.

Other Cases Filed Against Another Agency/Entity

Nothing To Report

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