

Ecosystem Management Coordination

Happy Leap Year!

February 29, 2020

Court Decisions

Nothing to Report

Court Update

Wildlife | Region 1

Tugaw Ranches, LLC v. USDOJ, et al. (18-159, D. Idaho) **Idaho, Montana, Utah, and Nevada**— Region 1- On February 7, 2020, the parties filed in the District Court of Idaho a Stipulation for Dismissal of this case regarding the submission of final Sage Grouse Plans to Congress by the Forest Service and Bureau of Land Management (BLM). The parties agree that because the Forest Service submitted its signed Records of Decisions (ROD) to Congress on February 3, 2020, and the BLM's submitted its RODs to Congress on March 15, 2019, there is no need for additional litigation on the merits. The dismissal does not require any action by the Court. Plaintiff Tugaw Ranches and Plaintiff-Intervenors, the Idaho State Governor and Legislature, allege the agencies violated the CRA by issuing their ROD and plan amendments without prior submission to Congress for review.

Background

On April 11, 2018, the plaintiff filed a complaint in the district court claiming the BLM and Forest Service did not submit the Sage Grouse Rules (i.e., ROD for the Great Basin Region Greater-Sage Grouse Sub-Regions of Idaho and Southwestern Montana Nevada and Utah) for Congressional Review as required by the CRA - Agencies actions are unlawfully withheld and unreasonably delayed.

Litigation Update

Nothing to Report

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.

New Cases

Forest Management/Travel Management | Region 1

Friends of the Bitterroot v. Leanne Marten et. al. (20-0019, D. Mont.). On February 19, 2020, the plaintiff filed a complaint in the District Court of Montana against the Forest Service regarding the **Darby Lumber Lands Phase II Project on the Bitterroot National Forest**. The plaintiff claims the Forest Service violated the Administrative Procedures Act (APA) concerning the Agency's Environmental Assessment (EA), decision notice and Finding of No Significant Impact (FONSI) for the project. The plaintiff further claims the Agency's decision violated the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Travel Management Rule (TMR), and the 2012 Planning Rule.

Plaintiff's Specific Claims include:

1. TMR - Failure to adequately and lawfully designate a minimum road system for the project.
2. NFMA - Building roads and harvesting timber in Management Area 8b is a violation of the Forest Plan
3. NFMA- 2012 Planning Rule - Project Specific Forest Plan Amendments regarding elk habitat are unlawful and are not informed by best available science.
4. NEPA – not following the travel management rule, the Forest Plan, and the 2012 Planning Rule.

In the complaint the plaintiff indicates the Forest Service did not include a need: to identify a minimum road system for the project area; and to increase big game forage production or winter range habitat in its statement of propose and need for the project.

Background

The Decision Notice (DN) for the project was signed on July 31, 2019. The decision authorized 959 acres of commercial harvest, 334 acres of non-commercial thinning, and 1,294 acres of prescribed burning; as well as 4.3 miles of road construction, temporary roads as needed, 39 miles of road decommissioning, storage of 16 miles of system roads, and 1.9 miles of OHV trail construction and 4.7 miles of trail decommissioning. The project also included a project specific forest plan amendment to the 1987 Forest Plan to certain standards relating to elk habitat effectiveness and elk habitat objectives.

The DN indicated the project was developed to design and implement a suitable transportation system for long-term land management that is responsive to public interests and reduces adverse environmental effects, improves forest health and stand resilience, restores historic structure in dry pine stands and reduces potential fire severity, and provides timber products and related jobs.

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Forest Management | Region 3

Center for Biological Diversity and Maricopa Audubon Society v. David Bernhardt, U.S. Fish and Wildlife Service and U.S. Forest Service (20-0075, D. Ariz.) Region 3 – On February 20, 2020, Plaintiffs filed a complaint in the District Court of Arizona. The plaintiffs claim the U.S. Fish and Wildlife Service (FWS) and Forest Service are in violation of the National Forest Management Act (NFMA), Endangered Species Act (ESA) and the Administrative Procedures Act (APA) by not protecting the **New Mexico Meadow jumping mouse (NMMJM)** and its **critical habitat** on the **Apache-Sitgreaves National Forest (ASNF)**. The NMMJM was listed as endangered on June 20, 2014, and plaintiffs claim the FWS stated in their final listing rule that the NMMJM populations are threatened with extirpation from habitat loss and modifications claiming the main sources of habitat loss and degradation include (1) grazing pressure (2) water management and use (3) loss of water (4) and wildfires.

Specific claims:

1. Ongoing violation of the ESA for failure to reinitiate and complete consultation on the ASNF Land Management Plan (LMP).
 - a. New Information has revealed effects of the LMP that may affect the NMMJM and its critical habitat in a manner and to an extent not previously considered in the 2015 Biological Opinion (BO).
2. Secretary of the Department of Interior (DOI) and FWS violated ESA in failing to develop and implement a recovery plan for the NMMJM.
 - a. The Secretary of DOI's failure to develop a recovery plan is subject to judicial review under ESA.
3. Forest Service is in violation of Section 7(a)(1) of the ESA for failing to carry out with the FWS' assistance, programs for conservation of the NMMJM on the ASNF.
 - a. The Forest Service failed to utilize authorities to effectively protect and conserve the highly endangered NMMJM on the ASNF from authorized and unauthorized livestock and known grazing and other adverse impacts resulting from horses and nonresident elk.
4. Forest Service violated NFMA in developing and approving the 2015 LMP for the ASNF as the plan fails to insure and maintain a viable population of the NMMJM in the Planning Area.
 - a. The Forest Service failed to select the NMMJM as a management indicator species in the 2015 LMP as plaintiffs claim is required by NFMA.

Plaintiffs claim they conducted their own surveys and provided them to the FWS and Forest Service extensive documentation and photographs of widespread habitat destruction, extreme grazing of the streamside herbaceous vegetation and discovered heavy fresh horse, cow, and nonresident elk presence throughout drainage areas. The plaintiffs' documentation shows severe trampling of vegetation, cattle fencing along parts of drainages, not excluding cattle and presence of cattle on multiple sites in the ASNF.

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Notice of Intent

Nothing to Report

Other Cases Filed Against Another Agency/Entity

Nothing to Report

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