

## Ecosystem Management Coordination

### Court Decisions

#### Forest Management | Region 1

**Alliance for the Wild Rockies and Native Ecosystem Counsel, v. Leanne Marten, et al.** [19-0092 (lead case) and 19-0102 (member case), D. Mont.] **Region 1**—On June 3, 2020, the District Court of Montana issued a favorable decision on the consolidated challenges against two Healthy Forest Restoration Act (HFRA) categorical exclusion (CE) projects—**Willow Creek Project** on the Helena-Lewis and Clark National Forest and the **North Bridgers Project** on the Custer-Gallatin National Forest. The Plaintiffs claimed violations of the 2014 amended HFRA, sections 602 and 603; National Environmental Policy Act (NEPA); Endangered Species Act (ESA); and Administrative Procedures Act (APA). The projects were approved with an insect and disease CE, under the 2014 amended HFRA, sections 602 and 603.

The Forests completed extraordinary circumstances analyses and evaluated cumulative impacts.

- Willow Creek Project – This project was authorized on May 29, 2019 and includes 2,140 acres of timber harvest.
- North Bridgers Project – This project was authorized on August 27, 2018 and includes 2,296 acres of timber harvest.

The district court found:

#### 1. Willow Creek and North Bridger Projects

- The Threatened Landscape Designation is not a final agency action subject to NEPA review in accordance with several previous decisions of the district court and the 9<sup>th</sup> Circuit Court of Appeals.
- The plaintiffs failed to include in its Notice of Intent (NOI) to Sue for the Willow Creek project that the Willow Creek Project Biological Assessment failed to consider interdependent or related actions. This claim was therefore dismissed. The NOI for the North Bridgers project raised this claim, and it was properly before the court despite that it was not raised in comments on the project. The court found, however, that the claim was meritless, because the two projects are not interdependent or interrelated.
- Other claims on both cases, including cumulative effects analysis, were dismissed because they were not argued in summary judgment briefs of the plaintiffs.

#### 2. North Bridgers project

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- The court found that the regulatory requirements for applying a CE does not apply to HFRA projects, that these projects are “governed exclusively by 16 U.S.C. 6591b.”

### **3. Willow Creek Project**

- Complies with the HFRA CE on the issues of closing temporary roads and on whether the project maximizes retention of old growth and large trees.
- The project was not in the Wildland Urban Interface or in the proper condition class to qualify it for the HFRA CE were waived, because plaintiffs failed to raise these issues during the comment period, and the court concluded in any event these claims fail on their merits, because interface, intermix and occluded areas all qualify as urban wildland interface communities.
- The court dismissed plaintiff’s ESA challenges to the Blackfoot Travel Plan for lack of jurisdiction since they were not raised in the NOI.

#### Background

***Alliance for the Wild Rockies, et al., v. Leanne Marten, et al. (19-0092, D. Mont.)***—On June 3, 2019, the plaintiffs filed a complaint in the district court concerning the Forest Service’s decision memorandum (DM) and CE for the North Bridger Project. Specifically, the plaintiffs’ claim the Forest Service’s actions or omissions violate NEPA, and APA.

On August 27, 2018 the Forest Serviced signed the DM authorizing the project. The project area is located approximately 13 miles northeast of Bozeman, MT in the Bridger Mountains and is within the Gallatin National Forest and is located adjacent to the Bridger IRA. The project area is approximately 10,200 acres and activities are proposed on approximately 2,300 of the area. Specifically, the project includes 2,396 acres of commercial logging: 667 acres of clear cutting, 87 acres of “group selection” and 1,542 acres of intermediate harvest. The project was approved as part of an “insect and disease treatment program” in accordance with the HFRA and was categorically excluded from NEPA pursuant to the Act.

#### ***Alliance for the Wild Rockies, et al. v. Leanne Marten, et al. (19-0102, D. Mont.)***—

On August 26, 2019 the plaintiffs filed an amended complaint in the District Court of Montana regarding the DM and 2014 amended HFRA CE for the Willow Creek Project. Plaintiffs allege the decision violates NEPA and ESA.

On May 29, 2019, the Forest Service’s DM was signed authorizing an insect and disease treatment program in an area located in the Blackfoot River drainage on the north and Nevada Creek drainage on the south. The project area is approximately 10,181 acres with activity on 2,140 of those acres. The project is part of the HFRA area.

## **Litigation Update**

### **Nothing to Report**

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**New Cases**

**Nothing to Report**

**Notice of Intent**

**Nothing to Report**

**Other Cases Filed Against Another Agency/Entity**

**Nothing to Report**

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