

Ecosystem Management Coordination

In Honor of D-Day

June 6, 1944

Court Decisions

Forest Management | Region 1

Alliance for the Wild Rockies and Native Ecosystem Counsel v. Leanne Marten, et al. (12-055, D. Mont.)—Region 1—On April 20, 2020, the District Court of Montana issued an order lifting the injunction on the Bozeman Municipal Watershed Fuels Reduction Project and the East Boulder Fuel Reduction Project on the Gallatin National Forest after the Forest Service adequately assessed the impacts of the Northern Rockies Lynx Amendment (Lynx Amendment) and the projects on the Canada Lynx and its critical habitat. The projects aimed to reduce the severity and collateral effects of wildfire by way of logging, thinning, and prescribed burns. Both projects were to take place in areas designated as critical habitat lynx. The plaintiffs alleged non-compliance with the Endangered Species Act (ESA), and National Environmental Policy Act (NEPA). The district court stated the projects can go forward. The plaintiffs argued that legal deficiencies remained and opposed the Forest Service’s motion to lift the injunction.

The court found:

1. The Forest Service complied with the ESA and its implementing regulations and adequately demonstrated that the Lynx Amendment and the projects will not appreciably reduce the conservation value of lynx critical habitat.
2. The plaintiffs argued that because Forest Service failed to remedy their ESA violation, NEPA’s “hard Look” requirement likewise remained unsatisfied. However, the district court found that the Forest Service and the U.S. Fish and Wildlife Service satisfied their statutory and regulatory obligations under the ESA. The Forest Service appropriately evaluated whether it should undertake further procedures under NEPA’s supplementation mandate following its triad of revised ESA consultation.

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Background

On April 23, 2013, the district court remanded the case back to the Forest Service to reinstate both the programmatic (Lynx Amendment) and site specific (projects) ESA section 7 consultation, consistent with the district court's decision in *Salix v. U.S. Forest Service (D. Mont., 2013)*. The Forest Service was enjoined from implementing the projects pending completion of reinstated consultation and any further procedures that might have been required under NEPA in light of the findings from that consultation. On April 10, 2012, the plaintiffs filed a complaint against the Forest Service concerning approval of the projects.

Forest Management | Region 5

Earth Island Institute, et al. v. Nash, et al. (19-01420, D. E.D. Cal.) Region 5—On April 21, 2020, the Eastern District Court of California issued an order dismissing the plaintiffs motions for temporary restraining order and preliminary injunction concerning the use of disaster relief funds for clearcutting timber, and construction of new biomass power plant utilizing the timber as feedstock following the 2013 Rim Fire on the Stanislaus National Forest.

The district court found:

1. The plaintiffs have not shown they are likely to prevail on their claim that the California HCD and Forest Service violated a duty to consider whether new information warranted preparing an Environmental Impact Statement (EIS).
2. The district court did find the plaintiffs adequately demonstrated a likelihood they will suffer irreparable harm if the preliminary injunctive relief is not granted.
3. The plaintiffs have only raised serious questions on the merits as to one claim and have not demonstrated that the hardship balance sharply tips in their favor.

Background

On September 16, 2017, the plaintiffs filed a complaint in the district court against the HUD, California HCD and Forest Service. The plaintiffs claim HUD violated NEPA when authorizing the use of disaster relief funds to the Forest Service for clear cutting timber and construction of a new biomass power plant utilizing the timber as feedstock following the 2013 Rim Fire. The plaintiffs allege violation NEPA, HUDs regulations government environmental review of HUD funded projects, the 2013 DRAA, P.L. 113-2, 127 Stat.4 and APA.

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Forest Management | Region 1

Friends of the Bitterroot, v. Leanne Marten, et al. (20-0019, D. Mont.) Region 1—On April 29, 2020, the District Court of Montana issued an order favorable to the Forest Service dismissing the plaintiff's motion for Temporary Restraining Order (TRO) and Preliminary Injunction regarding the Darby Lumber Lands Project on the Bitterroot National Forest.

The district court found:

- The plaintiffs failed to establish a likelihood of irreparable harm with generic allegations.
- The court considered the plaintiff's issue with additional road construction but noted the project will result in a net decrease in road mileage through road decommissioning.
- The delay in the plaintiff's complaint and motion from the time when project was authorized and subsequently implemented and noted the four-month delay of filing the lawsuit and additional seven-week delay in seeking an injunction.
- A PI is not warranted, because the plaintiff failed to allege an injury that is not likely to follow from the project's upcoming activities.

Background

The plaintiffs filed for a motion for injunction on April 10, 2020. The complaint, filed February 19, 2020, alleges violations of the TMR, NFMA, and NEPA.

- TMR - Failure to adequately and lawfully designate a minimum road system for the project.
- NFMA - Building roads and harvesting timber in Management Area 8b is a violation of the Forest Plan
- NFMA - 2012 Planning Rule - Project Specific Forest Plan Amendments regarding elk habitat are unlawful and are not informed by best available science.
- NEPA – not following the travel management rule, the Forest Plan, and the 2012 Planning Rule.
- Forest Service awarded the timber sale for this project in September of 2019.
- The Decision Notice for the project was signed in July of 2019.

Wildlife Management | Region 1,2,4

Wildearth Guardians, et al. v. U.S. Forest Service, et al. (19-00203, D. Idaho) Regions 1, 2, 4—On May 7, 2020, the District Court of Idaho issued an order that granted the Forest Service's motion to dismiss the plaintiffs' claim that the Agency supplement the 1995 Environmental Assessment (EA) based on new information. However, the district denied the Forest Service's and U.S. Fish and Wildlife Service's motion to dismiss the plaintiffs' claim for reinitiating consultation based on taking of grizzly bear resulting from black-bear baiting for hunting in the

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Idaho Panhandle National Forest, Caribou-Targhee, Bridger-Teton, and Shoshone National Forests.

The district court found:

1. The Magistrate determined that after an agency has prepared an EA and has issued a Finding of No Significant Impact, an agency must supplement its environmental analysis if there are “significant new circumstances or information” relevant to environmental concerns and bearing on the proposed action or its impact. The Magistrate concluded that there is no ongoing or proposed federal action that requires supplementation.
2. While the Forest Service did not dispute it was a proper defendant in the first count, the FWS argued it was not, and urged dismissal because it lacked the legal authority to initiate consultation. The FWS claimed the authority to initiate consultation lies solely with the action agency –Forest Service, in this case. The Magistrate determined that “While the federal agencies’ arguments might be compelling if this was an issue of first impression, the 9th Circuit Court of Appeals has already addressed this precise issue multiple times and confirmed that both the action agency and the consulting agency have a duty to reinstate consultation.”

Background

On June 5, 2019, the plaintiffs’ filed a complaint in the district court against the Forest Service and FWS concerning the allowing of black bear baiting for hunting in the states of Idaho and Wyoming, and how this practice endangers the national listed threatened grizzly bear within the national forests in Idaho and Wyoming where black bear baiting occurs and grizzly bears may be present. The plaintiffs’ claim the Forest Service and FWS violated the section 7 of the ESA, and NEPA.

Mining | Region 4

Idaho Conservation League and Greater Yellowstone Coalition v. U.S. Forest Service (18-0504, D. Idaho) Region 4—On May 4, 2020, the District Court of Idaho issued a decision concerning the Kilgore Exploration Project on the Caribou-Targhee National Forest (a 5-year mining exploration project). The court vacated the August 20, 2018, decision notice (DN) and finding of no significant impact (FONSI) and the environmental assessment (EA). The district court’s December 18, 2019 decision had permitted the project to proceed, minus the Dog Bone Ridge portion of the project.

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The plaintiffs alleged violations of National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Organic Act (OA), and the Administrative Procedures Act (APA), when the Forest Service failed to take a hard look at the impacts of the Dog Bone Ridge and how the project's drainage will impact Corral Creek and the Yellowstone Cutthroat Trout.

The district court found:

1. Following the district court's December 18, 2019 decision Otis Capital USA Corp (Defendant Intervenor) announced that it will proceed with the project in all areas other than Dog Bone Ridge.
2. The court determined that allowing the project to proceed in this manner essentially splits the project into two, violating the central principle of NEPA that an action be considered as a whole.
3. Splitting the project in this way ignores the possibility that once the Forest Service fully studies the impacts of the Dog Bone Ridge portion of the project, it may consider changes to other parts of the project or may order an environmental impact statement. If the rest of the project proceeds before the study, the damage will be done and the options for the Forest Service significantly limited.
4. The court determined that NEPA requires a review of the entire project before making a decision. Allowing a potentially environmentally damaging program to proceed without an adequate decision runs counter to mandate of NEPA.

Background

On December 18, 2019, the district court issued a decision granting Motions for Summary Judgment by each party in part and remanded the case to the Forest Service to consider the Kilgore Project's impacts on (1) groundwater in the Dog Bone Ridge Area, and (2) how the groundwater from Dog Bone Ridge Drainage will impact Corral Creek and the Yellowstone Cutthroat Trout in Corral Creek. Specifically, the court allowed the project to proceed, minus the Dog Bone Ridge portion of the project.

Range | Region 6

Oregon National Desert Association (ONDA), Center for Biological Diversity v. U.S. Forest Service (3-0213, D. Ore.; 18-35514, 9th Cir.) Region 6—May 1, 2020, the 9th Circuit Court of Appeals ruled in favor of the Forest Service upholding the District Court of Oregon's decision granting summary judgment for the Forest Service, concerning the plaintiffs' challenge to the issuance of grazing authorizations between 2006 and 2015 on seven grazing allotments on the Malheur National Forest. The plaintiffs allege non-compliance with the Wild and Scenic Rivers Act (WSRA), Administrative Procedures Act (APA), National Forest Management Act (NFMA), and Inland Native Fish Strategy (INFISH).

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The 9th Circuit addressed procedural/substantive obligations pursuant to NFMA and the APA in issuing a grazing permit. The 9th Circuit held “While we agree with ONDA that this case is justiciable, we hold that the Forest Service met its procedural and substantive obligations pursuant to the NFMA and the APA in issuing the challenged grazing authorizations, and we affirm the district court’s order granting summary judgment for the Forest Service.”

The 9th Circuit Found:

1. Determined the administrative record demonstrated that the Forest Service did not act arbitrarily or capriciously, on either a procedural or substantive basis, in issuing the challenged grazing authorizations.
2. Deferred to Agency’s reasonable exercise of its scientific expertise in choosing how best to meet the requirements of its Forest Plan while accommodating the competing interests of environmental, recreational, extractive, and other uses on the Forest. The court held the Forest Service’s “ongoing site-specific monitoring, analysis, and enforcement activities aimed at protecting and improving bull trout habitats were reasonable means of ensuring consistency with Forest Plan Area 3a Standard 5”, which provides the necessary habitat to maintain or increase populations of management indicator species.
3. Held that the Forest Service did not act arbitrarily or capriciously with respect to the NFMA’s consistency requirement as applied to INFISH Standard GM-1 in issuing any of the challenged grazing authorizations. (Standard GM-1 requires modification of grazing practices that retard or prevent attainment of Riparian Management Objectives or increase populations of management indicator species: bull trout, cutthroat trout, rainbow/redband trout.)
4. Rejected plaintiffs’ procedural challenge, because the Forest Service was “not obligated by statute, regulation, or case law to memorialize each site-specific grazing authorization’s consistency with the Forest Plan.”

Background

On April 16, 2018, the district court adopted a favorable decision (“Finding and Recommendations”) of the Magistrate on a challenge to livestock grazing. The plaintiff claimed the authorization of grazing (10 years of permits on seven allotments) along the Malheur River and North Fork of the Malheur River caused the degradation of the riparian habitat of the threatened bull trout. In the Magistrate’s “Finding and Recommendations”, the court addressed the justiciability of the lawsuit, followed by violations of the WSRA and the NFMA.

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Forest Management | Region 5

Conservation Congress v. United States Forest Service, et al. (13—01922, D. E. Cal.; 19-15753, 9th Cir.) Region 5—On May 8, 2020, the 9th Circuit Court of Appeals affirmed the District Court for Eastern California’s favorable decision to the Forest Service and the U.S. Fish and Wildlife Service (FWS) concerning the Bagley Hazard Tree Abatement Project on the Trinity National Forest.

On March 28, 2019, the district court granted the Forest Service’s motion for summary judgment and denied the plaintiff’s amended motion. The district court found that: (1) the Forest Service complied with NEPA’s procedural requirements by appropriately considering the cumulative effects of private logging activities, addressing the potential adverse environmental effects for special land designations, and considering a reasonable range of alternatives; (2) the FWS’s concurrence letter was based on the best available science and was not arbitrary and capricious; and (3) the plaintiff alleged insufficient facts to support a claim under the NFMA.

The 9th Circuit found the following:

1. The Forest Service adequately considered the impact of post-fire logging on private land in its Environment Assessment, and the record did not disclose a “clear error of judgment” by the agency;
2. The Forest Service reasonably concluded that the project did not require an Environmental Impact Statement, but rather an Environmental Assessment, because the project would affect a small percentage of suitable northern spotted owl habitat, target only a narrow range of trees near open roads, remove only damages trees hazardous to roadway users, and affect only a small portion of Inventoried Roadless Areas and one Late Successional Reserve;
3. The Forest Service did not err in refusing to adopt the plaintiff’s proposed alternative, which would conflict with the project’s objective of making existing roads safe for use; and
4. The FWS did not violate the Endangered Species Act in issuing its concurrence letter, as the letter noted that the agency considered the 2011 Northern Spotted Owl Recovery Plan and detailed why the Bagley Project was consistent with its goals.

Background

In September 2013, the plaintiff filed a complaint against the Forest Service and the FWS alleging violations of the NEPA, NFMA, ESA and APA. The plaintiff challenged the Forest Service’s decision to authorize the Bagley Project. Under the Bagley Project, the Forest Service seeks to fell dead and dying hazard trees burned by the 2012 Bagley Fire. The hazard trees identified in the Bagley Project are along 95 miles of Forest roads that are usually open to the public but are closed because of the risks to public safety.

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Forest Management | Region 1

Friends of Rapid River, Friends of the Clearwater v. Cheryl Probert, et al. (18-00465, D. Idaho; 19-36063, 9th Cir.) Region 1—On May 20, 2020, the 9th Circuit Court of Appeals affirmed the District Court of Idaho’s favorable decision to the Forest Service, concerning the Windy Shingle Project on the Perce Clearwater National Forest. The project was approved with an insect and disease categorical exclusion (CE), under the 2014 amended Healthy Forest Restoration Act (HFRA), sections 602 and 603. The Forest completed an extraordinary circumstances analysis and evaluated the cumulative impacts. The project consists of a timber harvest (2,510 acres), Rehab (44 acre), prescribed fire on harvested and unharvested acres, construction of fuel break, road work.

The 9th Circuit found that the methods applied for determining old growth status were legitimate, and that adjusting the management areas was permitted by the Nez Perce Forest Plan. The claim regarding gravel pit expansion was dismissed as moot due to the Forest withdrawal of the authorization for the action.

The 9th Circuit specifically held:

1. The Forest Service did not violate the National Forest Management Act (NFMA) or the Forest Plan in relying on legacy stand exams and photographs in lieu of site visits to verify old growth — the Forest Service’s interpretation of its plan requirements was contextually reasonable.
2. The Forest Service used appropriate old growth identification and verification methods, which does not violate the Forest Plan or HFRA by not completing a priority ranking of old growth in the project area, because this is not required.
3. Adjusting the management area, which includes the project area does not violate the Forest Plan or NFMA. The Forest Service’s interpretation of its plan as allowing such adjustments is entitled to deference.
4. In light of the Forest Service withdrawal of authorization to expand the gravel pit, the challenge to this aspect of the project is moot.

Background

On October 23, 2018, the plaintiffs filed a complaint in district court challenging the project, seeking a declaration that the designation of areas in Idaho eligible for a CE under the Farm Bill and the project decision itself is not in accordance with law under the Administrative Procedures Act. The plaintiffs argued that the project decision violates HFRA by incorporating the expansion of a gravel pit, that this activity is not among the permissible activities allowed by the CEs under HFRA, and that the effect of the expansion on fisheries was not considered. Furthermore, the plaintiffs contend that the project decision violates HFRA by failing to comply

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with the Forest Plan and NFMA; and NEPA and HFRA by failing to properly analyze the effects of the Rattlesnake Creek wildfire on old growth stands and wildlife.

Forest Management | Region 5

Mountain Communities for Fire Safety, Los Padres Forestwatch, and Earth Island Institute v. Elliott, et al. (19-6539, D. C. Cal.) Region 5—On May 26, 2020, the District Court of Central California issued a decision favorable to the Forest Service concerning the Cuddy Valley Project on the Los Padres National Forest involving the use of a 36 C.F.R. § 220.6(e)(6) categorical exclusion (CE), for timber stand and wildlife habitat improvement. The plaintiffs asserted that approval of the project violated the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), and Administrative Procedures Act (APA).

The district court found:

1. NEPA (Category 6 CE)

The Forest Service considered the record and determined that the tree stand thinning activities proposed by the project to prevent fires and improve plant health amounted to “timber stand improvement activities” that are categorically excluded from further NEPA review. The category 6 CE-does not include any restrictions on tree diameter, tree size, or commercial harvesting, and confers discretion upon the Forest Service to determine how best to reduce fire hazard and improve growth;

2. NEPA (Extraordinary Circumstances)

In evaluating whether there are extraordinary circumstances, the Forest Service does not need to consider any of the “intensity” factors in 40 C.F.R. 1508.27; and

3. NFMA (consistency with Forest Plan)

The project is consistent with Los Padres NF Forest Plan direction on scenic integrity standards and desired conditions for the Mt. Pinos Place.

Wildlife | Region 1

L&W Construction and Bonnie Lynn, v. United States (19-01628, Fed. Claims) Region 1—On May 28, 2020, the Court of Federal Claims issued an order dismissing the case for lack of jurisdiction in favor of the National Park Service and the Forest Service concerning continued allowance of the hunting of bison that have migrated out of the Yellowstone National Park and through Beattie Gulch on the Custer-Gallatin National Forest. Plaintiffs allege the hunting program has affected a temporary regulatory taking of plaintiffs’ property by creating an atmosphere of danger and decreasing the rental value of their property. Also, that the program has affected a temporary physical taking when carrion birds transport bison offal onto plaintiffs’ property.

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The court found:

Count 1

- The plaintiffs' claims were not filed within the six-year statute of limitations. The court has jurisdiction over claims "filed within six years after such claim first accrues." The statute of limitations is a jurisdictional requirement and cannot be waived.
- The plaintiffs asserted a temporary taking, but the court was not able to assert the plaintiffs' property was subject to regulation as the hunt occurred on public land and they could only see it.

Count 2

- The plaintiffs claimed that carrion birds are instrumentalities of the United States, because the United States should expect birds to scatter remains left in the open but were instead dropped on plaintiffs' property. The court stated, "Wild animals, acting on their own impulse, are not instrumentalities of the United States."

Forest Management | Region 6

Conservation Congress, et al. v. Forest Service, et al. (13-00934, D. E. Cal.) Region 6—On May 28, 2020, the District Court of Eastern California issued a decision against the Forest Service and the U.S. Fish and Wildlife Service (FWS) concerning the Pettijon Project (a fuel-reduction project) on the Shasta-Trinity National Forest regarding the Plaintiffs motion to supplement the administrative record. The case concerns violations of the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Healthy Forest Restoration Act (HFRA), and the Administrative Procedures Act. The district court determined the plaintiffs can update their administrative record to include:

1. NEPA: Exhibit A (a September 2016 update to the Forest Service's Resource Planning Act Assessment), and Exhibit B (published in June 2016, Forest Service resource that details how to account for climate change when conducting a NEPA analysis).
2. ESA: Exhibit C (a December 2018 process paper for the Interim baseline adjustment for northern spotted owl and its critical habitat: 2008 through 2018 wildfires).

Background

On June 9, 2019, the district court issued an order approving a joint stipulation to lift the stay after ESA consultation was completed. On April 13, 2018, the U.S. Fish and Wildlife Service issued a new superseding Biological Opinion and concluded consultation with the Forest Service.

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On July 8, 2013, the district court signed a stipulation to stay the litigation. Previously, on May 12, 2013, the plaintiffs filed the complaint alleging violations of ESA, NEPA, HFRA, and NFMA in connection with the project. Also, on June 27, 2013, the Forest Service requested additional consultation with the FWS on the project pursuant to Section 7 of the ESA; whereas the Forest Service would not proceed with the project or undertake any ground disturbing activities related to the project until the reinitiated Section 7 Consultation was complete.

Mining | Region 3

Grand Canyon Trust, et al. v. Provencio, et al. (13-8045, D. Ariz.; 13-16994, 9th Cir.) Region 3— On May 22, 2020, the District Court of Arizona issued an order in favor of the Forest Service concerning the remaining claim which challenged the Agency’s determination that Energy Fuels has “valid existing rights” (VER) at the Canyon Mine on the Kaibab National Forest. The Decision concerns the district court evaluation of Federal Land Policy and Management Act (FLPMA) in determining prior existing rights based on the 9th Circuit Court of Appeals order (December 19, 2019) vacating back to the lower court for review.

The district court did deny the Forest Service’s motion to dismiss the case on standing but ruled in favor of the Agency on the merits.

The district court found:

1. Environmental Monitoring Costs: Even if it were to assume that certain environmental monitoring and wildlife conservation costs were not considered (specifically, elk habitat restoration and a potential net covering evaporation ponds to protect California condors), any error in not accounting for these items would be harmless.
2. Mitigation Costs: The Forest Service was not required to consider speculative future mitigation costs. The court generally agreed with federal defendants’ and intervenors’ contention, made at oral argument, that it need not consider alleged procedural errors in the harmless error analysis, at least in evaluating the VER determination.
3. Sunk Costs: The Forest Service was not required to consider sunk costs in making its determination, and in any event the plaintiffs did not show that any failure to consider sunk costs was harmless.
4. Intervenor Status: The court granted Intervenor’s motion to seal plaintiffs’ un-redacted versions of their briefs, which contain confidential cost information.

Background

On December 19, 2019, the 9th Circuit affirmed the district court decision in favor of the Forest Service concerning the National Environmental Policy Act (NEPA) and National Historic

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Preservation Act (NHPA). However, the 9th Circuit vacated the district court decision concerning FLPMA. The 9th Circuit found the district court should not have relied on the 1872 Mining Act to determine prior existing rights but should have applied FLPMA. The Court remanded back to the district court to do so.

Lands | Region 1

Wilkins, et al. v. USA (18-00147, D. Montana) Region 1—On May 26, 2020, the District Court of Montana issued a decision favorable to the Forest Service, concerning Robbins Gulch Road easement on the Bitterroot National Forest. The court granted the Agency’s motion to dismiss and denied the plaintiffs’ motion for summary judgment. The plaintiffs alleged that by allowing public access on Robbins Gulch Road, the Forest Service was exceeding the scope of its 1962 road easement, which plaintiffs argued was limited to Forest Service use only, such as for timber or grazing purposes, and was not intended to provide public access to National Forest System lands. Robbins Gulch Road passes private property for approximately one mile before entering the Bitterroot National Forest.

The district court found:

1. The plaintiffs’ allegations were time-barred, in part since Forest Service maps from 1964-2005 were sufficient to put a landowner on notice that the Forest Service was encouraging the public to access the Bitterroot National Forest via Robbins Gulch Road, and that the public had been using the road for decades. The Court also found that landowners had notice by way of a 2006 temporary closure order that expressly closed the road to the public, since this closure order communicated that the Forest Service otherwise viewed the road as open to the public.
2. The court lacks jurisdiction over the plaintiffs’ QTA claims since they did not file their complaint within the Act’s 12-year statute of limitations, as a reasonable landowner would have known that the Forest Service believed its easement granted public access or opened the road to the public since at least the 1970s.

Court Update

Forest Management | Region 1

Helena Hunters and Anglers Association et al v. Marten. (19-cv-0047, D. Mont.) Region 1—On April 24, 2020, the District Court of Montana issued an order regarding a factual dispute between the Forest Service and the plaintiff, which must be addressed prior to summary judgement. The case concerns the Forest Service’s approval of Tenmile South-Helena Vegetation Project on the Helena-Lewis and Clark National Forest. A factual dispute arose after the plaintiffs took photos and collected GPS information in the project area, which they believe

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strengthens their case. The dispute regards the condition and use of existing roads in the Lazyman Inventoried Roadless Area (IRA), what make and model and specification of vehicles the Forest Service intends on using in the roadless area. The district court's order states that the plaintiffs shall confer and notify the court by May 8, 2020, whether the parties intend to stipulate to facts, submit affidavits, or whether a hearing will be necessary to resolve disputed issues. Additionally, the district court stated if the parties intend to stipulate or submit separate affidavits, the parties should propose an agreed upon deadline for filing documents. The Forest is working with OGC and the DOJ, and is examining information related to project activities within the Lazyman Gulch IRA. In some places, access to those areas is hampered by current snow levels.

Background

The Forest began project implementation in May 2019, and the Record of Decision for the project was signed in on December 19, 2018. The decision authorizes over 5,000 acres of logging with use of mechanized equipment and logging related activities, and seven miles of new mountain bike trails within two inventoried roadless areas along the continental divide (Jericho Mountain and Lazyman Gulch).

On March 19, 2019 the plaintiffs filed a complaint in the district court. The plaintiffs claim the following violations: (1) NFMA—Arbitrary use of 8 site specific forest plan amendments, elk analysis, and road density standards; (2) 2001 Roadless Rule—Failure to document and demonstrate need for exceptions; and (3) NEPA—Cumulative effects of the adjacent Telegraph project, cumulative effects on big game and roadless, use of science, and failure to prepare an EIS due to road work in roadless. This case is consolidated with the case – Alliance for the Wild Rockies, et al v. Marten (19-cv-0106, D. Mont), which alleges violations of NEMA, NEPA, and the 2001 Roadless Rule.

Litigation Update

Nothing to Report

New Cases

Forest Management | Region 6

Central Oregon Landwatch and Oregon Wild, v. Kovarik, et al. (20-00648, D. Or.) Region 6— On April 20, 2020, the plaintiffs filed a complaint in the District Court of Oregon against the Forest Service concerning the Black Mountain Vegetation Management Project on the Ochoco National Forest. Plaintiffs claim the project is inconsistent with the Ochoco NF Forest Plan as

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amended by Inland Native Fish Strategy (INFISH). The plaintiffs claim the Forest Service failed to take a hard look at direct, indirect, and cumulative impacts of the project. The plaintiffs request partial vacatur of the ROD and remand of final EIS for full and fair analysis of the project's impact on water quality and riparian areas, elk and aquatic species.

The plaintiffs claim the Forest Service:

NFMA and APA Compliance

- Violated Forest Plan Standards and Guidelines protecting Rocky Mountain Elk, a management indicator species.
- Violated INFISH and Forest Plan standards and guidelines protecting riparian areas and water quality.

NEPA and APA Compliance

- Failed to adequately disclose and consider direct and indirect impacts on Elk.
- Failed to adequately disclose and consider direct and indirect impacts to riparian areas and water quality.
- Failed to adequately disclose and consider cumulative impacts.

Background

The project provides for management activities in riparian areas and other sensitive habitats that pose significant threats to water quality and key habitats for many species, including Rocky Mountain elk and native fish. The plaintiffs claim they attempted to resolve these issues by participating extensively in the project's administrative process, including pre-decisional resolution meetings in which the plaintiffs tried to work with the Forest Service to protect the most sensitive areas on a unit-by-unit basis.

Travel Management | Region 4

Yellowstone to Uintas Connection, and Alliance for the Wild Rockies, v. Mell Bolling, et al. (20-00192, D. Idaho) Region 4—On April 20, 2020, the plaintiffs filed a complaint against the Forest Service concerning the Crow Creek Pipeline on the Caribou-Targhee National Forest and the Agency's final decision and amendments to the 2003 Caribou-Targhee National Forest (CTNF) Forest Plan. The plaintiffs allege violations of the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Mineral Leasing (MLA), and National Trails System Act (NTSA).

The Complaint states the project is planned through 18.2 miles of National Forest System (NFS) lands along existing roads and will result in a 20-foot permanent right-of-way and 50-foot temporary right-of-way during construction. The only aboveground facilities related to the pipeline are stations at each end of the pipeline and markers identifying the pipeline's location

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along the route. Construction is expected to take 9-24 months, it will not require building of new roads and will result in temporary soil displacement solely for the pipeline trench. Reclamation of disturbed areas will begin two months after construction begins.

The plaintiffs claim the Forest Service:

1. Violated ESA by failing to analyze three listed species that “may be present” in the Biological Assessment (BA) for the project. Failed to analyze potential “effects of the action” on lynx critical habitat, and its improper use of the superseded 2009 lynx critical habitat map instead of the 2014 lynx critical habitat map, in the BA for the project, were in violation of the ESA’s mandate to use the best available scientific information.
2. Failed to disclose and demonstrate compliance with the Forest Plan requirements for sage grouse from the 2003 Revised Forest Plan and 2015 Forest Plan amendment, in the project Environmental Impact Statement (EIS), violates NFMA, NEPA, and the APA. Failed to take a hard look at potential cumulative effects on sage grouse and sagebrush habitat violates NEPA and the APA.
3. Failed to demonstrate (1) that the new pipeline corridor is in the public interest, (2) that the new pipeline corridor is compatible and consistent with other Forest resources, (3) that there is no reasonable alternative or accommodation off National Forest System (NFS) land, (4) that the use of existing right-of-ways is “impractical,” and (5) that the rationale for locating the new pipeline corridor on NFS lands is not solely lower cost or less restrictive location violates the Forest Plan, Forest Service regulations, the Forest Service Manual, NEPA, NFMA, the Mineral Leasing Act, and APA.
4. Failed to rigorously explore and objectively evaluate all reasonable alternatives in the project EIS violates NEPA and the APA.
5. The project EIS fails to take a hard look at the project’s impact on the Oregon National Historic Trail and the California National Historic Trail and fails to demonstrate compliance with the applicable laws that govern National Historic Trails, in violation of NEPA, MLA, NTSA, and the APA.

Background

On March 20, 2020 the Forest Service responded to the plaintiffs’ January 21, 2020 NOI, where the Forest Service indicated the critical habitat for the Canada Lynx does not occur in the action area in both the 2009 and 2014 critical habitat maps, as well as the Forest Service’s 2018 and 2019 queries in to the U.S. Fish and Wildlife Service’s Information for Planning and Consultation website. The Forest Service inadvertently used the 2009 Canada lynx critical habitat map, instead of the more current 2014 map in their BA.

On January 21, 2020, the Forest Service received the NOI from the plaintiffs claiming violation of the ESA regarding the project. The plaintiffs states the pipeline utility corridor provides a

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permanent 18.2 mile road: motorized vehicles will use the corridor in perpetuity to maintain and inspect the pipeline, which will permanently cut through six different National Forest Inventoried Roadless Areas and will cause permanent vegetation removal, increased sight-lines for poaching, increased weed spread, and abundant new opportunities for illegal motor vehicle use. The plaintiffs claim the Forest Service applied 2009 lynx critical habitat map in its BA and ignored the more recent 2014 map. The plaintiffs' further claim that BA only addressed lynx and wolverine and did not evaluate other listed species in the project area (grizzly bear, ute ladies' tresses orchid, and yellow-billed cuckoo).

Range | Region 4

Western Watersheds Project, et al. v. Christiansen, et al. (20-0067, D. Wyo.)—Region 4_ On April 20, 2020, the plaintiffs filed a complaint in the District Court of Wyoming against the Forest Service approval of the Alkali Creek, Forest Park, and Dell Creek feedgrounds on the Bridger-Teton National Forest. The plaintiffs challenge two feedground decisions by the Forest Service's (1) five year approval of the Wyoming Game and Fish Commission request to resume feeding operations on the Alkali Creek Feedground without conducting the environmental analysis previously ordered by the district court (September 14, 2019 order; 17-0202, D. Wyo.); and (2) indefinite authorization of artificial feeding at Dell Creek and Forest Park feedgrounds without issuing the special uses permit under the Forest Service's own regulations (36 CFR section 251.54(e)(1), or conducting environmental analysis under the National Environmental Policy Act (NEPA). The plaintiffs' main concern is the impacts of feeding grounds on the spreading of the Chronic Wasting Disease on native wildlife (Elk and deer) populations.

Background

On September 14, 2018, the district court issued an order against the Forest Service concerning the Agency's approval of the WGFD request to amend a special use permit to include the Alkali Creek Feedground located on the Bridger-Teton NF as an elk winter feeding location for use through 2028. The court found Forest Service failed to comply with procedural requirements of NEPA and vacated and remanded the Agency's decision.

Recreation | Region 1

YJ Guide Service LLC v. Probert, et al. (20-cv-00202, D. Idaho) Region 1—April 27, 2020, the petitioner (YJ Guide Service, LLC dba Bungalow Outfitters) a hunting outfitter and guide, filed an application for Temporary Restraining Order (TRO) in the District Court of Idaho against the Forest Service regarding suspension of a special use permit for Outfitting and Guiding on the North Fork Ranger District of the Nez Perce-Clearwater National Forest. No complaint has yet been filed. The petitioner's application for the TRO is based on upon grounds that it believes it will suffer irreparable harm and injury if the TRO is not issued.

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The petition indicates the following:

- The Petitioner was issued a special use permit for Outfitting and Guiding on May 23, 2019 to perform hunts within the North Fork Ranger District of the Forest.
- On April 9, 2020 during a phone conference the District Ranger suspended the special use permit based on events that occurred in 2019.
- On April 18, 2020, the petitioner received a written notice of suspension of the special use permit from the Forest.

Forest Management | Region 6

Klamath-Siskiyou Wildlands Center, et al. v. Grantham, et al. (20-00408, E.D. Calif.) Region 5—On April 24, 2020, the plaintiffs filed a complaint in the Eastern District of California against the Forest Service concerning the Crawford Vegetation Project on the Klamath National Forest. The plaintiffs claim the Forest Service failed to supplement their environmental analysis for the project in light of significant new information and changed circumstances regarding the impacts of the project on the northern spotted owl and Pacific fisher which have been found in the project area.

The complaint includes no ESA claims, and currently no NOI is filed against the project claiming new information/new proposed listing of the Pacific Fisher or new information associated with the northern spotted owl, in which to consult/re-consult with the FWS. The complaint concerns project specific NEPA.

Plaintiffs allege the following:

NFMA and APA Compliance

1. Failed to comply with the Klamath NF Forest Plan and the Northwest Forest Plan (NWFP) standards and guidelines for protection and recovery of northern spotted owl.
2. Failed to comply with the Klamath NF Forest Plan and the NWFP standards and guidelines for protection of the Pacific fisher.

NEPA and APA Compliance

1. Failed to prepare an environmental impact statement (specifically due to effects on the northern spotted owl and Pacific fisher).
2. Failed to take hard look at the direct, indirect and cumulative impacts of the proposed action on the northern spotted owl and Pacific fisher.
3. Failed to modify, update, and supplement the NEPA analysis for the project to address significant new information and changed circumstances. (The U.S. Fish and Wildlife Service issued a notice of proposed listing and 4(d) rule regarding the Pacific fisher.)

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4. Failed to adequately disclose and consider cumulative impacts.

Background

The plaintiffs indicate that on February 11, 2020, the Forest service issued a final Decision Notice approving the project. The plaintiffs further indicate the project is approximately 11,000 acres, of which approximately 1,650 acres would be logged or subject to some form of vegetation management.

Forest Management | Region 6

The Wilderness Society and Friends of the Boundary Waters, et al. v. David Bernhardt, et al. (20-01176, D. DC) Region 9—On May 6, 2020, the plaintiffs filed a complaint in the District Court for the District of Columbia against the U.S. Department of Interior (DOI), Bureau of Land Management (BLM), Department of Agriculture (USDA) and the Forest Service concerning compliance with the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA) when the BLM issued two hard-rock mining lease renewals to Twin Metals Minnesota in an area adjacent to the Boundary Waters Canoe Area Wilderness (Boundary Waters) on the Superior National Forest.

The mining leases at issue are adjacent to the Boundary Waters, a 1.1 million acre wilderness in the Superior National Forest in northern Minnesota.

The plaintiffs allege:

1. The Forest Service violated 16 U.S.C. § 508b, which requires the Forest Service's consent through the Secretary of Agriculture for any development and utilization of mineral deposits in the Boundary Waters. The Forest Service consented to or failed to object to lease stipulations on renewed leases that encourage develop of a mine without preventing the impacts cited its 2016 analysis and that would limit its ability to withhold consent to future renewals.
2. BLM violated NEPA by not preparing an environmental impacts statement. Also, BLM's renewal of Twin Metal's leases was an "irreversible and irretrievable commitment of resources" by the Agency allowing mine development causing significant impacts to the environment, because they did not withhold absolute authority to prevent development of the leases.
3. BLM failed to adequately consider cumulative impacts of mining lease renewal. The Agency must assess the cumulative impacts of the action "resulting from incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." BLM's environmental assessment considered the impacts of mining in only generalized, conclusory statement that failed to take hard look at the impacts of mining.

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4. BLM failed to consider a no-action alternative, which is a requirement of NEPA. Also, BLM failed to consider other reasonable alternatives suggested by the public without reasoned explanation for rejecting them.

Background

Separately, the plaintiffs sued the DOI in 2018, over its decision to reinstate the mineral leases, arguing pollution in the Boundary Waters would hurt their businesses. Environmental groups then filed two separate, but similar, lawsuits arguing the lease reinstatement was unlawful. All three lawsuits challenging the mineral leases eventually merged. On March 17, 2020 the District Court for the District of Columbia ruled in favor of DOI, but the groups have appealed the decision. [*Voyageur Outward Bound School, et al. v. United States, et al.* (18-01463, D. DC); *Wilderness Society, et al. v. Zinke* (18-01496, D. DC); and *Friends of the Boundary Waters, et al. v. Bureau of Land Management, et al.* (18-01499, D. DC)]

Wildlife | Region 1 & 4

Western Watersheds Project et al v. USDA APHIS, USDA APHIS Wildlife Services (USFS and BLM) (20-213, D. Idaho.) Regions 1 and 4—On May 7, 2020, the plaintiffs filed a complaint in the District Court of Idaho against the Animal and Plant Health Inspection Service (APHIS) concerning their predator damage management actions in the State of Idaho, relying on inadequate and outdated environmental analysis in violation of the National Environmental Policy Act (NEPA). The plaintiffs bring related claims against the Bureau of Land Management (BLM) and Forest Service, which authorized APHIS’s aerial gunning of coyotes and other wildlife on federal lands [through Annual Work Plans (AWPs)], without adequate environmental analysis in violation of NEPA.

Plaintiffs allege the following:

First Claim AHPIS’s predator damage management actions have no valid NEPA

- Plaintiffs claim the reliance on the 2002 and 1996 EAs to support the predator damage management actions violate NEPA because they are outdated and inadequate, and new information shows the actions may have significant effects the EAs failed to consider.
- By not preparing an EIS, APHIS failed to take a hard look including direct, indirect and cumulative impacts, relying on outdated information, incorrect assumptions and inadequate analysis of effects in the 2002 and 1996 EAs.
- The district court (in an earlier case) vacated the 2016 EA/FONSI that covered APHIS’s activities in Idaho, thus requiring the completion of and Environmental Impact Statement (EIS).

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Second Claim: APHIS has not completed Supplemental NEPA Analysis and Is Causing Irreversible and Irretrievable Commitments of Resources

- New information and changed circumstance required that, at a minimum, APHIS must supplement its 1996 and 2002 NEPA analysis.
- APHIS is in violation of NEPA, because it failed to complete any supplemental analysis for the 1996 and 2002 EAs, before undertaking further predator control actions.

Third Claim: BLM and Forest Service AWP Violate NEPA

- Plaintiffs allege BLM and Forest Service violated NEPA by authorizing activities on federal lands through AWP, without conducting site-specific NEPA for compliance with its land-use plans and governing land use statutes or the effects on the sites where the proposed actions will be conducted.
- Plaintiffs allege violation of NEPA for not conducting site-specific NEPA analysis to include direct, indirect and cumulative impacts of the activities authorized by those plans or assessing whether those activities comply with federal land use plans and other federal laws.

Fourth Claim: Operating Pocatello Supply Depot without Adequate NEPA Analysis is in Violation of NEPA

- APHIS's failure to supplement the 1994/1997 PEIS with current information concerning effects of operating the Pocatello Supply Depot (violates NEPA and APA).

Range | Region 4

Western Watershed Project, et al. v. Bernhardt, et al. (20-0860, D. D.C.) Region 4—On May 8, 2020, the plaintiffs filed a request for a preliminary injunction (PI) in the District Court for the District of Columbia against the U.S. Fish and Wildlife Service (FWS) and the Forest Service concerning the Upper Green River Area Rangeland Project on the Bridger Teton National Forest, which plaintiffs allege unlawfully impacts the grizzly bear, and the Kendall Warm Springs dace. Plaintiffs challenge the FWS issuance of, and the Forest Service reliance on, a flawed Biological Opinion (BO) regarding the negative impacts to grizzly bears that arise from the Forest Service's authorization of continued livestock grazing in prime grizzly bear habitat within the Forest, in violation of the Endangered Species Act (ESA), and Administrative Procedures Act (APA), and impacts on the Kendall Warm Springs dace. The plaintiffs request the district court issue a PI against the project to prevent the lethal removal of grizzly bears in the project allotments pursuant to the 2019 BO and Incidental Take Statement and herding of cattle through the Kendall Warm Springs enclosure as authorized by the project Record of Decision. The plaintiffs indicate their request is limited injunctive relief in order to maintain the *status quo* and prevent

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imminent, irreparable harm to the grizzly bear, and the Kendall Warm Springs dace, until the court has opportunity to issue a final decision on the merits of the case.

Forest Management | Region 9

Monroe County Board of Commissioners, et al. v. U.S Forest Service, et al. (20-00106, D. Ind.) Region 9—On May 13, 2020, the plaintiffs filed a complaint in the District Court of Indiana against the Forest Service concerning the Forest Service Houston South Vegetation Management and Restoration Project on the Hoosier National Forest. The plaintiffs allege the project violates the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), and Administrative Procedures Act (APA). The plaintiff's concerns are related to the impacts of the project on Lake Monroe watershed, which supplies drinking water for more than 145,000 people. The plaintiffs claim the Forest Service's action fails to comport with the Agency's own stated goal of protecting and restoring watershed health in its 2006 Hoosier NF Forest Plan. The project consists of commercial logging, including clear-cuts, shelterwood cuts, selective cuts, and thinning cuts, as well as road building, herbicide application, and prescribed burning activities.

The plaintiffs claim that at every step of the public review process the plaintiffs explained their concerns that the project would cause significant adverse impacts on drinking water, recreational trails, and sensitive wildlife, and urged the Forest Service to consider alternatives that would better preserve the environmental resources. Instead the Forest Service only considered the proposed project and a no action alternative.

Specifically, the plaintiffs claim the Forest Service:

1. Failed to consider any alternatives for the Houston South Project beyond the project as proposed and a no-action alternative—including any mid-range alternatives that would reduce impacts to sensitive resources — (violated NEPA).
2. Failed to include in its Environmental Assessment all supporting analyses and information that informed the Forest Service's decision, including the decision to undertake the project in the selected area instead of other areas of the Hoosier National Forest in Management Area 2.8—(violated NEPA).
3. Decided to conduct the project in a manner that is inconsistent with the goals and objectives of the Land and Resource Management Plan for the Hoosier National Forest—including the goal and objective of protecting and restoring watershed health—(violated NFMA).
4. Failed to make determinations required by the Forest Plan regarding the suitability of various management activities, such as clearcutting, before deciding to implement those activities—(violated NFMA).

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In the complaint the plaintiffs indicate they provided a 60-day Notice of Intent (NOI) to sue the Forest Service and the U.S. Fish Wildlife Service alleging violations of ESA concerning the project's impacts on the federally listed Indian bat and Northern Long-Eared bat. The plaintiffs may amend their complaint if the Agency's do not address their concerns. The plaintiffs state the Forest service admits the project will adversely harm the bat species, but states that the adverse impacts do not violate ESA, because project impacts are purportedly consistent with the Incidental Take Statement for the Indiana Bat and complies with a special rule that allows certain impacts to the Northern Long-Eared bat. The plaintiffs also state that the FWS's failed to take a hard look at direct, indirect, and the cumulative impacts of the project on the species.

Forest Management | Region 1

Friends of the Clearwater, and Alliance for the Wild Rockies v. Jeanne Higgins, et al. (20-243, D. Idaho) Region 1—On May 20, 2020, the plaintiffs filed a complaint in the District Court of Idaho against the Forest Service for violations of the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), National Forest Management Act (NFMA), the Administrative Procedures Act (APA), and Agency Wild and Scenic River regulations concerning the Brebner Flat Project on the Idaho Panhandle National Forest.

The decision notice and FONSI was signed on October 3, 2019. The project was developed to address forest health and to improve resilience to disturbances, such as insect and disease outbreaks and drought. The project includes approximately 1,719 acres of commercial timber harvest. Road management activities include constructing approximately 2 miles of new road, 4 miles of temporary roads, converting 1 mile of non-system road to system road, reconstructing approximately 3 miles of road, maintaining 48 miles of existing roads, and storing roughly 3 miles of roads or road segments after project implementation.

The plaintiffs claim:

1. The Forest Service and U.S. Fish and Wildlife Service (FWS) failed to include grizzly bear and the Canada lynx in the project biological assessment (BA) and letter of concurrence violating ESA and APA.
2. The Forest Service failed to take a hard look at the project impacts on the St. Joe Wild and Scenic River and address this issue in the project environmental assessment (EA) in violation of NEPA, the APA and Forest Service's Wild and Scenic River regulations.
3. The Forest Service failed to take a hard look at cumulative effects on the declining elk populations in the project area and failed to address the efficiency of the proposed mitigation measures for elk security, in violation of NEPA, and requires an environmental impact statement. In addition, the proposed mitigation measure "a posted sign" will fail to

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effectively prevent motorized use on Road 1956E; resulting in a net loss in elk security in violation of the Idaho Panhandle NF Forest Plan and the NFMA.

Background

On January 31, 2020, the Forest Service responded to the December 6, 2019 NOI, where the Forest concluded that the project would have “no effect” on grizzly bear and that consultation with the FWS is not warranted. The Forest also concluded that the project was not within the Lynx Analysis Unit.

The NOI claims violations of ESA by the Forest Service and the FWS concerning the project. The plaintiffs claimed the Forest Service: did not prepare a BA for the project and the FWS did not issue a Letter of Concurrence or Biological Opinion; by not preparing a BA for grizzly bears or Canada lynx, the Forest Service’s conclusion that the project will have “no effect” is arbitrary and capricious and an abuse of discretion; and acted unlawfully by not requesting the most current species list from the FWS.

Notice of Intent

Forest Management and Wildlife| Region 4

NOI – On April 15, 2020, (dated April 7, 2020), a 60-day Notice of Intent was received by the Friends of the Clearwater and the Alliance for the Wild Rockies (FOC/AWR) to sue the National Marine Fisheries Service (NMFS) and the Forest Service concerning the approval of the Lolo Insect and Disease Project and 24 new culvert replacements on the Nez Perce-Clearwater National Forest. The FOC/AWR state the Forest Service approved a decision permitting the Lolo Insect and Disease Project and 24 culvert replacements, and NMFS’s issued Biological Opinion (BO) and Incidental Take Statement (ITS) for the project on June 20, 2019, and a revised ITS on July 19, 2019, with a take limit of 79 Snake River Basin (SRB) steelhead. The complainants claim violations of Section 7 and Section 9 of the ESA concerning the Snake River Basin Steelhead. The purpose of Section 7 ESA consultation was to evaluate impacts of the project on the SRB steelhead. The FOC/AWR’s specific concerns are with adverse effects due to (1) turbidity plumes caused by ongoing road use for harvest activities near streams, and (2) sedimentation of stream beds caused by culvert removals, culvert replacements, and road use or reconstruction near streams.

The FOC/AWR claim that:

- The Forest Service and NMFS have to reinitiate Section 7 consultation, due to (a) new information relating to the recent dramatic decline in Snake River Basin steelhead numbers,

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and (b) the addition of new culvert replacements within the project boundary, which are likely to affect the SRB steelhead in a manner and extent not previously considered. If NMFS and the Forest Service do not reinitiate consultation within 60 days of receiving this letter, FOC/AWR intend to initiate a lawsuit to remedy these violations.

- The failure of NMFS and the Forest Service to reinitiate consultation renders the ITS invalid such that it no longer provides a safe harbor to the Forest Service for the taking of SRB steelhead. If the Forest Service, relying on the invalid ITS, engages in activities that will result in the taking of SRB steelhead, that taking is unlawful and in violation of Section 9 of the ESA. To the extent the Forest Service is taking SRB steelhead in the project area prior to the completion of reinitiated consultation and a new ITS, FOC/AWR intend to file a lawsuit under Section 9 of the ESA, alleging an unlawful take of ESA-listed species.

The FOC/AWR specifically claim the Forest Service had consulted with NMFS on 21 culverts replacements for the project, but that three additional culverts were not among them. Consequently, NMFS's July 20, 2019, BO and ITS and July 19, 2019, revised ITS does not address impacts of the additional culvert replacements on SRB steelhead. Subsequently the Forest Service is required to reinitiate consultation due to the modification in the project, with the addition of three culverts.

Range and Wildlife | Region 6

NOI – On April 1, 2020, Range 6-received a 60-day Notice of Intent by the WildEarth Guardians (WEG) to sue the U.S. Fish and Wildlife Service (FWS) and the Forest Service concerning ongoing Livestock Grazing, on the Cooper Mires, Lambert, and C.C. Mountain allotments on the Colville National Forest. The FWS and the Forest Service continue to violate the Endangered Species Act (ESA) section 7 consultation. Complainants claim four listed species and two critical habitats exists within the allotments: bull trout, woodland caribou and their critical habitats, grizzly bear, and Canada lynx. Also, suitable habitat for yellow-billed cuckoo (listed threatened species) and both wolverine and white bark pine are present (candidate species).

The WEG claims the Forest Service is violating the ESA by authorizing livestock grazing on the Coper-Mires, Lambert, and C.C. Mountain allotments without proper consultation, fails to ensure that ongoing grazing does not jeopardize the continued existence of listed, proposed, and/or candidate species in violation of the ESA.

The Forest Service never prepared or submitted to FWS for concurrence a Biological Assessment (BA) that addresses the site-specific impacts of livestock grazing on the allotments to listed and/or proposed species, at least not since the lynx was listed as threatened in 2000.

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Forest Management & Wildlife| Region 1

NOI-dated April 27, 2019, Alliance for the Wild Rockies and Native Ecosystems Council sent a 60-day Notice of Intent to Sue pursuant to the Endangered Species Act (ESA) for alleged violations concerning the Stonewall Vegetation Project on the Helena-Lewis and Clark National Forest.

The Stonewall project was authorized 1,381 acres of vegetation treatments in a Record of Decision on December 19, 2019. This project was analyzed in a Supplemental EIS due to a fire that had burned through the project area. Also, of note, the original EIS was litigated by the same individuals who filed the NOI. Before the Forest Service could address the court, the fire had burned through the project area.

Respondents state the following violations of ESA:

- Wolverine: Failure to analyze project specific effects on the wolverine in the project Biological Assessment and receive concurrence from U.S. Fish and Wildlife Service. The Forest Service instead relied on a programmatic BA for the wolverine.
- Canada lynx: Use of 2016 consultation and failure to reinitiate consultation for the project for both the species and critical habitat. "Reinitiation of ESA consultation is required for lynx because either "new information reveals effects of the action that may affect [lynx] in a Manner or to an extent not previously considered" and/or because the Project has been "subsequently modified in a manner that causes an effect to [lynx] that was not considered in the biological opinion or written concurrence."
- Grizzly bear: Use of 2016 consultation and failure to reinitiate consultation for the project. "Reinitiation of ESA consultation is required for grizzly bears because either "new information reveals effects of the action that may affect [grizzly bears] in a manner or to an extent not previously considered" and/or because the Project has been "subsequently modified in a manner that causes an effect to [grizzly bears] that was not considered in the biological opinion or written concurrence."
- Bull trout: Use of 2016 consultation and failure to reinitiate consultation for the project for the species and critical habitat. "Reinitiation of ESA consultation is required for bull trout & critical habitat because either "new information reveals effects of the action that may affect [bull trout & critical habitat] in a manner or to an extent not previously considered" and/or because the Project has been "subsequently modified in a manner that causes an effect to [bull trout & critical habitat] that was not considered in the biological opinion or written concurrence."

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Mining and Wildlife| Region 9

NOI-dated May 20, 2020, Center For Biological Diversity, Northeastern Minnesotans for Wilderness and the Wilderness Society sent a 60-day Notice of Intent to Sue the Bureau of Land Management (BLM), Forest Service and the U.S. Fish and Wildlife Service (FWS) pursuant to the Endangered Species Act (ESA) for alleged violations concerning BLM's May 1, 2020 Decision approving Federal Hardrock Prospecting Permit Extensions for Twin Metals; and for the Forest Service and FWS failure to reinitiate and complete ESA consultation regarding ongoing impacts to Federally listed species and their critical habitat from the Prospecting Permits on the Superior National Forest (Region 9). The NOI states that the permits violate Sections 7 and 9 of the ESA based on new information concerning Canada lynx, gray wolf and their critical habitat, and the Northern long-eared bat.

The NOI claims:

1. The Forest Service and FWS failed to reinitiate and complete consultation on the prospecting permits.
 - a. Subsequent to the FWS's March 22, 2012 biological opinion new information reveals effects of the prospecting permits that may affect listed species and/or critical habitat in a manner or to an extent not previously considered.
 - b. The new information includes, but is not limited to: the submission of Twin Metal's December 2019 Mine Plan of Operations, and related lease applications; the BLM's 2018 reinstatement and 2019 renewal of Twin Metal's leases; and December 14, 2016 determination by the Forest Service that development of a copper-nickel sulfide ore mine within the same watershed as the Boundary Waters.
2. The BLM failed to consult with the FWS prior to issuing its May 1, 2020 decision approving prospecting permit extensions.
 - a. The decision may affect listed species, including the Canada lynx and gray wolf and their critical habitat, and the Northern long-eared bat.
 - b. Prior to issuing the decision, BLM failed to request from the FWS whether any listed or proposed species may be present in the area of the proposed action.
 - c. Listed or proposed species may be present in the area of the prospecting, and BLM failed to prepare a biological assessment to determine whether the listed species may be affected by the permits.

Other Cases Filed Against Another Agency/Entity

Nothing to Report

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