Ecosystem Management Coordination

Court Decisions

Mining | Region 2

High Country Conservation Advocates, et al. v. United States Forest Service, et al. (17-03025, D. Colo.; 18-1374, 10th Cir.) Region 2—On June 15, 2020, the District Court of Colorado issued an order vacating the Colorado Roadless Rule's North Fork Coal Mining Area exception on the Grand Mesa, Uncompahgre, and Gunnison National Forest, per the 10th Circuit Court of Appeals March 2, 2020, order. Also, the court ordered the Forest Service and Defendant-Intervenor to respond to the plaintiffs' emergency motion to enforce remedy by Monday, June 22, 2020.

Background
On March 2, 2020, the 10th Circuit concluded that the Forest Service acted arbitrarily and capriciously in its analysis for the North Fork Exception by failing to analyze in detail the Pilot Knob Alternative within the GMUG. The 10th Circuit vacated the district court's judgement and remanded the case for entry of an order vacating the North Fork Exception.

In July 2012, USDA promulgated the Colorado Roadless Rule, a state-specific regulation for management of Colorado roadless areas. This Rule addressed State-specific concerns while conserving roadless area characteristics. One State concern was maintaining ability to construct or reconstruct roads for exploration and development of coal resources on the GMUG. The Rule addressed this by creating the 19,100-acre North Fork Coal Mining Area, and an exception to the

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Rule that allows temporary road construction for coal-related activities in the area. In September 2014, the district court vacated this exception due to NEPA analysis deficiencies.

In April 2015, the Forest Service began a supplemental analysis process to reinstate the North Fork Exception into the Colorado Roadless Rule. On November 18, 2016, the Forest Service published the Final Environmental Impact Statement (FEIS) to reinstate the North Fork Exception. The FEIS analyzed three alternatives: Alternative A – the Colorado Roadless Rule without the North Fork Exception; Alternative B – the Colorado Roadless Rule reinstating the North Fork Exception on 19,700 roadless acres; and Alternative C – reinstate the North Fork Exception for a reduced North Fork Coal Mining Area on 12,600 roadless acres. On December 19, 2016, USDA published the final rule reinstating the North Fork Exception.

Minerals | Region 1

Solenex LLC v. Bernhardt, et al (13-00993, D. DC; 18-5343, DC Cir.) Region 1—On June 16, 2020, the District of Columbia (DC) Court of Appeals issued a favorable decision on the appeal of a DC District Court's decision, concerning the Solenex oil and gas lease, located within the Badger-Two Medicine Area on the Helena-Lewis and Clark National Forest. The DC Circuit found the Bureau of Land Management's (BLM) cancellation of an oil and gas lease was not arbitrary and capricious, reversing the lower court's decision. The appeal regards an oil and gas lease that BLM issued in 1982 covering approximately 6,247 acres within culturally sensitive areas to the Blackfeet Tribe on the Helena-Lewis and Clark National Forest. BLM cancelled the lease in 2016 during litigation brought by the leaseholder, Solenex, in the district court. Solenex then amended its complaint seeking to reverse the lease cancellation.

Findings: The DC Circuit reversed the district court's September 24, 2018 order vacating the lower court's decision.
:

1. The Secretary of Interiors delay in cancelling the lease is not enough to render the cancellation arbitrary or capricious. Standing alone the delay did not render the lease cancellation as invalid.
2. The Secretary of the Interior did consider, and in fact compensated, Solenex's identified reliance interests in cancelling the lease.
3. The district court erred when entered summary judgment in Solenex's favor.

Background

On September 24, 2018, the district court ordered that the lease cancellation be reversed, stating the Secretary of the Interior was arbitrary and capricious and waited too long to exercise

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cancellation authority and did not consider the leaseholder's reliance interests. The US Government subsequently filed an appeal in April 2019 arguing that the district court erred in concluding the lease cancellation was arbitrary and capricious. Further, the government argued that the district court abused its discretion by ordering the lease to be reinstated rather than remanding the matter for the Department of the Interior to address the issues that the court held the Agency had overlooked.

Forest Management and Wildlife | Region 4

Western Watershed Project, et al. v. Bernhardt, et al. (20-0860, D. D.C.) Region 4—On June 19, 2020, the District Court for the District of Columbia issued a memorandum opinion order denying the plaintiff's request for a preliminary injunction (PI), subsequent to the court's initial June 12, 2020, order denying the PI. On March 31, 2020, the plaintiffs filed a complaint in the district court 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 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, and Administrative Procedures Act, and impacts on the Kendall Warm Springs dace.

The district court found:

Kendall Warm Springs Dace

The plaintiff's request for PI relief as to the Kendall Warm Springs Dace is moot. The defendant parties (Forest Service, FWS, and the ranchers) agreed that crossings will not occur during the pendency of the case, thus there is no need for injunctive relief.

Grizzly bear

The district court determined that the plaintiff cannot prevail, as they failed to establish irreparable harm. The court found no need to consider the other injunctive relief factors in the case. Specifically:

- The court determined that irreparable injury "must be both certain and great, it must be actual and not theoretical. Providing allegations of what is likely to occur is insufficient, because the court must decide, whether the harm will in fact occur. The court concluded that the Forest Service and FWS have measures in place to restrain the number of female grizzly bears takings in the immediate future, even without a numerical limit of 72 bears.

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- The court determined the plaintiff did not explain why their delay in filing a complaint warrants the emergency action of a PI. The FWS issued its biological opinion in April 2019 and the Forest Service issued its record of decision on October 11, 2019, yet the plaintiff filed their complaint in March of 2020.

Forest Management | Region 10

Southeast Alaska Council, et al., v. Forest Service et al. (19-0006, D. Alaska) Region 10—On June 24, 2020, the District Court for Alaska issued a remedy order against the Forest Service concerning the Prince of Wales Landscape Level Analysis Project (the Twin Mountain Timber Sale is the first sale for the project) on the Tongass National Forest. The remedy order vacates the portions of the March 16, 2019, record of decision (ROD) for the project that authorize vegetation management and road construction activities; and vacates the portion of the October 19, 2018, Final Environmental Impact States (EIS) as applied to vegetation management and road construction activities. The plaintiffs requested the district court declare the National Environmental Policy Act (NEPA) and National Forest Management Act (NFMA) violation, vacating the portions of the ROD authorizing vegetation management and new road construction. The Forest Service requested remand without vacatur and requested the allowance of supplemental briefing to be submitted. The court granted the opportunity to brief on the remedy.

The district court concluded:

1. ROD: The parties agreed that the portions of the project's ROD that authorize vegetation and road construction should be vacated.
2. EIS: However, the parties disagreed as to whether the project EIS should also be vacated.
   a. The Seriousness of the Errors: The court determined that the errors in the project EIS in light of its stated purpose are of such seriousness as to weigh in favor of vacatur, and that vacatur of the ROD alone would not fully redress plaintiffs' injuries. The court states: "The project EIS's lack of site-specificity and inadequate comparison of alternatives precluded the Forest Service from taking the requisite hard look at the Project's potential impacts and deprived the public of the opportunity to comment on those impacts, thus undermining the "two fundamental objectives" of NEPA: the agency's careful consideration of "detailed information concerning significant environmental impacts" and the public's ability to participate in the decision-making process."
   b. The Disruptive Consequence of Vacatur: The court determined that the economic harm caused by the partial vacatur of the project EIS does not outweigh the seriousness of the errors in the document, such that remand without vacatur is appropriate.

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Litigation Update

Nothing to Report

New Cases

Grazing | Region 6

WildEarth Guardians, Western Watersheds Project, and Kettle Range Conservation Group, v. U.S. Forest Service, et al. (20-00223, D. E. Wash.) Region 6--On June 17, 2020, the plaintiffs filed a complaint in the District Court of Eastern Washington against the Forest Service primarily concerning the state listed gray wolf on the Colville National Forest in northeast Washington. The plaintiffs claim that Forest Service abdicated its authority on livestock ranching activities to ranchers, which has incited conflict with the gray wolf, in violation of the, National Forest Management Act (NFMA), National Environmental Policy Act (NEPA), and the Administrative Procedures Act (APA). The plaintiffs also claim violations of section 7 of the Endangered Species Act (ESA), concerning ranching activities on the Canada lynx, grizzly bear, and whitebark pine.

Claims:
The plaintiffs claim the Forest Service's October 2019 revised Forest Plan fails to evaluate how the Agency's federally permitted livestock grazing program adversely affects wolves. The plaintiffs challenge the Forest Service's approval of cattle grazing for Diamond M Ranch, which is responsible for most wolf deaths on the Colville National Forest since 2012, without requiring any measures to prevent these wolf-livestock conflicts from recurring.

Violations of NEPA

1. Failure to Address Impacts to gray wolves Under the Forest Plan and to evaluate reasonable grazing management alternatives that reduce wolf/livestock conflicts; with failure to analyze reasonable range of alternatives, take a hard look, analyze direct, indirect and cumulative impacts.
2. Failure to prepare supplemental NEPA analyses for the Diamond M allotment management plans.

Violations of NFMA

1. Revised Forest Plan fails to meet NFMA's requirements.
2. Diamond M's grazing authorizations are inconsistent with Forest Plan direction.

Violations of ESA

At least since 2000, the Forest Service has failed to:

1. Prepare a Biological Assessment to determine whether annual grazing on the Copper-Mires, Lambert, and C.C. Mountain allotments "may affect" listed, proposed and/or

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candidate species such as Canada lynx, grizzly bear and whitebark pine that may be present in the action area.
2. Consult FWS as required by the ESA and its implementing regulations; and
3. The Forest Service's refusal to ensure no jeopardy to listed, proposed and/or candidate species through consultation with the U.S. Fish and Wildlife Service (FWS) is a violation of its mandatory, affirmative duties under section 7(a)(2) of the ESA.

Background
On April 1, 2020, received a NOI from the WEG to sue the 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. 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. That for 75 years the Forest Service has issued term grazing permits to Diamond M Ranch, reportedly the largest cattle producer in the state of Washington, to graze its cattle on allotments in the western portion of the Colville. In 2013, the Forest Service issued a 10-year term grazing permit authorizing Diamond M Ranch to annually graze cattle on the allotments. These federal grazing allotments are managed under the direction of Allotment Management Plans.

Notice of Intent

Forest Management and Wildlife | Region 5

NOI-dated June 22, 2020, Klamath Siskyou Wildlands Center (KSWC), Klamath Forest Alliance, and EPIC sent a 60-day Notice of Intent to Sue pursuant to the Endangered Species Act (ESA) for alleged violations concerning the Crawford Vegetation Project on the Klamath National Forest. The NOI alleges the Forest Service failed to reinitiate consultation on the project regarding "new information that indicates that the proposed vegetation management activities may affect Northern Spotted Owls (NSO) in a manner and to an extent not previously considered by the agencies."

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The KSWC alleges the following new information claims:

1. Monitoring reports from the Klamath National Forest provide long-term data (9 years) on the status of the NSO in the action area.
2. The Forest Service's surveys of the Crawford Project were inadequate.
   a. The survey fails to account for and cover substantial portions of the action area, including areas of nesting and roosting habitat that could be occupied; and
   b. For the areas that were surveyed, the number and type of surveys completed were inadequate to fully assess owl occupancy and use, particularly in light of barred owl presence and occupancy in the area.

The new information requires reinitiation of consultation. Specifically, the Forest Service's survey information and gaps discussed by biologist Tonja Chi's report (referenced in the NOI) are new information that may reveal effects on NSOs not previously considered.

Background

Klamath-Siskiyou Wildlands Center, et al. v. Grantham, et al. (20-00408, E.D. Calif.). On April 24, 2020 the plaintiffs filed a complaint in the Eastern District of California against the Forest Service concerning the project. 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 (Federal listed threatened species) and Pacific fisher (Forest Service "sensitive species" and proposed for Federal listing), which have been found in the project area. The plaintiffs claim violations of the National Forest Management Act, National Environmental Policy Act, and Administrative Procedures Act.

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