Ecosystem Management Coordination

Court Decisions

Forest Management | Region 4

Alliance for the Wild Rockies v. USFS (19-445, D. Idaho)-Region 4-On August 11, 2020, the District Court of Idaho issued an unfavorable decision against the Forest Service and Intervenors on the **Lost Creek-Boulder Creek Landscape Restoration Project on the Payette National Forest.** The case concerns an alleged violation of the National Forest Management Act (NFMA) by failing to adhere to the requirements of the 2003 Forest Plan and issuing a 2019 FEIS and ROD that is essentially the same as the original 2014 Project decision found deficient by the 9th Circuit. Plaintiffs contend the 2019 decision is inconsistent with that Circuit remand.

The 2019 ROD does not satisfy the 9th Circuit's instruction to address a flaw in the 2014 ROD whereby the FS didn't articulate how the switch from Management Prescription Category (MPC) 5.2 to MPC 5.1 moves all components toward their desired conditions. In its 2019 ROD, the Forest Service explained that the selected alternative would allow future options whereby the Agency could achieve its desired conditions. In other words, future projects would cure the violation.

The project authorized activities on approximately 80,000 acres of the Payette National Forest

Background

The original project ROD was signed on September 5, 2014, authorizing 22,100 acres for commercial logging and 17,700 acres for non-commercial logging. On June 4, 2015, plaintiffs filed a complaint in the District Court of Idaho asserting the FS's project decision violated NFMA. The district court ruled in favor of the FS on August 31, 2016. On October 12, 2016, plaintiffs appealed to the 9th Circuit, and the court ruled in favor of the plaintiffs under the claims of violation of NFMA and the project approval was inconsistent with the forest plan. The 9th Circuit remanded the case back to the district court with instructions to

vacate the 2014 ROD and to hold further proceedings consistent with its opinion. The plaintiffs claim the new Final Environmental Impact Statement and ROD, signed on November 1, 2019, is essentially the same as the 2014 project.

Lands/Mining | Region 1

United States of America v. Carrie Pfleger Robertson (17-54, D. Montana) Region 1-On August 7, 2020, the District Court of Montana issued a Findings of Fact Conclusions of Law, and Order in favor of the United States for trespass and damages associated with the White Pine patented mining claim on the **Beaverhead-Deer Lodge National Forest.**

The Court Concluded:

1. Damages related to trespass in this case were temporary and given the stewardship obligations of the USFS for National Forest Lands, restoration damages apply, as allowed by Montana State Law
2. Defendants failed to remove property in a timely manner and did not ask or was granted an extension
3. The USFS had the right to remove the property and restore the lands to their previous state and recover the costs of $48,532.44
4. Defendant Carrie Pfleger Robertson and the Estate of Joseph Robertson are jointly and severally liable to the US for $48,532.44

Background

On May 15, 2017, the United States government filed suit against Carrie and Joseph Robertson for unauthorized use of and encroachment onto Forest Service lands unlawfully trespassing on United States lands in violation of 16 U.S.C. 551 and regulations promulgated thereunder and in violation of regulations governing the surface land of the unpatented mining claims.

Forest Management | Region 5

Klamath-Siskiyou Wildlands Center v. Patricia Grantham (20-850, E.D. Cal.) Region 5— On August 12, 2020, the Eastern District of California issued a Stipulation for Dismissal without Prejudice regarding the Crawford Vegetation Project on the Klamath National Forest. The alleged violations were NFMA, NEPA and APA.

The Parties Stipulated:

Defendants withdrew the FEIS FONSI and DN for the Crawford Project on August 6, 2020.

Background
On April 24, 2020, the plaintiffs filed a complaint in the Eastern District of California against the Forest Service concerning the **Crawford Vegetation 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

Forest Management/Wildlife | Region 5

Los Padres Forest Watch, et al. v. U.S. Forest Service, et al. (19-5925, C.D. Cal.) **Region 5**- On August 20, 2020, the Central District Court of California issued a favorable decision to the Forest Service concerning the **Tecuya Ridge Shaded Fuelbreak Project on the Los Padres National Forest**. The Forest Service analyzed the project under **Category 6 Wildlife Habitat Enhancement Categorical Exclusion** (CE) for "timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction." (36 CFR 220.6(e)(6). The Plaintiffs concerns alleged violations of National Environmental Policy Act (NEPA), for claimed improper use of category 6 CE, and alleged violations of National Forest Management Act (NFMA), and Endangered Species Act (ESA).

The district court concluded that the Forest Service's:

1. Finding that the project was exempt from an environmental assessment and an environmental impact statement was not a violation of NEPA. The court determined that the Forest Service's decision that exceptional circumstances did not warrant further environmental study was not arbitrary and capricious.
2. Decision that the project was not likely to adversely affect the California condor was not a violation of the ESA. The court determined that the Forest Service's decision to go forward with this project was not arbitrary and capricious. The Agency consulted with its experts, considered the science, listened to opposing views, and performed a careful analysis. As such, the Forest Service's decision will not be disturbed.
   "*See Ctr. for Biological Diversity v. Ilano*, 928 F.3d 774, 783 (9th Cir. 2019) (upholding Forest Service's conclusion that thinning project was excluded from environmental assessment and environmental impact statement where evidence established that Forest Service considered the relevant scientific data, engaged in a careful analysis, and reached its conclusion based on evidence supported by the record)."

Background

On July 10, 2019 the plaintiffs filed a complaint in the district court against the Forest Service concerning the project.

The decision memo authorizing the project was signed on April 2019. The project provides for a reduction in stand density, competing vegetation, and fuels are proposed on an estimated 1,626 acres of National Forest System lands within Mt. Pinos Place Management Area. The project area has been identified within the Mt. Pinos Communities Wildfire Protection Plan and within the Los Padres National Forest Strategic Fuelbreak Assessment as strategic for future wildfire and prescribed fire management. The project creates a variable-width, shaded fuelbreak, along Tecuya Ridge in order to alter existing stand structure, reduce fuel loading, and protect local communities and provide for firefighter safety. To achieve this, various types of vegetation treatments are proposed.

Litigation Update

Nothing to Report

New Cases

Minerals | Region 9

Center for Biological Diversity, et al. v. Michelle Leverete, et al. (20-02132, D. D.C.) **Region 9**—On August 5, 2020 the plaintiffs filed a complaint in the District Court for the District of Columbia against the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), and the Forest Service concerning the issuance of **13 prospecting permits on the Superior National Forest** to **Twin Metals Minnesota LLC** (Twin Metals), for proposed sulfide-ore copper mine at the edge of the Boundary Waters Canoe Area Wilderness (Boundary Waters) in Minnesota. The complaint alleges that BLM, in deciding on May 1, 2020 to extend the prospecting permits, failed to consider how Twin Metals' mine plan, mineral leases and permits could harm the critical resources of the Boundary Waters watershed. The complaint alleges that BLM failed to consult with the FWS over potential harm to three endangered species and their critical habitat: Canada lynx, gray wolves and northern long-eared bats. The plaintiffs also challenge the ongoing failure of BLM's, FWS's, and Forest Service's failure to reinitiate and complete consultation pursuant to Section 7 of the Endangered Species Act (ESA) on the listed species.

Also alleged are violation of the National Environmental Policy Act (NEPA) and Administrative Procedures Act (APA), and BLM Regulations 43 C.F.R 3305, in authorizing the 13 prospecting permits.

According to the complaint the prospecting permits allow Twin Metals to drill holes, build roads and do other mining exploratory work throughout more than 15,000 acres of Superior National Forest. With some of the renewed permits extending beyond the geographic footprint of the proposed mine.

The plaintiffs claim Twin Metals' mining proposal would cause environmental damage to the region's forests, lakes, rivers and wetlands that lie between Birch Lake and the edge of the Boundary Waters — and to the wilderness itself. The plaintiffs specifically claim:

1. BLM Violated NEPA by failing to:

- Consider the cumulative impacts of the prospecting permits along with all past, present, and reasonably foreseeable future actions prior to issuing the prospecting permits.
- Consider whether the extension of the prospecting permits, and Twin Metals' Mine Plan of Operations, preference right lease applications, and/or new permit applications are cumulative and/or connected actions that must be considered together.
- Consider and address relevant new science and information, prior to issuing the prospecting permits.
- Prepare and environmental assessment (EA) or environmental impact statement (EIS) prior to issuing the prospecting permits.

2. BLM Violated the ESA by Failing to:
   Consult with the FWS and ensure no jeopardy to listed species and no adverse modification or destruction of critical habitat, prior to issuing the prospecting permits. Specifically, concerning the Canada lynx, gray wolf, and northern long-eared bat.
3. BLM, Forest Service and FWS Violated the ESA by Failing to:
   Reinitiate and complete consultation on the ongoing impacts of the hardrock minerals prospecting permits on the Superior National Forest, concerning the gray wolf, northern long-eared bat.
4. The BLM violated its own regulations in issuing the prospecting permits. Specifically, pursuant to the BLM's regulations, in order to extend a prospecting permit, the BLM must prove that (a) the mining company "explored with reasonable diligence," and was unable to determine the existence and workability of a valuable deposit covered by their permit, or (b) that the permittee's failure to perform diligent prospecting activities was due to conditions beyond their control. 43 C.F.R. § 3505.62(a).

<u>Background</u>
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 BLM, FWS and

Forest Service pursuant to ESA for alleged violations concerning BLM's prospecting permit extensions for Twin Metals; and for the Forest Service and FWS failure to reinitiate and complete ESA consultation regarding ongoing impacts to Canada lynx, gray wolf, and northern long-eared bat and their critical habitat from the permits.

Separate Complaint

On May 6, 2020 the Wilderness Society, Friends of the Boundary Waters, and Northeastern Minnesotans for Wilderness filed a complaint in the District Court for the District of Columbia against the U.S. Department of Interior, BLM, Department of Agriculture and the Forest Service concerning compliance with NEPA and APA when the BLM issued two hardrock mining lease renewals to Twin Metals in an area adjacent to the Boundary Waters. The complaint includes no ESA claims.

Grazing/Lands | Region 2

Ralph Round v. USDA, et al (20-2092, D. Colo.)-Region 2-On July 17, 2020, Plaintiffs filed a complaint in the District of Colorado for declaratory and injunctive relief pursuant to 28 U.S.C. 2201 and Judicial Review pursuant to 5 U.S.C. 701 among many other claimed questions pertaining to 28 USCA 1331 under the Constitution and laws of the United States (General Land Law Revision Act, Forest Service Organic Act, NFMA, MUSYA, APA, Bankhead-Jones Farm Tenant Act, Farmers Home Administration Act, Stock Raising Homestead Act, and many more). Plaintiff claims violations of these laws, acts and statutes, allowing destruction of the plaintiff's private property, specifically upon the grazing allotments as well as the improvements thereon and cattle owned by Plaintiff on the **Pike and San Isabel National Forest, Cimarron and Comanche National Grasslands, Rock Fall and Crooked Arroyo Grazing Allotments**

Plaintiff Generally Claims:

1. Declaratory Judgment
   a. Declare the plaintiff is the owner of the property rights included in the surface estate referred to as the Grazing Allotments
   b. Declare plaintiffs are entitled to continue to graze cattle on the Allotments and plaintiffs are allowed to protect his valid existing property rights
2. Declaratory Judgment
   a. Declare plaintiff has vested property rights as valid existing rights.
   b. Declare the vested existing rights existed prior to the Forest Service's management of the Grazing Allotments and any action taken by the Forest Service is subject to those rights.

c. Declare the Defendants have interfered with Plaintiffs valid existing rights and damaged such rights.

3. Injunctive Relief
   a. Declare plaintiff will be harmed by the defendants continued allowance of hunters destroying plaintiff's private property
   b. Defendants are destroying plaintiff's ability to earn a living by declaring the grazing allotments are public land and national forest system lands
   c. Issue a permanent injunction barring defendant from further interference with Plaintiffs access to his property and interference from Defendants with Plaintiffs ability to protect his vested surface rights.

Wildlife/Tribal/Lands | Region 10

State of Alaska, Department of Fish and Game v. Federal Subsistence Board, et al. (20-00195, D. Alaska) **Region 10**—On August 10, 2020 the State of Alaska, Department of Fish and Game filed a complaint in the District Court of Alaska against the Federal Subsistence Board (FSB), U.S. Department of Agriculture (USDA), including the Forest Service, and the U.S. Department of Interior (DOI), including the Bureau of Land Management (BLM), regarding the FSB's delegation of regulatory authority to in-season managers to open seasons for hunting, fishing, to authorize opening temporary hunting seasons, to close certain federal lands to non-federal qualified subsistence users, to delegate administrative authority to entities outside a federal agency, and to take action outside a public meeting. The plaintiff claims violations of the Open Meeting Act (OMA), Alaska National Interest Lands Conservation Act (ANILCA), and Administrative Procedures Act (APA) on **Federal public lands within the State of Alaska**

The plaintiff claims the following:

1. Violation of OMA: The OMA requires actions of the FSB to be in a public meeting that is announced at least one week prior to the meeting.
   a. The FSB violated the OMA by taking action to delegate official rulemaking authority on April 9, 2020, without announcing a public meeting or holding the meeting in a manner where the public could observe the actions being taken.
   b. The FSB violated the OMA by holding an unannounced executive session on July 16, 2020.
2. Violations of ANILCA Title VIII:
   a. ANILCA authorizes the FSB to close or restrict hunting opportunities on federal public lands for stated purposes and considering specific information. Defendants violated ANILCA by opening a hunt for deer and moose near Kake without the statutory authority to open such a hunt.

Defendants violated ANILCA by adopting 50 CFR § 100.19 to the extent the FSB attempted to give itself the authority to open temporary and emergency seasons, beyond merely reopening seasons that were closed.

b. In Title VIII of ANILCA, Congress provided for the continuation of hunting and fishing subsistence activities for rural residents on federal public lands, both Alaska Native and non-Native. Defendants violated ANILCA by authorizing a hunt for deer and moose near Kake only for members of the Organized Village of Kake.
c. ANILCA authorizes the FSB to close or restrict hunting opportunities on federal public lands for stated purposes and considering specific information. The defendants violated ANILCA by closing federal lands to harvest of moose and caribou for two years in Game Management Unit 13A and 13B to non-federally qualified subsistence users based on competition between hunters.

3. Violation of ANILCA § 1314: In ANILCA Congress preserved the State's authority as primary managers of fish and wildlife, including on federal public lands, except as provided in Title VIII of ANILCA. The defendants violated ANILCA by exceeding the authority granted by Congress by opening a moose and deer hunt for Kake tribal members and closing hunts for moose and caribou in Unit 13A and 13B to non-federally qualified hunters.
4. Violation of APA: The APA provides that courts shall set aside agency action, findings, and conclusions that are not in accordance with the law.
   a. The FSB's decision to authorize a 30-day hunt, and the resulting action by the Forest Service District Ranger for the Petersburg Ranger District to issue the Emergency Special Action Permit, "COVID-19 FOOD SECURITY COMMUNITY HARVEST FOR THE ORGANIZED VILLAGE OF KAKE," opening a 60-day hunt for deer and moose to only Kake tribal members is not in accordance with law.
   b. Defendants' decision to ignore the determination by the Mass Care Group, that there are no food security problems or food supply disruptions resulting from COVID-19, and, therefore, no imminent threat to public safety, is not in accordance with law, and contrary to Defendants' own guidelines.
   c. Defendants' delegation of administrative authority to the Organized Village of Kake to determine who is eligible to participate in the hunt is a delegation outside of federal agencies and is not in accordance with law.
   d. Defendants' decision to close moose and caribou hunting to non-federally qualified users on federal public lands in Unit 13A and 13B is not in accordance with law.

e. Defendants' decision to modify a request for a temporary closure, even if such closure had been authorized under ANILCA, by expanding the requested closure of moose and caribou hunting from one year to two years is not in accordance with law.

Background
According to the complaint, on April 9, 2020, the FSB approved a process to delegate broad authority to local federal land managers ("agency field managers") throughout Alaska to adopt emergency, up to 60 days, or temporary regulations to open areas for hunting and fishing.

On July 16, 2020, the FSB met to address four proposals, including WSA 20-03, a temporary special action request seeking a one-year closure to moose and caribou hunting on federal lands with Unit 13 as an experiment to reduce hunter competition. The FSB adopted the proposal to temporarily close moose and caribou hunting in Subunits 13A and 13B to non-federally qualified users and made the closure for two years rather than the requested one year.

Minerals | Region 4

Nez Perce Tribe v. Midas Gold Corp, et al. and United States of America, et al. (third-party Defendants) (19-00307, D. Idaho) **Region 4**—On August 18, 2020 Midas Gold (defendant) in this case, filed a proposed Third Party motion against the Forest Service to join this case, or in the alternate, to consolidate this case with the action Midas Gold Idaho, Inc. v. United States (20-409, D. Idaho), concerning the Stibnite Gold Project on the **Payette and Boise National Forests.** The Plaintiff alleges Violations of the Clean Water Act (CWA).

Midas Gold claims (Defendant):

The United States and the Forest Service are the owners, operators and the rightful defendants for at least 3-point source discharges into the East Fork South Fork Salmon River, and its tributaries and should be named in the underlying litigation. Specifically, Midas Gold claims the Forest Service has violated the CWA by discharging pollutants from the Hangar Flats Tailings Pile, the DMEA Adit and Waste Rock Dump, the Bonanza Adit, and the Cinnabar Tunnel in the District into navigable waters without a valid National Pollutant Elimination System (NPDES) permit(s) authorizing the discharges.

Nez Perce Tribe seeks (Plaintiff):

Declaratory and injunctive relief prohibiting Midas Gold from discharging pollutants into the East Fork South Fork Salmon River and its tributaries without obtaining ad

complying with a valid NPDES permit(s). This case is being brought under the citizen enforcement provision of the CWA.

Background

On Jude 11, 2020, Midas Gold Corp., Midas Gold Idaho, Inc., Stibnite Gold Co., and Idaho Gold Resource Co., LLC (Midas Gold) sent a 60-day Notice of Intent to Sue pursuant to the Clean Water Act (CWA), to possibly name the United States and the Forest Service as third party defendants in *Nez Perce Tribe v. Midas Gold Corp., (19-00307, D. Idaho)* Stibnite Gold Project (project); Plan of Restoration and Operations (PRO): Midas Gold is working with the Environmental Protection Agency (EPA) to develop an Administrative Order on Consent (AOC) to undertake some early actions to address water quality at the Site on an interim basis. The Nez Perce Tribe notified and then filed suit against Midas Gold alleging violations of the CWA regarding 8-point sources of discharge in violation of the CWA. Midas Gold claims the United States and the Forest Service are the owners, operators and the rightful defendants for at least 3 of those points of sources of discharge and should be named in the underlying litigation.

The Nez Perce Tribe (Tribe) sent an NOI to Midas Gold and copied the Forest Supervisor of the Payette National Forest (PNF) indicating their intent to bring an action under the CWA for alleged unpermitted point source discharges located on lands within the control of Midas Gold. The Tribe asserts that Midas Gold is responsible for all of the discharges. The Tribe filed a complaint in Idaho asserting the claims on August 8, 2019. The Tribe alleges that the defendants (Midas Gold) owns and operates 8 point sources that are discharging pollutants into the waters of the United States on the SGP site in Idaho in violation of 33 U.S.C. SS 1311 (a) which prohibits the discharge of "any pollutant by any person" unless in compliance with the National Pollution Discharge Elimination System.

Notice of Intent

Nothing to Report

Other Cases

Minerals | Region 2

Citizens for a Healthy Community, et al. v. United States Bureau of Land Management, et al. (20-02484, D. Col.)—**Region 2-**On August 19, 2020 the plaintiffs filed a complaint in the District Court of Colorado against the Bureau of Land Management (BLM), concerning the Agency's approval of a revised Resource Management Plan (RMP) for BLM's Uncompahgre Field Office (UFO) in the State of Colorado. BLM's approval of the RMP expands lands

available to oil and gas leasing and development, committing hundreds of thousands of acres of land to oil and gas development without consideration of reasonable alternatives, without taking a hard look at the plan's greenhouse gas emissions and resulting impacts to the climate and natural resources, and without defining or taking steps to prevent unnecessary or undue degradation of the lands—particularly resulting from the plan's contribution to the climate crisis.

The plaintiffs claim the approval of the RMP through an Environmental Impact Statement (EIS) and Record of Decision (ROD), signed April 2, 2020. They claim BLM's approval of the RMP violated the National Environmental Policy Act (NEPA), and NEPA's implementing regulations promulgated by the Council on Environmental Quality, as well as the Federal Land Policy and Management Act (FLPMA), and FLPMA's resource management planning regulations.

The plaintiffs make the following claims:

NEPA Claims

1. Failure to analyze a reasonable range of alternatives: BLM's analysis failed to consider a no leasing alternative, which was necessary to: (1) establish a baseline from which to analyze the effects to resource values and greenhouse gas emissions managed by the plan; (2) is consistent with the agency's multiple use mandate and land management obligations; (3) is reasonable given the urgency of the climate crisis, the role of fossil fuel extraction on public lands, and the significant contribution to total U.S. emissions; and (4) the federal government's commitment and obligation to reduce anthropogenic fossil fuel emissions as necessary to reduce the risks of catastrophic warming and preserve a livable planet.
2. Failure to take a hard look at the severity and impacts of greenhouse gas pollution: The Uncompahgre RMP/EIS failed to take a hard look at cumulative greenhouse gas emissions or the severity of resulting climate impacts, and declined to employ either of these protocols—or any other tool—for assessing the impact of the climate pollution caused by the production and combustion of the federal mineral resources that will be developed under the RMP/EIS, opting instead for a "qualitative approach."
3. Failure to take a hard look at methane emissions and global warming potential: BLM failed to properly quantify the magnitude of methane pollution resulting from coal, oil and gas emissions sources in the planning area.
4. Failure to take a hard look at impacts to wildlife: The Uncompahgre RMP/EIS failed to take a hard look at direct, indirect, and cumulative impacts to wildlife and wildlife habitat, including the survival and recovery of the threatened Gunnison sage-grouse and its habitat.

FLPMA Claims

5. Failure to define and prevent unnecessary or undue degradation in the context of climate impacts: BLM has neither defined what constitutes "unnecessary or undue degradation" in the management of the resources in the UPA—with particular consideration of greenhouse gas emissions and resulting climate impacts—nor has the agency explained why its choice of Alternative E will not result in such degradation, as required by FLPMA.

Background

The plaintiffs state that the UPA includes a vast swath of land, which encompasses portions of six counties within its 3.1 million acres and stretches from Paonia in the north to Telluride in the South. The planning area includes 675,800 acres of BLM-administered lands, and controls development on 971,220 acres of federal mineral estate underlying federal, state, municipal, and private lands. The RMP, as approved, allocates the vast majority of this mineral estate—871,810 acres—as "open" to fluid mineral leasing with estimated direct greenhouse gas (GHG) emissions of 2,512,570 tons of carbon dioxide equivalent (CO2e) per year, and up to 129 million tons CO2e in indirect emissions over 30 years.