

## Ecosystem Management Coordination

*Happy Friday!*

### Court Decisions

#### Lands | Region 1

**North Dakota, et al. v. United State of America** (12-125, D. N.D.; lead case), and **Billings County, North Dakota, et al. v. Unites State of America** (12-102, D. N.D; consolidated case) **Region 1**—On October 2, 2020, the District Court for North Dakota issued an order against the Forest Service regarding specific Roads on the Dakota Prairie National Grassland pertaining to a Quiet Title jurisdiction of: (a) section line rights of way; and (b) seven specific roads on the Dakota Prairie National Grassland R.S. 2477 Right-of Way.

#### The district court:

- Quieted title to all the specific roads to the county.
- Roads #2, #3, and the Section 17 diagonal for County Road #193. Title to these roads are quieted to McKenzie County. Temporary Restrictions to off-road vehicle travel during the hunting season was not enough to trigger statute of limitations (10/2/2020 order).
- Title to Township Road #169 is quieted in favor of McKenzie county. (Partial Summary judgment on 10/31/2019).
- Title to Road 30 and portions of Roads 172 and 193 to McKenzie County (disclaimer of interest 11/13/2019).

#### Background

On June 26, 2017 the district court issued a favorable decision to the Forest Service, in *North Dakota, et al. v. USA* (12-125, D. N.D.). The court sided with the Agency on the section right of way, but, as a result of the court's October 2, 2020 order, plaintiffs may now appeal the June 26, 2017 order.

On September 14, 2012 the State of North Dakota filed a complaint in district court that claims that all section lines in North Dakota, including those on the grasslands, are a public right-of-way under RS 2477, regardless of whether any road exists on the ground. On July 30, 2012 Billings County North Dakota filed a complaint in district court that claims jurisdiction over seven specific right of ways on the grasslands.

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## Litigation Update

### Nothing to Report

### New Cases

### Nothing to Report

### Notice of Intent

#### Forest Management | Region 5

**NOI – Dated October 2, 2020, the Forest Service and the U.S. Fish and Wildlife Service (FWS) received a 60-day Notice of Intent by the Earth Island Institute, Greenpeace Inc., and Sequoia ForestKeeper (Earth Island) intend to sue in connection with the logging and vegetation management activities if the defendants do not reinitiate consultation on the Rim Fire Projects. The plaintiffs intend to file a lawsuit and/or amend their existing complaint.**

Earth Island states that new information indicates that the proposed Rim Fire Project may affect the Pacific fisher, a newly listed species, in a manner not previously considered by agencies. On May 15, 2020, the Pacific fisher was Federally listed in the southern Sierra Nevada on the Stanislaus National Forest. The proposed Rim Fire Project may affect the species, thus requiring re-initiation of consultation.

Complainants allege violation of Section 7 of the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA).

Earth Island claims that the Forest Service and FWS violated ESA and NEPA. Specifically:

1. The Forest Service and FWS documents previously admitted that the project “may affect” Pacific fishers.
2. Freedom of Information Act (FOIA) documents confirm Pacific fishers’ sightings in the action area and this new information requires re-initiation of consultation, per section 7 ESA requirements.
3. Earth Island’s biologists previously detected Pacific fisher in the action area.
4. The Forest Service and FWS are to supplement their NEPA analyses to adequately address the impacts of the Pacific fishers

#### Travel Management | Region 6

**NOI – Dated September 14, 2020, the Forest Service and the U.S. Fish and Wildlife Service (FWS) received a 60-day Notice of Intent by the WildEarth Guardians and Conservation**

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**Northwest** to sue the Agencies regarding the **modification to the vehicle class use designations and the motor vehicle use maps** for the Colville National Forest.

WildEarth Guardians and Conservation Northwest allege the Forest Service violated section 7(a)(2) of the Endangered Species Act (ESA) by failing to reinitiate and complete consultation, or to reinitiate consultation, on the modifications to the vehicle use class designations and motor use maps for the Colville National Forest made in 2019 and 2020. They claim these changes have the potential to harm listed species on the Forest. They allege violation of Section 7 of the ESA.

WildEarth Guardians and Conservation Northwest allege:

1. Modifications to the vehicle use class designations and motor use maps for the Colville National Forest authorize new vehicle uses and will induce increased vehicle traffic on approximately 128 miles of roads in the Colville National Forest. They claim the Forest Service authorizations may affect ESA listed species that inhabit and use the Forest, including but not limited to: Canada lynx, bull trout and its critical habitat, grizzly bear, woodland caribou, yellow-billed cuckoo, as well as candidate species wolverine. The Forest Service's failure to initiate and complete consultation, or reinitiate and complete consultation, on these actions violates section 7(a)(2) of the ESA.
2. The Forest Service violated section 7(d) of the ESA by adopting and implementing modifications to the vehicle use class designations and motor vehicle use maps for the Colville National Forest before completing adequate and lawful consultation. Such actions constitute an "irreversible and irretrievable commitment of resources" and warrant an injunction.

### Background

According to the NOI – Colville National Forest Motor Vehicle Use Map: The Forest Service requested informal consultation based on its 2008 Biological Evaluation that determined Amendment #31 was not likely to adversely affect gray wolf, grizzly bear, Canada lynx, woodland, caribou, bull trout, and designated bull trout critical habitat, woodland caribou, western yellow billed cuckoo, and wolverine.

### **Other Cases**

#### **Nothing to Report**

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